

## The complaint

Mrs T, through her representative, complains that S.D. Taylor Limited, trading as Loans at Home (LAH), lent to her irresponsibly. Her representative also says that Mrs T did not receive debt advice from LAH and failed to send to her its final response letter following her complaint.

## What happened

We had very little information from either party but what I did have enabled me to create a brief loan table. 'W/O' in LAH's records likely means 'written off' but the date was not given. Correspondence from LAH suggests this 'write off' was December 2016.

Loan	Agreement Date	Settled	Term in weeks	Weeks To Settle	Capital
1	20/11/2008	09-07-2009	32	33	£200
2	25/12/2008	01-04-2010	41	66	£250
3	09/07/2009	27-05-2010	41	46	£250
4	01/04/2010	30-09-2010	41	26	£250
5	27/05/2010	09-12-2010	41	28	£250
6	05/08/2010	21-04-2011	41	37	£125
7	30/09/2010	21-04-2011	41	29	£250
8	09/12/2010	26-05-2011	41	24	£250
9	09/12/2010	30-06-2011	41	29	£125
10	21/04/2011	01-12-2011	41	32	£250
11	21/04/2011	01-12-2011	41	32	£250
12	26/05/2011	07-11-2013	52	128	£450
13	30/06/2011	17-10-2013	41	120	£125
14	30/06/2011	17-10-2013	41	120	£125
15	18/08/2011	07-11-2013	41	116	£125
16	15/09/2011	07-11-2013	32	112	£200
17	01/12/2011	28-11-2013	41	104	£250
18	01/12/2011	28-11-2013	41	104	£250
19	07/11/2013	W/O	41		£500
20	28/11/2013	W/O	41		£250
21	28/11/2013	W/O	41		£250

Mrs T sent to us a copy of her credit file dated 6 February 2020 but as that goes back for six years it does not cover the period of these loans. And it did not give me much information about her financial situation before February 2014. Mrs T sent nothing further.

Originally, LAH said that all these loans are outside of our jurisdiction and so it has not investigated them. It did issue a final response letter in February 2021 and it said all were 'Time Barred'.

From LAH we have received the basic details about the loans approved, most of which are set out in the loan table above. LAH told us that letters relating to arrears were sent to Mrs T each year from 2009 onwards to 2016/17. Copies were not sent to us. It had no information about any credit search results, it had no account notes to send to me and so I had very little to review.

Of the ones LAH considered '*Time Barred*', our adjudicator applied the Financial Conduct Authority (FCA) rules which apply and thought that we could look at them all.

LAH originally disagreed with the adjudicator's view on jurisdiction. This position has changed – see later in this decision.

Our adjudicator looked at the merits of the complaint as well and thought that LAH should put things right for Mrs T for loans 4 to 21.

LAH wrote back to object about the jurisdiction element and a second view was issued by our adjudicator to confirm the first view, as well as informing LAH that the case would be passed to an ombudsman for both jurisdiction and merits to be considered.

I issued a provisional decision on 20 January 2022 in which I gave reasons why I felt able to consider all the loans and that each fell within our jurisdiction. I do not repeat those points here as LAH has not disagreed and has responded to that part of my provisional decision relating to Mrs T's complaint on its merits. So, LAH has decided to proceed to try to resolve the complaint rather than raise issues on jurisdiction.

That part of my provisional decision relating to the merits of Mrs T's complaint is duplicated here in full and in smaller type size to differentiate it from my final determination which is set out later in this decision.

### ***What I provisionally decided on the merits of the complaint – 20 January 2022***

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance, and good industry practice - on our website. LAH has received many decisions from this Service about irresponsible lending and so my summary here is brief.

I note that some loans were approved by LAH for Mrs T when the relevant guidance for lenders was before the FCA was the regulator. And this case concerns loans that were started before the Office of Fair Trading's Irresponsible Lending Guide (ILG) was issued in March 2010. Prior to this the FCA's Lending Code 2006 gave some appropriate guidance to use when lending. And from January 2008 onwards there's also the Office of Fair Trading (OFT) Consumer credit licensing guidance.

The FCA Lending Code refers to a potential lender having to carry out a sound and proper credit assessment rather than a proportionate check. And rather than specifying the lending being sustainable the earlier guidance refers to the lender having to consider *factors 'which may show a high risk of experiencing financial difficulty'*. And, under the guidance given by the OFT, businesses should make sure they have made reasonable enquires to ensure it lent responsibly.

Whilst the wording is different in the OFT's ILG (March 2010), the Lending Code 2006 and the OFT guidance, the tests to ensure the lending is right for the consumer are broadly similar. I have considered them all.

I'm familiar with the Office of Fair Trading's Irresponsible Lending Guide (ILG) issued in March 2010. Under the guidance given by the OFT, businesses should make sure they have made reasonable enquires to ensure they have lent responsibly. The OFT ILG was the foundation of the rules going

forward in the FCA C book (CONC) and often sections of the ILG were cited in those rules.

In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that LAH should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. But certain factors might point to the fact that LAH should fairly and reasonably have done more to establish that any lending was sustainable for Mrs T. These factors include:

- the lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become or was becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable. and/or may lead the lender to recognise that the customer was showing '*...a high risk of experiencing financial difficulty*'.

LAH was required to establish whether Mrs T could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to do so without borrowing further. Similarly, with the earlier guidance and codes.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mrs T's complaint.

### *The secondary complaint points*

The complaint points raised by Mrs T relating to not receiving debt advice from LAH and not receiving a final response letter (FRL) are addressed here.

On current evidence I have no information about whether or not LAH provided such advice to Mrs T nor whether Mrs T ever asked for it. LAH has time to respond to this element if it has anything further to say on this. But I do not plan to uphold this element. LAH did issue its FRL and so I consider that part of the complaint resolved.

### *Irresponsible lending*

I do not have enough for me to review Mrs T's financial circumstances in detail and considering the age of the loans, and what has been forwarded to me already, it's not likely that I will obtain much more detail. This is a provisional decision with a short turn around to allow Mrs T (and LAH if it wishes) to send me more details and information which I can review next week.

However, using what I do have, has meant that I have come to some provisional conclusions. LAH has informed us that Mrs T was receiving arrears notices regularly from around 2009 and so I do think that it demonstrates that she was not good at repaying and was at risk of falling into financial difficulty and that LAH knew this.

I have looked at the loan table and noticed that it had become a regular pattern that Mrs T would use additional fresh loans to repay earlier ones. Sometimes Mrs T had 5 or 6 loans on the go at the same

time. The length of time it took to repay her loans became longer and longer.

So, I think that from Loan 10 when Mrs T was asking for two loans on the same day and looks to have been refinancing previous loans yet again, then that is when I think LAH ought to have recognised that the pattern of lending had become unsustainable, and/or that Mrs T was at serious risk of falling into financial difficulty. I am planning to conclude that LAH ought to have ceased lending completely at loan 10.

I think that Mrs T lost out because LAH continued to provide borrowing from loan 10 onwards because:

- these loans had the effect of unfairly prolonging Mrs T's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period.
- the sheer number of loans was likely to have had negative implications on Mrs T's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I am planning to uphold Mrs T's complaint from Loans 10 onwards and I am planning to direct LAH puts things right as set out below.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

### ***How both parties responded***

LAH accepted the provisional decision and calculated the figures for the uphold for loans 10 to 21. These calculations were sent to Mrs T and her representative replied to accept.

In the circumstances the complaint is resolved in line with my provisional decision reasoning and findings and I uphold the complaint for loans 10 to 21.

In relation to the secondary complaint points, neither party sent to me anything further. So on whether LAH had failed to issue an FRL, I do not uphold that part, and on the issue surrounding whether Mrs T received debt advice, I have no information about it and so I do not uphold that part of Mrs T's complaint.

### **Putting things right**

In deciding what redress LAH should fairly pay in this case I've thought about what might have happened had it stopped lending to Mrs T from loan 10, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mrs T may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between her and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct.

From what I've seen in this case, I certainly don't think I can fairly conclude there was a real

and substantial chance that a new lender would have been able to lend to Mrs T in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mrs T would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce LAH's liability in this case for what I'm satisfied it has done wrong and should put right.

LAH shouldn't have given Mrs T loans 10 to 21. LAH has agreed with this provisional decision and it must ensure that the calculated figures and credit file amendments are in line with my directions here:

- LAH should add together the total of the repayments made by Mrs T towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything LAH have already refunded.
- LAH should calculate 8% simple interest\* on the individual payments made by Mrs T which were considered as part of "A", calculated from the date Mrs T originally made the payments, to the date the complaint is settled.
- Some loans were written off around December 2016. LAH may – if LAH chooses to – use the total of "A" plus "B" to repay any principal which LAH have written-off, if it did that.
- LAH should pay any remaining refund to Mrs T. If there is no refund left and still a balance outstanding made up of written-off principal, it would not be fair for LAH to pursue this further.
- The overall pattern of Mrs T's borrowing for loans 10 to 21 means any information recorded about them is adverse, so for those loans which still appear on her credit file, I direct that LAH should remove these loans entirely from Mrs T's credit file. If LAH have sold any of the loans LAH should ask the debt purchaser to do the same.

\* HM Revenue & Customs requires LAH to deduct tax from this interest. LAH should give Mrs T a certificate showing how much tax LAH has deducted if she asks for one.

### **My final decision**

My final decision is that I uphold Mrs T's complaint in part and I direct that S.D. Taylor Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 24 February 2022.

Rachael Williams  
**Ombudsman**