

The complaint

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

What happened

Using information from both Ms L and STFL the records show that Ms L was approved for 45 loans from a date unknown before 2015 to February 2021. In our adjudicator's letter of opinion, he listed them all and STFL has its own records of most of them.

I have not duplicated that table here as both parties have that information, and the loan table our adjudicator did is very long. Our understanding is that the final loan has an outstanding balance.

Ms L had complained, and STFL did not uphold her complaint. After Ms L had referred it to the Financial Ombudsman, one of our adjudicators looked at it all and thought that STFL ought not to have approved loans 7 to 45.

STFL responded to say it agreed in relation to loans 7 to 35 and calculated the redress to be over £9,000 which would include clearing the outstanding balance on loan 45. STFL did not accept the outcome for loans 36 to 45 and gave a very specific reason why which I will address in the main part of this decision.

The unresolved complaint was passed to me to decide.

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 short-term 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 L 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 L'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. This is what our adjudicator thought was the situation with Ms L.

STFL was required to establish whether Ms L 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.

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

Ms L seems to have accepted what our adjudicator has said and from that it seems she has no issue with the outcome for loans 1 to 6. So, I am not deciding about loans 1 to 6. We have very little information about those loans.

Although STFL was only able to provide information from loan 12 onwards, Ms L demonstrated some of the details of the earlier loans from her own records.

Our adjudicator thought that having looked at the progression of the capital sums – from £100 upwards – it was reasonable to consider that the loans ran consecutively and he treated all the loans as one single chain of lending. I have reviewed this and I agree.

Added to which, STFL has agreed to put things right for Ms L for loans 7 to 35 and so the disputed ones are loans 36 to 45 and here is a brief loan table of those last eight.

Loan	Date	Capital	Settled	Term weeks	Weekly sum
36	28/02/2019	£700	13/05/2019	16	£70.00
37	07/03/2019	£200	25/06/2019	23	£30.00
38	13/05/2019	£800	04/07/2019	16	£80.00
39	23/07/2019	£200	26/09/2019	16	£20.00
40	11/11/2019	£500	06/01/2020	16	£50.00

41	11/02/2020	£800	04/05/2020	16	£80.00
42	08/06/2020	£750	24/08/2020	15	£75.00
43	10/11/2020	£800	01/01/2021	15	£80.00
44	19/11/2020	£200	07/02/2021	23	£32.00
45	21/01/2021	£350	Balance o/s	15	£-

STFL has made a specific argument about these last eight loans. It has said:

'In 2019 we were subject to FCA 166 phase 2, we took on board all the recommendations made by a skilled person and also the FCA. All recommendations were completed and implemented into our application and credit decisioning process and these were reviewed by the FCA who found all loans analysed to be 100% compliant, and were signed off by the FCA.'

'As from 2019 we can evidence that we have factored into customers expenditure the findings on the customer's Credit reports, this includes any defaults, delinquent or CCJs the customer may have, there was also a discussion held with the customer regarding these, an enhanced due diligence check was taken and a full bank statement was seen and discussed with [Ms L].'

My starting point is that STFL has not explained all the details here. I have received a similar argument from STFL on this subject before, and a copy of the detailed Report relating to this s166 Review was sent to me. It seems this is the same series of events to which STFL is referring now.

The Executive Summary of the Report tells me that STFL was issued with a Skilled Person Requirement Notice on 21 October 2019 by the Financial Conduct Authority ('FCA'). The Notice required STFL to appoint a Skilled Person under s166 of the Financial Services and Markets Act 2000 ('FSMA') to undertake various phased Reviews.

The Report goes on to explain that STFL

'ceased lending following the Phase I report in order to implement required changes. Following a five-month period of not lending and in line with our recommended changes, STF implemented its updated lending policies and processes and recommenced lending on 20 July 2020.'

The Report – of which I have a copy – and STFL's recent submissions to defend Ms L's complaint about loans 36 to 45 do not persuade me that Ms L's complaint about these last 8 loans should fail. The reasons are that there was a cessation in lending for a period because of the FCA's review and that does not lead me to think that the STFL procedures were as robust as they should have been for the loans lent before that period.

And, after that period when the lending recommenced, it seems STFL is relying on the successful regulatory review as being the reason why Ms L's complaint ought not to be upheld for some (or all) of the loans in this last batch up to loan 45.

And I do not consider that the FCA 'sign off' following the s166 Review necessarily means that all loans lent after that are ones where any complaint about irresponsible lending is bound to fail. Each customer can complain and having been reviewed by us, the repetitive nature and consistent lending to Ms L over many years were the significant elements. And although I can see from the loan table for these last 8 that there were some relatively small gaps between lending its likely those were either when the FCA had requested it cease lending and/or are such small gaps, considering the longevity of the lending relationship, that I do not consider they make a difference.

Ms L had been consistently indebted to STFL for many years and this pattern of repeat lending was entrenched and harmful. Ms L wasn't making any real inroads into the amount she owed STFL. Loan 45 was taken out after at least six years from when Ms L received loan 12 in May 2015, and as we know Ms L had 11 loans before that, the likely total lending period was significantly more than 6 years. Loans 43 and 44 were taken out in the same week in November 2020 and the combined capital was £1,000, followed by another loan a couple of months later for £350. Ms L had paid large amounts of interest to, in effect, service a debt to STFL over an extended period.

STFL has said that it reviewed a bank statement with Ms L but no copy has been sent to us nor any explanation as to when that was, or for which loan application. So as STFL has not established this point I can't agree with it.

I think that Ms L lost out because STFL continued to provide borrowing from loan 7 onwards because:

- these loans had the effect of unfairly prolonging Ms L's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period.
- the sheer number of loans and deferrals was likely to have had negative implications on Ms L's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I am upholding the complaint about loans 7 to 45 and STFL should put things right. I acknowledge that STFL has agreed to put things right in respect of loans 7 to 35, and it seems logical to include all the loans in this redress section. The calculations STFL had already done need to be re-done.

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 L from loan 7 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 L 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 L 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 L 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.

What STFL needs to do

If STFL has sold the outstanding debt on loan 45 STFL should buy it back if it is able to do so and then take the following steps. If STFL is not able to buy the debt back then STFL should liaise with the new debt owner to achieve the results outlined below.

A) STFL should add together the total of the repayments made by Ms L towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

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

C) STFL should remove all interest, fees and charges from the balance on any upheld outstanding loans (loan 45) and treat any repayments made by Ms L as though they had been repayments of the principal on all outstanding loans. If this results in Ms L having made overpayments then STFL 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. STFL 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. The surplus should be paid to Ms L.

E) The overall pattern of Ms L's borrowing for loans 7 to 45 means any information recorded about them is adverse, so it should remove these loans entirely from Ms L's credit file. STFL does not have to remove loan 45 from Ms L's credit file until it has been repaid, but STFL should still remove any adverse information recorded about it.

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

My final decision

My final decision is that I uphold Ms L's complaint and I direct that Short Term Finance Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 22 April 2022.

Rachael Williams
Ombudsman