DRN-3268431

The complaint

Ms W, through her representative, complains that S.D. Taylor Limited, trading as loansathome4u (LAH) lent to her irresponsibly.

Ms W entered an individual voluntary arrangement (IVA) on 3 March 2020. Ms W's insolvency practitioners have been made aware of this complaint and have told us that they have an interest in the outcome.

What happened

After Ms W had complained to LAH, it sent to her a final response letter in which was a loan table of the 32 loans approved for her and so I have not replicated that loan table here as both parties have that information.

We have relatively little information from either party about Ms W's financial circumstances during the loan period which spanned several years from the first loan in December 2009 to the last loan being paid off in August 2017.

The final response letter from LAH said that it felt most of the loans were *'Time Barred'* as Ms W had complained to it on 22 August 2020 and so all loans approved six years before that date (loans 1 to 26) were not ones it needed to investigate. It did not give its consent for the Financial Ombudsman to investigate the complaint about loans 1 to 26. The final loans approved from September 2014 to December 2015 – loans 27 to 32 – LAH did look at and thought it had done nothing wrong.

Once Ms W's complaint was with us, one of our adjudicators looked at the complaint in relation to the 'time bar' issue and the merits of the complaint. Our adjudicator applied the Financial Conduct Authority (FCA) rules which apply and thought that we could look at them all. And having considered the merits he thought that LAH ought to have realised that Ms W was not able to continue to repay all them from loan 6. Our adjudicator thought LAH should put things right for Ms W in relation to loans 6 to 32.

LAH disagreed with our adjudicator's outcome on the jurisdiction and maintained that loans 1 to 26 were time barred. It made no comment on the merits outcome but considering LAH's final response letter it seems likely LAH do not agree.

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.

The unresolved complaint was passed to me to decide. I issued a jurisdiction decision on 31 January 2021, combined with a provisional decision on the merits of the complaint. I gave time for both parties to respond and send me anything further they wished me to look at or to know about.

Ms W has said she agrees with my jurisdiction decision and my provisional decision on the merits and has not sent to us any further material to review. LAH has not responded.

The reply deadline of 14 February 2022 has passed and so I have decided to issue my final determination.

Why I can look into this complaint

I've reconsidered all the available evidence and arguments provided by Ms W and LAH to decide whether we can look at all loans being complained about.

The rules I must apply say that, where a business doesn't agree, I can't look at a complaint made more than six years after what's been complained about, or if later, more than three years after the complainant (in this case, Ms W) '*became aware (or ought reasonably to have become aware) that he had cause for complaint'.* The exact wording is in rule 2.8.2R and can be found online in the FCA's Handbook.

I outlined in my jurisdiction decision on 31 January 2022 what I had reviewed and the reasons for me deciding that we could look at all the loans. I explained that I had not seen anything to persuade me that Ms W was, or ought reasonably to have been aware, earlier of her cause to complain more than three years before she did complain. So, I decided that we could look at all the loans as the complaint was referred to the Financial Ombudsman within the time limits I had to apply. Nothing further has been sent to me about that element of Ms W's complaint and so my decision on jurisdiction remains the same.

Duplicated here in italics, is my provisional decision on the merits of the complaint.

My provisional decision on the merits of the complaint issued 31 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 Ms W 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 FLA'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 FLA 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 Consumer Credit Source 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 Ms W. These factors include:

A. *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);*
B. *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);*
C. *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 Ms W 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. The position is similar when applying 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 Ms W's complaint.

<u>Irresponsible lending</u>

I do not have enough for me to review Ms W'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. For instance, any credit file for Ms W would go back to 2014 which means it's not likely to cover most of the period of the lending.

I do not consider the Claim Audit Form, completed by Ms W for her representative, on its own to be enough, as it summarises what Ms W has said was her income and outgoings but

a) it is not clear enough to tell me which years these figures relate to, especially where the lending relationship lasted for so many years; and

b) there is no verification from another source on the sums involved.

So, I attach little weight to that Claim Audit Form. This is a provisional decision and so Ms W has time, if she wishes, to send accurate financial information to me about the period covered by the lending from LAH.

So, I do not consider that on the current evidence I have, that there's enough for me to conclude that at loan 6 Ms W was in a situation where the pattern of lending led to it being unsustainable to her.

I do think that from Loan 6 LAH ought to have been obtaining additional financial information from Ms W before lending as I think that by the 6th loan LAH ought to have done more than rely on the information Ms W had been giving to it in the loan applications. But, as I do not have any real information about Ms W's financial circumstances for that period, and for the few loans after that, I am not able to assess what it was LAH may have seen if it had carried out those further financial checks at loan 6 onwards.

However, using what I do have, has meant that I have come to some provisional conclusions. LAH has informed us that Ms W was receiving arrears notices regularly from 2010 to 2016 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 spreadsheets provided by LAH and noticed that it had become a regular pattern that Ms W would use additional fresh loans to repay earlier ones. Sometimes Ms W had around 2 to 4 loans on the go at the same time. There was an escalation in the level of her borrowings when Ms W, while still owing loans 7, 8 and 9, applied for loan 10 in July 2011 for £1,210. The loans requests and approvals up to that date had been for around £200 to £400. This loan 10 application showed a tripling of the capital required. Her repayments on so many loans at once had increased a great deal from her early lending.

So, I am planning not to uphold Loans 6 to 9 due to lack of information from Ms W. And at loan 10 when Ms W was asking LAH for the large loan while still owing three others, that is when I think LAH ought to have recognised that the pattern of lending had become unsustainable, and/or that Ms W 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.

What happened after that date was Ms W continued to apply for loans and they were approved despite, in some instances, owing on three or four others at any one time. And the only credit search results I have seen from LAH (dated February 2017 being the first search record provided) indicates that Ms W must have received a County Court Judgment (CCJ) for around £404 in around December 2013/January 2014. That was around the time she was approved for loan 25.

Whilst I appreciate that a CCJ alone may not be a reason for a lender to decide not to lend, the fact a CCJ was entered against Ms W indicates that she had been having serious repayment issues with that other creditor for a significant period leading up to it pursuing her for judgment. And this would have been a relevant factor for any new lender.

I do not have any evidence that LAH knew of this in or around January 2014 and for the period from the CCJ date to February 2017, but what it does show me is that Ms W's situation had deteriorated and still LAH lent to her. And in the absence of any detailed information from either party about Ms W's situation in the earlier part of the lending relationship then I consider it fair and reasonable to use the information I do have.

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

D. these loans had the effect of unfairly prolonging Ms W's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period.

E. the sheer number of loans was likely to have had negative implications on Ms W's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I am planning to uphold Ms W's complaint from loan 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.

As Ms W has agreed with my provisional findings on the merits and has not sent me anything further to review, and as LAH has not responded then I see no reason to depart from the findings made in my provisional decision, duplicated above.

For the reasons I gave in my provisional decision and repeated here, I uphold Ms W's

complaint for loans 10 to 32 and LAH needs to put things right for Ms W.

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 Ms W 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 Ms W may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between her 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 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 Ms W 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 W 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.

The insolvency practitioner in relation to Ms W's IVA will need to be informed.

LAH should not have given Ms W loans 10 to 32; and I direct that:

A. LAH should add together the total of the repayments made by Ms W 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.

B. LAH should calculate 8% simple interest* on the individual payments made by Ms W which were considered as part of paragraph "A", calculated from the date Ms W originally made the payments, to the date the complaint is settled.

C. Some loans were written off around December 2016. LAH may – if LAH chooses to – use the total of the sums calculated from paragraphs "A" plus "B" to repay any principal which LAH have written-off if it did that.

D. LAH should pay any remaining refund to Ms W. 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.

E. The overall pattern of Ms W's borrowing for loans 10 to 32 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 Ms W's credit file. If LAH have sold any of the loans LAH should ask the debt purchaser to do the same.

*HM Revenue and Customs requires LAH to deduct tax from this interest. LAH should give Ms W a certificate showing how much tax LAH has deducted if she asks for one.

My final decision

My final decision is that I uphold Ms W's complaint in part and I direct that S.D. Taylor Limited does as I have outlined above subject to the requirements of the IP for Ms W's IVA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 14 March 2022.

Rachael Williams
Ombudsman