

The complaint

Miss M through a representative complains that Skyline Direct Limited (Skyline) provided her with loans she couldn't afford to repay.

What happened

Miss M took 12 home collected loans between February 2018 and April 2021. I've included some of the information we've received about these loans in the table below.

loan number	loan amount	agreement date	repayment date	term (weeks)	weekly repayment
1	£150.00	06/02/2018	17/04/2018	20	£10.50
2	£300.00	17/04/2018	19/07/2018	20	£21.00
3	£400.00	07/08/2018	23/10/2018	20	£28.00
4	£600.00	23/10/2018	15/01/2019	20	£42.00
5	£700.00	15/01/2019	23/04/2019	20	£49.00
6	£700.00	23/04/2019	30/07/2019	20	£49.00
7	£800.00	30/07/2019	29/10/2019	30	£40.00
8	£900.00	29/10/2019	11/02/2020	30	£45.00
9	£1,000.00	11/02/2020	16/06/2020	30	£50.00
10	£1,000.00	16/06/2020	14/10/2020	30	£50.00
11	£1,000.00	13/10/2020	03/03/2021	30	£50.00
12	£500.00	13/04/2021	outstanding	20	£35.00

Following Miss M's complaint Skyline issued its final response letter in June 2021. Skyline outlined the checks that it said it carried out during the lending relationship. But it went on to say that Skyline wouldn't uphold Miss M's complaint.

Unhappy with this response, Miss M's representative referred the complaint to the Financial Ombudsman Service.

An adjudicator reviewed Miss M's complaint and he partially upheld it. He hadn't seen enough to say that it was incorrect of Skyline to have advanced loans 1 - 5. But he thought from loan six onwards the lending was now harmful for Miss M so he upheld the complaint about loans 6 – 12.

Neither Miss M nor her representative acknowledged receipt of the assessment.

Skyline disagreed with the adjudicator's assessment – in part. Having thought about the comments the adjudicator made, Skyline did agree to uphold the complaint about loans 6 – 8.

However, it didn't think loans 9 – 12 should be upheld, it said the following;

- There was a six-week gap between loans 11 and 12.
- The checks carried out met the standard set by the regulator.

- Miss M had enough disposable income to afford repayments even considering her credit commitments.
- Loans 9 – 12 were assessed under a new process which included and showed:
 - The credit check showed no risk of issuing credit.
 - The credit commitments were included in the expenditure information.
 - A weekly buffer was added to the expenditure to cover unplanned costs.
 - Evidence of Miss M's income was gathered.

The adjudicator went back to Skyline to explain why the points it had raised hadn't changed his mind about the outcome of Miss M's complaint.

Skyline responded with some further comments for consideration. I've summarised these below;

- As Skyline isn't a payday lender, then it considers a gap of over four weeks is seen as a break in lending.
- Skyline's understanding is as long as the loan is affordable and sustainable then there is no issue with the number of loans granted.
- The industry regulator hasn't raised any concerns with its lending practices.
- Skyline has asked for further information and evidence for the triggers that the Financial Ombudsman applies.
- Skyline wants some further guidance as to what further checks it ought to have carried out.
- Skyline is concerned that if it stopped lending after a certain number of loans this could result in customers not being able to access credit to cover unexpected costs.
- Miss M benefited from the credit Skyline provided.

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.

Neither Miss M nor her representative appears to disagree with our adjudicator's findings about loans 1 - 5. So, I no longer think this lending is in dispute, and I no longer need to make a finding about them. But I have kept these loans in mind when thinking about the overall lending relationship between Skyline and Miss M.

Skyline has also accepted that something went wrong when loans 6 - 8 were granted, and it offered to put things right for Miss M following the adjudicator's assessment.

So, like the loans the adjudicator didn't uphold, these loans are no longer in dispute, but for completeness I've included what Skyline needs to do to put things right in the 'putting things right' section at the end of the decision.

Instead, this decision will focus on whether Skyline did anything wrong when it granted loans 9 - 12.

Before each loan application 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 9 - 12

The loan being pounds and pence affordable is only part of the consideration that Skyline needed to consider. So, I haven't felt the need to recreate individual, proportionate affordability checks for these loans because I didn't consider it necessary to do so.

I do accept that based on the information that Skyline gathered for these loans they would've looked affordable to it. And for loans 10 – 12 it is also clear that a new process was being followed by Skyline.

For loans 10 – 12 Skyline has provided a detailed income and expenditure table, some screen shots of Miss M's bank statements and then a summary of the credit checks that were carried out. Again, these checks showed it that Miss M was going to be in a position to afford the repayments that she was committed to making.

But even then, I'd still argue that for the checks for these loans weren't proportionate. Taking into account the time in debt, amounts being borrowed and the fact that Miss M was only repaying these loans early by refinancing them.

So, while Skyline had some screen shots of Miss M's income (which it has provided) I think it needed to have been checking both her income and her regular outgoings. Skyline didn't do this, so the checks weren't good enough.

But Skyline also needed to consider what had gone on in the lending relationship and to consider whether the loans were sustainable so her ability to make the repayments as they fell due under the agreements.

I appreciate that Skyline, in the final response letter and in the information provided to the Financial Ombudsman, has pointed out that there is a six week gap between Miss M repaying loan 11 and being advanced loan 12. But I'm not persuaded that this 'gap' materially changes the outcome of the complaint.

I've considered this gap, but, in this case, it wouldn't change my mind about whether those loans are upheld. This is because prior to this gap, there seems to have been an unbroken chain of lending of over three years. So, I can't fairly say that a break of around six weeks is sufficient to think that either loan 12 is the start of a new lending relationship or was a sign that the final two loans were now sustainable for her.

The gap isn't in my mind sufficiently large to show that Miss M no longer needed regular access to credit and therefore, on balance, I'm still going to conclude, that this loan was harmful.

But that doesn't mean in another case, when different circumstances apply that a gap of that length may or may not lead us to conclude that there is a new chain of borrowing and or the loan(s) that followed the gap weren't sustainable.

So, 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.

This means, I haven't recreated individual checks, this is because, in addition to assessing the circumstances behind each *individual* loan provided to Miss M, Skyline needed to have regard to the *overall pattern* of lending and what unfolded during the course of its lending relationship with Miss M.

I'm mindful that the relevant rules and guidance made it clear that a lender shouldn't continue lending where the loans were unsustainable or otherwise harmful and / or it was apparent that the customer may be experiencing financial difficulties.

It seemed to me that there may come a point at which a responsible lender ought fairly and reasonably to have realised that continuing to offer further lending, to a customer who appeared to be persistently and repeatedly reliant upon them was unsustainable or otherwise harmful.

Having looked at the overall pattern of Skyline's lending history with Miss M, I agree with our adjudicator that this point was reached at loan six, but as Skyline has already agreed to uphold these loans, I've considered whether the overall ending pattern by loan nine was still harmful and so Skyline should reasonably have seen that further lending was unsustainable, or otherwise harmful. I say this because;

- By loan 9, Skyline ought to have realised Miss M was not managing to repay her loans sustainably. Miss M had been indebted to Skyline for two years. So, two years after she started borrowing, with a relatively small loan, she'd been given a further eight loans. Miss M started off with a loan of £150 and then she continued to borrow

taking ever increasing loans. Loan 9 was her largest loan to date. This pattern in my view isn't of someone who is able to manage their money, given how quickly they are returning for borrowing.

- I accept that Miss M's repayment history may have appeared good (in terms of absence of arrears). But the fact that she had taken a number of loans fairly quickly after the previous one was repaid, coupled with the fact that the loan amounts (and therefore the monthly commitments) were increasing her overall indebtedness, supports my view that Miss M's indebtedness was unsustainable.
- I also think that it ought to have been apparent to Skyline that Miss M was unlikely to have been using these loans as a useful means of managing any shortfalls she was having – after all she was regularly borrowing. Which would suggest it wasn't a short-term shortfall but a longer-term need. Especially as the loan amounts and total repayments weren't decreasing in any meaningful way over the life of Miss M's borrowing from Skyline.
- Miss M's first loan was for £150 and loan 9 was for £1,000. With her weekly commitment increasing from £10.50 per week to £50 per week a near 5 times increase. This to me shows that Miss M wasn't reducing her indebtedness with Skyline and so, although she was repaying loans in line with the credit agreements, she wasn't actually making any headway into reducing her overall capital balance – because she continued to take further lending.
- At this point Skyline ought to have thought it was more likely than not that Miss M had an ongoing need for this type of credit and was dependent on it. By loan 9, I don't think it was reasonable for Skyline to carry on assuming that Miss M was using this borrowing as a means of managing her finances.
- Miss M normally took new loans on the same day as previous loans were repaid. Indeed, Skyline has confirmed when this happens the loans were refinanced, so in effect Miss M was borrowing new money in order to clear her outstanding loan. 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.
- Miss M wasn't making any real inroads to the amount she owed Skyline. While her final loan was smaller than some of her previous loans it was still larger than her first three. Loan 12 was taken out over three years after loan one and Miss M had paid large amounts of interest to, in effect, service a debt to Skyline over an extended period

So, in addition to Skyline's offer to settle loans 6 – 8 I also think it was wrong to have approved loans 9 – 12. I think that Miss M has lost out because Skyline provided her lending 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.
- 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 loans 6 – 12 and I've outlined below what Skyline needs to do in order to put things right for Miss M.

I've considered what Skyline says about the industry regulator not raising any concerns with the affordability assessment it carries out. But I'm considering what has happened in this individual case, and I've not seen anything to suggest that the regulator has considered the individual circumstances of this case. So, in this case, what the regular may or may not have

said to Skyline is in my view not relevant when considering Skyline's obligations to Miss M and what unfolded during the lending relationship.

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 six, 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 6 - 12.

If Skyline has sold the outstanding balance it should buy it back if it is able to do so. If Skyline can't buy it back, then it should liaise with the debt owner to achieve the results outlined below.

- 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 loan. 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. If this results in a surplus, then the surplus should be paid to Miss M. However, if there is still an outstanding balance then Skyline should try to agree an affordable repayment plan with Miss M. 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 6- 12 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 12 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 for Miss M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 25 May 2022.

Robert Walker
Ombudsman