

The complaint

Ms B, through her representative, complains that Short Term Finance Limited (STFL), lent to her irresponsibly.

What happened

Ms B was approved for seven loans and using the information provided by STFL here is a brief loan table. My understanding is that all the loans have been repaid.

Loan	Agreement Date	Capital	Repay rate weekly	Date loan settled	Product	Weeks Ran
1	23/12/2015	£200.00	£20	15/04/2016	200x16	16
2	01/06/2016	£300.00	£30	21/09/2016	300x16	16
3	23/11/2016	£400.00	£40	22/03/2017	400x16	17
4	07/06/2017	£350.00	£35	20/09/2017	350x16	15
5	07/06/2017	£150.00	£10	15/11/2017	150x25	23
6	15/11/2017	£300.00	£30	06/03/2018	300x16	16
7	15/11/2017	£300.00	£20	12/06/2018	300x25	30

Loans 4 and 5 were approved on the same day and the combined capital lent was £500 at £45 a week repayment. Loans 6 and 7 were approved on the same day and the combined capital lent was £600 at £50 a week repayment.

STFL did not uphold her complaint. Ms B referred it to the Financial Ombudsman.

One of our adjudicators looked at the complaint and thought that by loan 5, STFL ought to have been carrying out additional checks but without the information from Ms B about her financial circumstances then our adjudicator did not come to a finding on whether loan 5 had been lent irresponsibly. Our adjudicator did think that the pattern of lending had become such that Ms B was likely reliant on the lending by Loans 6 and 7. So she did think STFL should put things right for Ms B for loans 6 and 7.

STFL disagreed and said that it had adhered to the regulations governing lending, and there are gaps between many of the loan applications by Ms B which does not demonstrate reliance on its credit and felt that the gaps broke the lending chain. STFL said:

*'From the end of loan 1 to the start of loan 2 there was a break of 6 weeks and 5 days
From the end of loan 2 to the start of loan 3 there was a break of 9 weeks From the end of loan 3 to the start of loan 4 there was a break of 11 weeks From the end of loan 4 to the start of loan 5 there was a break of 11 weeks*

Loans 4 and 5 were taken the same day as one loan was split over 16 weeks and 25 weeks terms
Loans 6 and 7 were also taken the same day as one loan was split over 16 weeks and 25 weeks terms'

The complaint remained unresolved and was passed to me. After I had reviewed it I asked for copy bank statements to better understand Ms B's financial situation. These were sent to us relatively recently all of which I have reviewed. Having done that, I issued a provisional decision on 17 March 2022 in which I gave reasons as to why I was planning to uphold loans 6 and 7.

I made it clear in that provisional decision that I was going to review the complaint again on 31 March 2022. And I said that as Ms B's complaint is almost a year old and then I was planning to issue a further decision on or before 31 March 2022 in the interests of both parties to try to conclude it.

We have heard from Ms B who has said she accepts the outcome in my provisional decision. We have not heard from STFL.

My provisional decision findings are duplicated in the next section of this decision and in smaller type to differentiate it.

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.

We have set out our general approach to complaints about high cost lending - including all the relevant rules, guidance, and good industry practice - on our website.

STFL needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms B could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the Ms B's income and expenditure.

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 STFL should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a level of income).
- having many loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).
- coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

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

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 Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further to do that.

My provisional decision findings dated 17 March 2022

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Ms B's complaint.

The statements we have received are for one bank account. I can see that there were transfers from another account copies, of which I do not have. The copies I have received cover the period 12 September 2015 to May 2017, then there's a gap and the next statements cover December 2017 to January 2018 and then one set covering November 2021 to December 2021.

Gaps in lending

I agree with STFL that the gaps in the lending between the loans do not lead me to be persuaded that Ms B was reliant on STFL's credit. They were not insignificant gaps. But I disagree that the gaps break the loan chain and so I have treated all seven loans as part of one lending relationship between Ms B and STFL.

Proportionate checks

The information Ms B gave to STFL at the time of applying for loans 1 to 3 were satisfactory. STFL has explained '*A credit status report was also obtained...to check for CCJ's and any other indebtedness to check if the applicant is suffering any financial hardship and to validate the expenditure data they have provided.*' 'CCJ' refers to County Court Judgments.

I have not seen any of the credit searches it carried out at the time. Ms B has not sent to me a copy of her credit file. But overall, I think that the checks were proportionate and loans 1 to 3 likely affordable.

In June 2017, Ms B applied for two loans on the same day – loans 4 and 5 – and the combination was a £500 loan, repayable at £45 a week. This was a marked increase in capital and repayment figures and so I have considered whether STFL ought to have carried out additional checks. On balance I think not and one reason was because Ms B had been debt free from STFL for over two and a half months and loans 1, 2 and 3 had been paid on time (except loan 3 was a week late). So, I do not consider that STFL was alerted to any need for additional checks to be carried out.

However, even if additional checks had been carried out, still I don't think that STFL's decision to lend would have altered when it approved loans 4 and 5. And I say this because I reviewed Ms B's bank statements for the month 12 April to 11 May 2017. And it revealed to me the following financial facts which I summarise here:

Ms B received around £541 in the month from the employer for which she'd been working part-time for a while; and Ms B's combined income from tax credits and child benefits amounted to £1,121; and she spent around £347 on food, £66 on childcare, media companies for films and music and internet - £71, TV licence £12, two different telephone companies £218, DVLA £20, insurance of £10, and council tax of £82. That equates to £826.

Apart from one payment to a debt company there were no payments to any other loan companies.

Added to which Ms B transferred into this account about £815 from another account to which she appears to have had access. And I can see that Ms B paid around £435 to a holiday company in that month. It looks as if the £815 which came from her other account was used to pay the holiday company.

So, ignoring the holiday expenditure and the additional transfers into her account, on her regular income figure of £1,662 less her regular expenditure of £826 that month it leads me to think that Ms B would have been able to afford loans 4 and 5. And even if STFL had looked at her bank statements or carried out additional checks before lending loans 4 and 5 then I think it would have approved those loans.

Loans 6 and 7 were applied for in November 2017 and loan 5 looks to have been paid off using the capital from one of the new loans 6 or 7.

By this stage I do think that STFL ought to have been carrying out a full financial review and I say that because Ms B was returning to refinance a loan and asking for more than she'd asked for before. And she had been a customer of STFL and indebted for almost two years.

Unfortunately, I have not been sent the copy bank statements for the period leading up to November 2017. I have copies up until May 2017 then nothing until December 2017.

So, I have reviewed the month for December 2017 and January 2018 and a marked difference was that Ms B received much less tax credit funds and there is no explanation as to why that may have been. I can see that she continued to receive her monthly salary of £540. Her overall combined income was much reduced for the month I looked at and her expenditure looks much the same as that of earlier in the year (save for the holiday company expense).

And so using what I have, and in view of the proximity of the December 2017 bank statement to the November 2017 loan approvals, I am making a provisional decision that it was unlikely she could afford the £50 each week to pay for loans 6 and 7.

If I am incorrect on this deduction that Ms B's income appeared to have reduced significantly around the time she applied for loans 6 and 7, then I think that STFL got it wrong when it calculated affordability at the point of sale of the two loans in November 2017. I say this because I refer to a discrepancy in the records STFL has sent to us which leads me to the same provisional conclusion – that Ms B was not likely able to afford loans 6 and 7.

Reviewing the information STFL had before lending, it looks like it was incorrect. It had recorded a *weekly* income of £793 made up of £220 employment, £33.40 child benefit and £540 'other'.

A full financial review which may have included looking at her bank statements and/or reviewing payslips – which is what I think proportionate checks would have been for loans 6 and 7 – would have revealed that her regular *monthly* income was £540 not her weekly income. And its own records likely would have told STFL that whether it viewed her bank statements or not. Then considering her outgoings were similar to those in April and May 2017, then I doubt that she could afford the £50 a week to STFL.

I am planning to uphold Loans 6 and 7.

This is the end of the duplicated provisional decision.

What have both parties said in response tot eh provisional decision?

Ms B, through her representative, has agreed with my provisional findings and added nothing further.

STFL has not responded.

As I outlined in my provisional decision, this complaint has been ongoing for a year and so in the interests of both parties to draw this to a resolution I have decided to issue my final decision.

And as Ms B has agreed to it and I have received nothing further from STFL, then I see no reason to depart from the findings I made in my provisional decision and they are repeated here and form part of my final determination.

I uphold the complaint in relation to loans 6 and 7.

Putting things right

In deciding what redress STFL should fairly pay in this case I've thought about what might have happened had it stopped lending to Ms B from loan 6, 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 Ms B may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this 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 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 Ms B 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 Ms B would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce STFL's liability in this case for what I'm satisfied it has done wrong and should put right.

STFL ought to do as follows:

- refund all interest and charges Ms B paid on loans 6 and 7;
- pay interest of 8% simple a year* on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- remove any negative payment information about loans 6 and 7 from Ms B's credit file;

*HMRC ask that STFL take off tax from this interest. It must give Ms B a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Ms B's complaint in part and I direct that Short Term Finance Limited does as I have directed in the section 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 28 April 2022.

Rachael Williams
Ombudsman