DRN-3353945

The complaint

Miss M complains that Skyline Direct Limited (Skyline) gave her loans she couldn't afford to repay.

What happened

Miss M took six home collected loans between February 2015 and April 2017. I've included some of the information we've received about these loans in the table below.

loan number	loan amount	agreement date	loan repayment date	term (weeks)	weekly repayment
1	£300.00	11/02/2015	03/06/205	30	£15.00
2	£400.00	03/06/2015	02/12/2015	30	£20.00
3	£400.00	01/12/2015	11/05/2016	30	£20.00
4	£400.00	10/05/2016	02/11/2016	30	£20.00
5	£500.00	01/11/2016	18/04/2017	30	£25.00
6	£500.00	18/04/2017	written off	30	£25.00

Skyline has said that Miss M had some problems repaying her final loan and in October 2018 it took the decision to write off the balance of £441.

Following Miss M's complaint, Skyline issued its final response letter. Skyline concluded that it had carried out proportionate checks before advancing these loans and it wasn't upholding the complaint.

Unhappy with this response, Miss M referred her complaint to the Financial Ombudsman Service.

One of our adjudicator's considered Miss M's complaint. She concluded it was reasonable for Skyline to have granted loans 1 – 3. But for loan 4, the adjudicator thought Skyline ought to have carried out further checks into Miss M's financial circumstances. It didn't do this, but neither had Miss M provided a copy of her bank statements or her credit file so the adjudicator wasn't able to say what Skyline may have seen, by carrying out further checks. Overall, the adjudicator didn't uphold the complaint about loans 1 – 4.

By loan 5, the adjudicator concluded that the lending was now harmful for Miss M, so this, and loan 6 shouldn't have been provided.

In response to the adjudicator's assessment Miss M provided a copy of her credit file.

Skyline didn't agree with the adjudicator's findings, in summary it said:

- Miss M's borrowing didn't always increase with each new loan.
- The lending pattern the adjudicator referred to is typical of Home Credit customers and this facility is used for life events such as holidays and Christmas.

- The loans provide a lower and fixed cost form of credit as opposed to, for example, a credit card.
- Skyline quoted some of the regulations and rules that it was required to follow at the time and it said it adhered to the rules.
- Skyline said its obligations in the rules was updated in November 2018, and it has been confirmed by the industry regulator that the update was made because the rules weren't clear (before this date).
- Skyline has no evidence that Miss M was having financial difficulties at the time.
- Skyline confirmed that, although it had written off the balance of loan 6 due to it being bad debt, this doesn't mean the balance shouldn't be repaid.

In response, the adjudicator contacted both Miss M and Skyline to explain why the comments they had provided hadn't changed her mind about the outcome of the case. In summary she said she'd not seen enough from Miss M to say that Skyline was wrong to have granted loan 4, so her view on these loans remained the same.

The adjudicator explained to Skyline that the purpose of the loan can't be confirmed because Skyline hadn't provided copies of the actual loan applications and in her mind the purpose of the loan should form the bases of a declined or accepted application. She also explained that affordability checks form only part of the assessment, Skyline still needed to be minded of the lending relationship.

She went onto say that Miss M's credit file, showed that after the final loan was advanced, she was having financial difficulties because she'd recently had three accounts referred to a third-party collection agency because they had been defaulted.

Finally, the adjudicator clarified with Skyline the redress that she proposed and how it could use the refund due from loan 5 to offset any outstanding principal balance it wrote off for loan 6.

Skyline responded to say that there is nothing in the rules or guidance indicating the number of loans is an indicator of 'this'. 'This' wasn't defined by Skyline but I believe in this case it is referring to the final two loans being unsustainable. Skyline went on to say, that no reasoning has been provided to explain why this point was reached at loan 5 rather than loan 6.

Miss M didn't provide any further comments.

As no agreement has been reached, the case has been passed to me to resolve.

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've set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Miss M appears to agree with our adjudicator's findings about loans 1 – 3. And following the second assessment by the adjudicator which explained loan 4 was also not being upheld no further comments were provided. It therefore seems the outcome of these loans is no longer in dispute. Although, I've not made a finding about these loans I have kept these loans in mind when thinking about the overall lending relationship between Skyline and Miss M.

Instead, this decision will focus on whether Skyline did anything wrong when it granted loans 5 and 6.

Skyline, in response to the adjudicator's assessment, provided some of the regulations that were applicable at this time. It also says that the regulator changed the affordability rules in November 2018 because, it accepted that before that date, the rules weren't clear. It isn't for me to say or to comment on the ultimate reasoning behind the changes to the rules from November 2018 all I am able to do is apply the rules that were applicable at the time.

However, in my view the change in November 2018, didn't significantly altered Skyline's obligation to carry out a proportionate check. However, for completeness I've outlined below the regulations at the time all of Miss M's loans were granted.

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

Skyline gave Miss M 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 Skyline. 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.

However, in CONC there are references to the Irresponsible Lending Guidance (ILG) issued by the Office of Fair Trading (OFT) who were the regulators of this type of lending until the FCA took over.

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 5.2.1 provides some information about where the information can be obtained from.

- *A creditworthiness assessment must be based on sufficient information obtained from:*
- *the customer, where appropriate; and*
- *a credit reference agency, here necessary.*

[Note: section 55B(3) of CCA]

CONC.5.2.3 provides some guidance about what a proportionate check could consider.

> *The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:*
> *(1) the type of credit;*
> *(2) the amount of the credit;*
> *(3) the cost of the credit;*
> *(4) the financial position of the customer at the time of seeking the credit;*
> *(5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;*
> *(6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*
> *(7) any future financial commitments of the customer;*
> *(8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
> *(9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).*

But CONC is also quite clear in CONC 5.2.4 that:

> *1) To consider all of the factors set out in CONC 5.2.3 G in all cases is likely to be disproportionate.*
> *[Note: paragraph 4.11 of ILG]*

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.*

While CONC 5.2.4G(3) goes into some detail about the type of information that a lender may wish to gather:

> *(3) A firm should consider the types and sources of information to use in its creditworthiness assessment and assessment required by CONC 5.2.2R (1),which may, depending on the circumstances, include some or all of the following:*
> *(a) its record of previous dealings;*
> *(b) evidence of income;*
> *(c) evidence of expenditure;*
> *(d) a credit score;*
> *(e) a credit reference agency report; and*
> *(f) information provided by the customer.*

[Note: paragraph 4.12 of ILG]

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.

(c) its assessment should be based on what the firm knows at the time of the assessment.
[Note: paragraph 4.13, 4.14 and 4.15 of ILG]

CONC 5.3.1.6 then goes on to explain what is meant by 'sustainable':

6) For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:
(a) without undue difficulties, in particular:
(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and
(ii) without having to borrow to meet the repayments;
(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and
(c) out of income and savings without having to realise security or assets; and "unsustainable" has the opposite meaning.

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).

Thinking about the regulations I've quoted above, Skyline had to assess the lending to check if Miss M could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Skyline's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss M's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Skyline should have done more to establish that any lending was sustainable for Miss M. These factors include:

- Miss M 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 particular level of income);
- Miss M having a large number of 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);
- Miss M 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 for Miss M.

Skyline was required to establish whether Miss M could *sustainably* repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss M was able to repay her loans sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Miss M's complaint.

Loans 5 and 6

The loan being pounds and pence affordable is only part of the consideration. So, I haven't felt the need to recreate individual, proportionate affordability checks for this loan because I didn't consider it necessary to do so. But I have commented below on the information that I've seen.

I also accept, based on the information that Skyline has put together for the Financial Ombudsman that it may have believed the weekly loan repayments were affordable for Miss M. For both of these loans, Skyline worked out that Miss M had weekly disposable income of £46.19 to meet her commitment of £20 per week for loan 5 and £25 for loan 6.

Skyline says that these loans were likely for lifestyle events such as Christmas. But a copy of the loan application forms hasn't been provided so I can't comment on the reason why Miss M may have requested these loans.

Skyline also says that Miss M's income has been verified but it hasn't provided us any evidence to show the documents (such as a wage slip) that it may have asked Miss M to produce at the time of these loans being advanced.

Miss M has provided a copy of her credit report, and it does show that she had problems repaying different types of credit including a loan and what looks like a mobile phone contract. With at least three of these accounts being passed to a third-party collection agent.

But, due to how long ago these loans were granted, there isn't really anything in the credit report which shows what her financial situation was at the time when loan 5 was advanced, which is likely as a result of information dropping off and / or being removed.

But in addition to assessing the circumstances behind each individual loan provided to

Miss M, Skyline also needed to consider the overall pattern of lending and what unfolded during the course of its lending relationship with Miss M.

Having looked at the overall pattern of Skyline's lending history with Miss M, I agree with our adjudicator that at this point in time, Skyline should reasonably have seen that further lending was unsustainable, or otherwise harmful, at the time it provided loan 5.

I appreciate that Skyline says no reasoning has been provided as to why these loans were unstainable and why this point was reached at loan 5 rather than say loan 6. There are a number of factors that are considered when thinking about whether the loans are unstainable. Examples of, but aren't limited to things like, how much is being borrowed, time in debt, what the lender knows about the consumer and the overall lending relationship. Having considered these factors here, there was enough, in my view by the time loan 5 was granted to say the lending was now unsustainable for Miss M and I've explained why below.

- At this point Skyline ought to have realised Miss M was not managing to repay her loans sustainably. Miss M had taken out five loans in around 21 months and she had been indebted to Skyline for the entire time. So, Skyline ought to have realised it was more likely than not Miss M was having to borrow further to cover an ongoing need and that her indebtedness was increasing unsustainably and her underlying financial situation didn't seem to be improving.
- Loan 5 was Miss M's largest loans to date, a further sign that her indebtedness was increasing rather than decreasing and was further evidence that the loans were now unsustainable for her.
- As previous loans were repaid Skyline has confirmed these loans were refinanced, so Miss M was using some of the advanced money to repay a previous loan. In effect, she was borrowing a new loan in order to facilitate the old loan being repaid. This was now the fourth time it had happened. Skyline ought to have realised it was more likely than not Miss M, on these occasions, was having to borrow further to effectively cover a long-term financial need. To me, this is indicative of her indebtedness not being sustainable.
- By loan 6, Miss M's weekly repayments were more than 50% larger compared to loan one. She started paying £15 per week but was now committed to paying £25 per week. So, Miss M's weekly repayments weren't deceasing which suggests that the loans weren't sustainable for her and her borrowing hadn't decreased over the lending relationship.
- Miss M took normally was advanced new loans on the same day Miss M wasn't making any real inroads to the amount she owed Skyline. Loan 6 was taken out 26 months after Miss M's first. And it was the joint largest loan to date, with the largest weekly commitment. Miss M had paid large amounts of interest to, in effect, service a debt to Skyline over an extended period.

Skyline has also said the pattern of lending of lending isn't unusual for a home credit user. But, when thinking about the pattern of lending, I've considered the rules and regulations that I quoted at the start of the decision as well as what unfolded during Miss M's lending relationship. Thinking about all of those together I'm satisfied a fair and reasonable outcome is to uphold her final two loans.

I think that Miss M has lost out because Skyline provided her with loan five because:

- these loans had the effect of unfairly prolonging Miss M's indebtedness by allowing her to take expensive credit over an extended period of time and

- the number of loans and the length of time over which Miss M borrowed was likely to have had negative implications on her ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, overall I'm intending to uphold the complaint about these loans.

Finally, in Miss M's complaint she has said that she has suffered from mental health and physical health problems and which the agent was aware of and she said she told Skyline about.

I'm sorry to hear this. But Skyline has told the Financial Ombudsman that this was the first it had heard about it – implying before the complaint it was unaware of any problems. Skyline has asked Miss M to complete a particular form and it will reinvestigate on receipt. Miss M may wish to contact Skyline about this.

Putting things right

In deciding what redress Skyline should fairly pay in this case I've thought about what might have happened had it not lent from loan 5, 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 Miss M 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 Miss M 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 Miss M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Skyline's liability in this case for what I'm satisfied it has done wrong and should put right.

Skyline shouldn't have given Miss M loans 5 and 6.

A. Skyline should add together the total of the repayments made by Miss M towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Skyline have already refunded.
B. Skyline should calculate 8% simple interest* on the individual payments made by Miss M which were considered as part of "A", calculated from the date Miss M originally made the payments, to the date the complaint is settled.
C. Skyline should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss M as though they had been repayments of the principal on the outstanding loans. If this results in Miss M having made overpayments then Skyline 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. Skyline 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 and any principal Skyline has already written-off. If this results in a surplus, then this should be paid to Miss M. However, if there is still an outstanding balance Skyline shouldn’t pursue outstanding balances made up of principal Skyline have already written-off.

E. The overall pattern of Miss M’s borrowing for loans 5 and 6 means any information recorded about them is adverse, so Skyline should remove these loans entirely from Miss M’s credit file. Skyline does not have to remove loan 6 from Miss M’s credit file until it has been repaid, but Skyline should still remove any adverse information recorded about it.

*HM Revenue & Customs requires Skyline to deduct tax from this interest. Skyline should give Miss M a certificate showing how much tax it has deducted, if she asks for one.

My final decision

For the reasons I’ve explained above, I’m upholding Miss M’s complaint in part.

Skyline Direct Limited should put things right as direct above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 19 May 2022.

Robert Walker
Ombudsman