

The complaint

Mr E complains Rogerstan Finance Limited (Rogerstan) provided him with loans that he couldn't afford to repay.

Mr E says these loans have caused long term financial problems for him, including contributing to him having significant arrears on his mortgage.

What happened

Mr E has complained about 22 home collected loans advanced between May 2015 and February 2020. A summary of Mr E's borrowing, based on the information provided to us from Rogerstan, can be found below;

<i>loan number</i>	<i>loan amount</i>	<i>agreement date</i>	<i>repayment date</i>	<i>term (weeks)</i>	<i>weekly repayment</i>
1	£400.00	05/05/2015	22/09/2015	31	£20.00
2	£400.00	19/08/2015	15/12/2015	31	£20.00
3	£600.00	22/09/2015	no information	no information	no information
4	£500.00	15/12/2015	31/05/2016	31	£25.00
5	£800.00	01/03/2016	no information	no information	no information
6	£600.00	31/05/2016	09/11/2016	31	£30.00
7	£1,000.00	30/08/2016	19/04/2017	31	£50.00
8	£1,000.00	08/11/2016	31/05/2017	31	£50.00
9	£1,000.00	18/04/2017	29/09/2017	31	£50.00
10	£1,000.00	30/05/2017	no information	no information	no information
11	£1,000.00	26/09/2017	28/02/2018	31	£50.00
12	£1,000.00	05/12/2017	30/05/2018	31	£50.00
13	£1,000.00	27/02/2018	29/08/2018	31	£50.00
14	£1,000.00	29/05/2018	no information	no information	no information
15	£1,000.00	28/08/2018	09/04/2019	31	£50.00
16	£400.00	11/09/2018	26/02/2019	31	£20.00
17	£1,000.00	23/10/2018	30/07/2019	31	£50.00
18	£1,000.00	09/04/2019	05/11/2019	31	£50.00
19	£1,000.00	30/07/2019	05/02/2020	31	£50.00
20	£1,000.00	29/10/2019	outstanding	31	£50.00
21	£500.00	10/12/2019	01/12/2020	31	£25.00
22	£1,000.00	04/02/2020	outstanding	31	£50.00

The 'weekly repayment' column is the cost per loan per week. Where loans overlapped the cost per week will be greater, so for example, Mr E was due to repay Rogerstan £40 per week when loans one and two were running concurrently.

Mr E has had some problems repaying some of his loans, and an outstanding balance remains due on loans 20 and 22.

There are also a number of loans that Rogerstan has told us where lent – this information was contained in a list of loans issued within the last six years. But, Rogerstan hasn't provided any further information about them such as the term or weekly repayment – these loans can be identified as I've put 'no information' into the table above.

I would add here that Mr E says he has been borrowing from Rogerstan for at least 20 years. This appears to be backed up by what Rogerstan has told the Financial Ombudsman about a charge that was previously placed on his property in 2008. But neither party has provided any information about this.

Rogerstan has told us it has only kept information about loans issued within the last six years – and these are the ones in the table above. Mr E doesn't have any further information about any earlier loans, so it is only the loans in the table above that are being reviewed as part of this final decision.

After Mr E complained to Rogerstan it issued its final response letter (FRL) on 15 March 2021 which didn't uphold his complaint. In the FRL Rogerstan explained that all the loans issued were subject to affordability checks and based on the information Mr E provided to Rogerstan these loans were affordable.

It also confirmed Mr E's outstanding balance had been reduced by £656, which seems to have been the outstanding interest that was due to be repaid by Mr E.

Unhappy with this response, Mr E referred his complaint to the Financial Ombudsman Service.

An adjudicator reviewed Mr E's irresponsible lending complaint and she thought the complaint should be upheld in full and concluded none of the loans in the table above should've been provided.

The adjudicator went on to explain, the credit check results provided to the Financial Ombudsman for loan one showed that Mr E was likely having financial difficulties and had loans in arrears. This was despite Mr E declaring on the application form that there were no arrears. Further checks (which the adjudicator felt Rogerstan ought to have carried out at the time) would've likely showed it that Mr E was in fact in arrears on his mortgage.

She thought it wasn't sustainable to have granted the first loan given the information on the credit file, and she went on to explain this was reflected in the fact it took 7 weeks for Mr E to make his first repayment towards the loan.

Mr E went on to experience further repayment problems with Rogerstan over the following loans and further checks would've showed Rogerstan that Mr E was continuing to have financial difficulties.

Finally, by loan 6, the adjudicator concluded that the lending was now clearly harmful to Mr E and any further loans were unsustainable for him.

Mr E appears to have accepted the adjudicator's findings.

However, Rogerstan didn't agree with the adjudicator's assessment about any of the loans Mr E had been given. I've read, in full, the comments Rogerstan has provided, and I've provided a summary of them below:

- all loans were issued in line with industry guidelines and regulations;

- there could've been a number of reasons why the repayments for loan one started late, but the loan was brought up to date after a month with a payment of £120;
- Rogerstan always acts with forbearance towards a consumer if payments are missed;
- although the loans were due to run for 31 weeks, some loans had weekly, fortnightly or monthly repayments – a consumer had 31 weeks to repay the loan;
- the majority of Mr E's loans were repaid within the contractual term or if repaid early he received an interest rebate;
- when loans did overrun there was a reason for this and Rogerstan didn't apply any further default charges, which is different to what a high street bank may do;
- it explained it "...is a very difficult situation to refuse a long-term good customer a new loan.";
- if Rogerstan didn't continue to lend then it would lose the consumer as a customer;
- should Rogerstan refuse a loan the consumer could've been put into financial difficulties;
- Rogerstan was able to build a relationship with Mr E and not once did he mention mortgage arrears;
- Mr E signed the application forms to confirm the information he had provided was correct and accurate;
- Mr E had excellent repayment history; and
- Mr E only raised his complaint due to hardship caused by the COVID-19 pandemic.

Later, Rogerstan made an offer to settle the complaint. It offered to write off the balance on Mr E's two outstanding loans and return the interest payments to him, along with 8% simple interest. The refund payable to Mr E would be £1,283.

This offer was put to Mr E but he didn't accept it. As no agreement could be reached the case has been passed to me to make a decision on the lending.

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.

It may help, and for clarity for all parties concerned, that I outline the legal and regulatory environment when the lending was approved. So below I've outlined what I consider to be the key regulatory requirements on the part of Rogerstan before providing the lending.

The legal and regulatory framework and other publications

Prior to these loans, Rogerstan was regulated by the Office of Fair Trading (up to 31 March 2014). And from 1 April 2014, it was regulated by the Financial Conduct Authority ("FCA"),

In the FCA's guidance there are references made to the OFT guidance which is called the Irresponsible lending Guidance (ILG). What this shows, in effect, is a continuity of regulation and continuity of requirements for what Rogerstan needed to do before each loan was approved. In November 2018 the FCA rules were reworded.

Regulation by the Financial Conduct Authority (from 1 April 2014)

Rogerstan gave Mr E all of the above loans after the regulation of Consumer Credit Licensees had transferred from the OFT to the FCA on 1 April 2014.

The FCA's Principles for Business set out the overarching requirements which all authorised Firms are required to comply with. The Principles themselves are set out in PRIN 2.1.1R. And the most relevant overarching principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities. It sets out the rules and guidance specific to consumer credit providers, such as Rogerstan. CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

The version of CONC quoted below was what was in place when loans 1 – 17 were approved. From November 2018, the FCA made changes to CONC but this didn't significantly alter Rogerstan's obligations for responsible lending.

The starting point for the relevant rules in this case is Section 5.2.1R(2) of CONC which sets out what a lender needs to do before agreeing to give a consumer credit of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R(1), a firm should take into account more than assessing the customer's ability to repay the credit.

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the

customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

On 6 March 2019, The FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all firms allocated to the 'High Cost Lenders' portfolio, which Rogerstan is part of. This letter was published after some of Mr E's agreements were entered into, but not all. This letter didn't include any new rules but deals with how firms ought to be handling complaints about whether their previous lending was unaffordable. I do think that this offers some insight on the FCA's perspective on its rules and guidance. So, I consider it to be of some relevance in this case.

The letter sets out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:

- *a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- *firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

The FCA sets out its areas of focus for all firms in the portfolio on page three of the letter. The section entitled 'Relending' says:

"Relending: *We have seen a high volume of relending across all credit products in the portfolio. We aim to carry out diagnostic work across the portfolio so that we can better understand the motivation for, and impact of, relending on both consumers and firms. This work will examine aspects of relending such as customers' borrowing journeys, firms' marketing strategies for offering additional credit and the costs of relending for consumers. We want to understand what harm, if any, relending may cause consumers. As part of this work, we will proactively engage with home-collected credit firms to ensure they understand our expectations. We will also discuss any changes to their processes as a result of the new rules and guidance on relending which we issued in our December 2018 Policy Statement on high-cost credit".*

The section entitled 'Affordability' says:

Affordability: *We recognise that there is an inherent challenge for these firms in*

assessing affordability for both new loans and repeat borrowing. High-cost credit customers' finances are often squeezed and they may have poor credit histories and low financial resilience. Nevertheless, firms must ensure that they are complying with all our affordability requirements. We gave an outline of these requirements in the Dear CEO letter we sent to HCSTC firms in October 2018. While this letter was aimed at HCSTC firms, the main principles are relevant to all firms in this portfolio.

Finally, under the section entitled '**Complaints**' it says:

*"**Complaints:** We know that there have been increasing numbers of complaints about many of the products in this portfolio. Firms should ensure that they are handling complaints appropriately. We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio".*

Turning to the 'Dear CEO' letter issued by the FCA on 15 October 2018, which was mentioned in the 'Affordability' section of the March 2019 FCA letter.

"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: <https://www.financial-ombudsman.org.uk/publications/technical.htm>). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".

Paragraph eight of the letter went on to say:

*"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible **assessments of the sustainability of borrowing**".*

Questions for me to consider before deciding whether Rogerstan did anything wrong when it provided Mr E with his loans.

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

Bearing in mind everything that I've set out above and our long-established approach to considering these types of complaints (which is also set out on our website), I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are

- Did Rogerstan, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr E would be able to repay in a sustainable way? If not, would those checks have shown that Mr E would've been able to do so?
- Bearing in mind the circumstances, at the time of each application, was there a point where Rogerstan ought reasonably to have realised it was increasing Mr E's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

- Did Rogerstan act unfairly or unreasonably in some other way?

If I determine that Rogerstan did not act fairly and reasonably in its dealings with Mr E and that he has lost out as a result, I will go on to consider what is fair compensation.

Did Rogerstan, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr E would be able to repay the credit in a sustainable way?

It is important to note the FCA didn't, and doesn't, specify exactly how an assessment of affordability is to be carried out but the "*extent and scope*" and the "*types and sources of information to use*" needed to be enough to be able to reasonably assess the sustainability of the arrangement for the consumer. Although, the OFT's ILG guidance does provide some examples of information a lender may wish to use.

In other words, the assessment needs to be consumer-focussed. It is not an assessment of the risk to the lender of not recovering the credit but of the risk to the consumer of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.

As set out in CONC, the risk to the consumer directly relates to the particulars of the lending and the circumstances of the consumer. Therefore, a lender's assessment of creditworthiness would likely need to be adaptable to the individual needs and circumstances of a consumer. That is to say, what is sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one circumstance might not be so for the same consumer in other circumstances.

Bearing the above in mind, I would expect an assessment of creditworthiness to vary with the circumstance of each request for credit. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way.

But, certain factors might point to the fact that Rogerstan should fairly and reasonably have done more to establish that any lending was sustainable for Mr E. These factors include, but are not limited to:

- the lower a customer's income (reflecting that it could be more difficult to repay 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 longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- the greater the number and frequency of credit agreements, and the longer the period of time during which a customer has been given the credit (reflecting the risk that ongoing use of these agreements may signal that the borrowing had become, or was becoming, unsustainable).

Rogerstan considers its checks were appropriate and complied with the regulations at all times when providing this lending.

It seems for each loan Rogerstan would've asked Mr E for details of his income and expenditure for its assessment of whether to lend. It also seems for some (but not all) loans that a credit search may have been carried out.

Rogerstan has provided some examples of the information it took from Mr E and the application forms completed. It has also provided the Financial Ombudsman with documents showing annual income and expenditure information for Mr E.

Loan one

Mr E has provided testimony that he's borrowed from Rogerstan for around 20 years, and this is further supported by Rogerstan providing some brief details of a charge placed on Mr E's property in 2008. So, it's likely, while I've labelled this lending decision as loan one, it's more likely than not that there were other loans before this one, which may or may not have formed part of the same lending chain.

For this first loan, Rogerstan has provided the Financial Ombudsman with a copy of Mr E's credit application as well as page 1 of 3 of the credit search results it received at the time.

On the face of it, there is an argument to be made that the checks for this loan were proportionate. This is, after all, the first loan that I'm able to consider and so it probably wasn't unreasonable for Rogerstan to have relied on the information that Mr E provided it on the application form. It also seems, as I've mentioned above, that a credit search was carried out.

However, it wasn't enough for Rogerstan to carry out a proportionate check; it also had to react to the information it discovered during the course of those checks.

Looking at the information Mr E gave to Rogerstan, he provided details of his employer and explained that his weekly income was £320. However, Mr E's household also received additional state benefits, which meant his weekly income increased to £520.47.

Rogerstan asked Mr E about his outgoings at the time. He told them he had rent, utilities, telephone, TV licence, housing keeping as well as £20 per week repayments towards another loan. In total, including the loan repayment, his weekly outgoings were declared as being £339.22.

Rogerstan therefore believed Mr E had £181.25 a week to afford his loan repayment of £20. Therefore, this loan would've arguably looked affordable on the face of this basic information. However, as part of his application Mr E declared that he didn't have any arrears and Rogerstan had information that suggested this wasn't entirely accurate.

As part of this application Rogerstan has provided the partial results of its credit checks, but even the partial results provided enough information to have prompted Rogerstan to make further enquires with Mr E.

The partial report shows that Mr E had three credit searches carried out in the last six months, and I don't consider this to be anything for it to have been concerned about. But, Rogerstan was aware that Mr E had been having repayment problems because the current 'worse status' on accounts reporting to the credit reference agency was an '8' which is likely to mean the account was, or about to be, defaulted and / or that Mr E had significant arrears.

In addition, under the public information section – which is likely to be some form of insolvency, so a County Court Judgement, for example – two accounts are listed, with an outstanding balance of £1,585. This information was last updated around 11 months before loan one was advanced. I don't have any further information about what these records are, only they are a further sign that Mr E had previously had some quite significant repayment problems.

The credit search report, in my view, shows Rogerstan ought to have made further enquiries into Mr E's financial situation because it contradicted what he had declared. A later credit search provided from Rogerstan shows that at the time, Mr E had significant arrears on a mortgage – it is marked as a '6'. Meaning that Mr E was at least six repayments in arrears.

A mortgage is a priority debt for a consumer, so the fact that Mr E was in arrears with his mortgage provider, and the arrears looked to have been increasing as well, would to me indicate that Mr E was having wider financial problems. He was unable to service and repay his mortgage, and it isn't therefore clear to me why Rogerstan would've believed that Mr E would be able to service and repay this loan in a sustainable manner.

I accept that Mr E has signed the application form confirming the information was correct, but whilst I understand the point Rogerstan is making in relation to this, it does not negate its regulatory responsibilities to Mr E as a lender.

Rogerstan had been put on notice from the information it received from the credit check that it ought to investigate Mr E's situation further, and I don't think the fact that Mr E signed the application form negates Rogerstan's regulatory requirement to carry out proportionate check and to react to the information that it was provided.

Given the results of the credit search that I've seen, I'm upholding Mr E's complaint about this loan because it shows that Mr E was already having financial difficulties and it wouldn't therefore in the circumstances be reasonable to provide further credit to him – this being something Rogerstan ought to have known about had it carried out a proportionate check based on the information it had available to it.

Loans 2 – 5

Rogerstan hasn't provided the Financial Ombudsman with the application data and or the credit file data for these loans. So, I can't say for sure exactly what information Mr E provided to Rogerstan about his income and expenditure. I also don't know whether a credit search was carried out for each of these loans (or not).

But what I have been provided with is a summary of Mr E's annual income and expenditure. For the years 2015 and 2016 (when these loans were approved). The 2015 figures have been recorded as being taken in April, so at loan one. And for the 2016 figures, these were recorded in August 2016, so just after loans 2 – 5 were granted.

Based on these figures alone, I accept that these loans would've looked affordable. But I have reservations about these figures, given I haven't seen anything that was taken at the time that each loan was granted, and I can't see a breakdown of the various sections which make up Mr E's expenditure figure.

It's also worth noting that during this period, Mr E's weekly repayments increased significantly to Rogerstan. He now had at least two loans running at the same time. He may have had more but the Financial Ombudsman doesn't have the repayment date or the weekly repayment for some of the loans that were granted that I've looked at in this section.

It isn't clear whether Rogerstan carried out a credit search before each or some of these loans. But it was aware of the information about the arrears and the insolvency from the first loan, and it again couldn't ignore this.

The credit search results carried out much later and provided by Rogerstan, also show that Mr E continued to have problems with his mortgage, and it appears that his mortgage balance was increasing rather than decreasing, indicating that he was getting further into

arrears. I think this ought to have been an indication that Mr E's financial position hadn't significantly changed from loan one.

And like the adjudicator, I can see from the loan statements that Mr E did frequently miss payments. I've thought about what Rogerstan says the payments have to be made within the term of the loan agreement, but its own statement of account has marked payments as 'missed' which to me is an indication that it was expecting Mr E to make payments and didn't.

And while, for some of the loans, Mr E would pay double the following week to make up for the missed payment the week before, this pattern continued through all the loans, and the payments weren't always made up. It ought to have been clear therefore to Rogerstan that Mr E was struggling.

The adjudicator said that Mr E missed his first seven payments for loan one, and I can see that. Rogerstan has provided some testimony as to why that may have happened, for example Mr E may have been on holiday.

While I can't know for sure what happened, it does show that Mr E missed payments and didn't always bring them up to date quickly, and this is what I can see in the statements of account moving forward. It is more likely than not, in my view, that Mr E didn't make his repayments because he couldn't afford to.

Rogerstan also hasn't provided the Financial Ombudsman with the credit agreements, so while I've been told the term of each loan was 31 weeks, I can't be sure how often payments were due to be made. It would look like from the statement of accounts that the loans were due to be repaid weekly. And this didn't always happen.

So I'm upholding these loans for similar reasons for loan one; but, in summary:

1. his indebtedness was increasing and he now had more than one loan running at the same time;
2. his credit report in relation to his mortgage showed signs that it was getting further into debt; and
3. he was missing payments towards his loans.

Although, it hasn't had a bearing on my outcome for these loans, I think it may be helpful to explain that by at least loan five I think Rogerstan's checks needed to go further. Mr E's borrowing was increasing and with the loans overlapping this meant his weekly repayments would've increased quite significantly.

By loan five, I no longer think it would've been proportionate for Rogerstan to have relied solely on the information Mr E was providing it. By this point, given the increased borrowing Rogerstan ought to have been verifying the information it was provided.

Rogerstan could've done this a number of ways, it could've asked to see copies of his bank statements, copies of wage slips, utility bills as well as looking at his credit report. Overall, based on what I've seen I don't think that the checks from at least loan 5 were proportionate or went far enough. But that doesn't change the outcome I'm reaching about these loans, because I think that there was enough other the information that Rogerstan had available to it to indicate that these loans weren't sustainable for Mr E.

Bearing in mind the circumstances, at the time of each application, was there a point where Rogerstan ought reasonably to have realised it was increasing Mr E's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

In addition to assessing the circumstances behind each individual loan provided to Mr E by Rogerstan, I also think it's fair and reasonable to look at the overall pattern of lending and what unfolded during the course of Mr E's lending history with Rogerstan. This is because, there may come a point where the lending history and pattern of lending itself demonstrates that the lending was unsustainable.

Referencing the relevant rules and guidance as summarised in the earlier part of my decision, Rogerstan was required to establish whether Mr E could sustainably repay his 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 CONC defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time and while meeting other reasonable commitments.

It follows that a lender should realise, or it ought fairly and reasonably to have realised, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further. I think this point was reached by loan 6.

- At this point Rogerstan ought to have realised Mr E was not managing to repay his loans sustainably. Mr E had been indebted to Rogerstan for at least 12 months. So Rogerstan ought to have realised it was more likely than not Mr E was having to borrow further to cover the hole making his previous loan repayments was leaving in his finances and that Mr E's indebtedness was unsustainable.
- Mr E's first loan was for £400 and loan 6 was for £600. Although the amount Mr E was borrowed had only slightly increased his actual weekly commitments were now £10 per a week more (not including the amount Mr E was due to pay for loan 5 – which may have still been outstanding at the time). At this point Rogerstan ought to have known that it was likely Mr E had an ongoing need for this type of credit and was dependent on it.
- From loan 6 onwards Mr E was provided with new credit whilst he hadn't repaid other loans and he often had more than one loan running at once. And by the end of the lending relationship, Mr E had three loans running concurrently.
- Mr E wasn't making any real inroads to the amount he owed Rogerstan. Loan 22 was taken out nearly five years after Mr E's first. And it was for a much larger amount compared to loan one. In addition, at this time loans 20 and 21 hadn't yet been repaid, so his weekly commitment had increased from £20 per week to £125. Mr E had in effect paid large amounts of interest to, in effect, service a debt to Rogerstan over an extended period.
- In addition, Mr E continued to have significant mortgage repayment problems through the life of his lending relationship with Rogerstan.

I think that Mr E lost out because Rogerstan continued to provide borrowing from loan 6 onwards because:

- these loans had the effect of unfairly prolonging Mr E's indebtedness by allowing him to take credit over an extended period of time.
- the length of time over which Mr E borrowed was likely to have had negative implications on Mr E's ability to access mainstream credit and so kept him in the market for these loans.

Overall, I'm upholding Mr E's complaint about all of the loans that he has been granted within the last six years (loans 1 – 22 in the table at the start of the decision).

Did Rogerstan act unfairly or unreasonably in some other way?

I've thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Rogerstan acted unfairly or unreasonably towards Mr E in some other way. Indeed, it does seem to have treated him with forbearance once it became aware of his financial difficulties which seem to have been exacerbated by the COVID-19 pandemic.

Putting things right

In deciding what redress Rogerstan should fairly pay in this case I've thought about what might have happened if it hadn't lent to Mr E, 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 Mr E may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them 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 Mr E in a compliant way at this time.

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

Rogerstan shouldn't have given Mr E loans 1 - 22. If Rogerstan has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Rogerstan isn't able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

- A. Rogerstan should add together the total of the repayments made by Mr E towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Rogerstan has already refunded.
- B. Rogerstan should calculate 8% simple interest* on the individual payments made by Mr E which were considered as part of "A", calculated from the date Mr E originally made the payments, to the date the complaint is settled.
- C. Rogerstan should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr E as though they had been repayments of the principal on all outstanding loans. If this results in Mr E having made overpayments then it should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Rogerstan should then refund the amounts calculated in "A" and "B" and move to step "E".

- D. If there is still an outstanding balance, then the amounts calculated in “A” and “B” should be used to repay any balance remaining on outstanding loans. If this results in a surplus, then the surplus should be paid to Mr E. However, if there is still an outstanding balance then it should try to agree an affordable repayment plan with Mr E. Rogerstan shouldn’t pursue outstanding balances made up of principal it has already written-off.
- E. Rogerstan should remove any adverse information recorded on Mr E’s credit file in relation to loans 1 – 5 if those loans still appear on his credit file. The overall pattern of Mr E’s borrowing for loans 6 – 22 means any information recorded about them is adverse, so it should remove these loans entirely from Mr E’s credit file. Rogerstan doesn’t have to remove loans 20 and 22 from Mr E’s credit file until these have been repaid, but it should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires Rogerstan to deduct tax from this interest. It should give Mr E a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons outlined above I uphold Mr E’s complaint in full.

Rogerstan Finance Limited should put things right for Mr E as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr E to accept or reject my decision before 1 April 2022.

Robert Walker
Ombudsman