

The complaint

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

What happened

Using information from STFL records and Mrs W's credit file report she has sent to us, here is a table of the loans approved for Mrs W. Loan 1 has been determined as outside of our jurisdiction but remains relevant when considering the lending relationship.

Loan	Date Taken	Principal	Term and Weekly Repayments	Date Settled
1	06/06/2014	Out of Jurisdiction		19/09/2014
2	26/09/2014	£400	16 x £40	19/12/2014
3	19/12/2014	£500	16 x £50	03/04/2015
4	08/05/2015	£625	21 x £50	04/09/2015
5	04/09/2015	£625	21 x £50	25/12/2015
6	25/12/2015	£625	21 x £50	15/04/2016
7	15/04/2016	£625	21 x £50	05/08/2016
8	05/08/2016	£750	21 x £60	16/12/2016
9	16/12/2016	£750	21 x £60	05/05/2017

One of our adjudicators thought that STFL should not have lent to Mrs W for loans 2 to 5 because of the level of debt she was already in before the STFL loans were approved for her. And by the time that Mrs W had taken many loans over the years, our adjudicator thought that the pattern of lending was such that STFL ought to have ceased at loan 6. So, our adjudicator upheld the complaint about loans 2 to 9.

STFL responded to disagree and said that it did not think that there was enough evidence to lead to the complaint for loans 2 to 6 being upheld.

In relation to loans 7, 8 and 9, STFL agreed with our adjudicator and invited us to pass that on to Mrs W.

Mrs W has not responded to the adjudicator's view and we understand that her representative is having difficulty getting in touch with her about STFL's partial agreement.

The unresolved complaint was passed to me.

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 Mrs W 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 consumer'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. And our adjudicator thought that this applied from loan 6 in Mrs W's case.

STFL was required to establish whether Mrs W 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 in order to do that.

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

I've reviewed the information STFL has sent to us. And I note that for the lending period with Mrs W, its policy was that it used to carry out a credit search. The policy has been sent to us and it states

'A credit status report was also obtained from [Credit Reference Agency] to check for CCJ's and any other indebtedness to check if the applicant is suffering any financial hardship and to validate the expenditure data they have provided.'

Use of the initials 'CCJ' is a reference to 'County Court Judgment'.

STFL has also said that

'STF affordability assessments were based on the information given on each loan application by [Mrs W] and evidenced by our agent by sight of benefit letters/confirmation, bank statements and utility bills and the level of credit offered based on this, her previous payment history and data from her credit reports.'

And yet following the adjudicator's view, STFL has said

*'Prior to late 2019 our policy was to credit check the first application only, after late 2019 we changed our policy to credit search each application.
As loans 2 to 6 were completed under this policy we believe we did nothing wrong when issuing loans 2 – 6'*

STFL continues to forward to us an 'example credit report' which is of no use at all. So we have no information from STFL about any searches it did or any copies of the results it may have had in relation to Ms W. And no copies of the documents it has said its agent would have viewed at the time he or she was in Mrs W's home doing the applications with her. Added to which I have three different explanations as to what it did before one or all the loans Mrs W applied for.

So, I do not consider it unreasonable for us to use the details Mrs W has sent to us using her personal credit report. In the absence of information STFL has said it obtained but is not able or has failed to send us copies, then it's fair and reasonable of us to use the information Mrs W can provide to give us an idea of what it likely was that STFL's credit searches would have discovered at the time. That credit report supplied by Mrs W was dated 27 July 2020. So, it likely covered Mrs W's credit position for the period July 2014 to July 2020.

At the time, Mrs W had three very young children and a fourth was born just before Mrs W applied for loan 2. Her income was low and mainly made up of benefits.

Our adjudicator analysed Mrs W's credit situation well and I summarise it here having cross referenced it with the credit report Mrs W has sent to us.

When Mrs W applied for loan 2, it seems that she had five active loans with three other lenders, two of those being home credit providers. Her outstanding loans at that time totalled £7,732, and this did not include the loan that STFL granted. Yet on Mrs W's loan application for loan 2, she disclosed no other loan repayments. The £40 she did insert related to Loan 1 with STFL.

I think it is fair to say that a credit check at that time would have verified that the expenditure data given in Mrs W's loan application was not an accurate representation of her financial situation. In these circumstances, I think it's unlikely Mrs W would've been able to sustainably meet her weekly repayments for this loan – and any subsequent loans.

Looking at Mrs W's credit file, I have seen with each loan that STFL granted, the balance of the outstanding loans she held elsewhere were also increasing. When loan 3 was granted, Mrs W's outstanding loans had increased to £8,162, by loan 4, £12,742, and by loan 5 this had increased to £13,414.

So, whilst Mrs W borrowed from STFL her debts increased, and there was no improvement to her financial situation. I think STFL would have been aware Mrs W was experiencing difficulties by the amount of loans she held and that she was borrowing continually. I don't think STFL acted responsibly by granting further loans to her, increasing her debts and

monthly commitments further.

For the same reasons I uphold Mrs W's complaint about loans 2 to 5.

I think by loan 6, STFL should've reasonably questioned whether continuing to offer further loans to Mrs W was sustainable or otherwise harmful. I note that when she applied in December 2015 (for loan 6) for another loan she already had a balance on the previous loan to refinance which was £250.

By loan 6, Mrs W had been borrowing from Short Term Finance for 18 months, with just a one-month gap in this period. A repeat pattern of lending had emerged, and Mrs W was taking out a new loan on the same day her existing loan had been repaid. The amounts Mrs W was borrowing from STFL didn't significantly decrease either.

I think that Mrs W lost out because STFL continued to provide borrowing from loan 6 onwards because:

- these loans had the effect of unfairly prolonging Mrs W'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 Mrs W'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 loan 6 onwards, loans 7 to 9 of which STFL has already agreed to put right. But I include all the loans 2 to 9 in the redress section for completeness.

Additional point raised by STFL

In the letter sending to us its file of papers for us to begin our investigation, STFL has raised an argument that I have seen before and I have addressed before in earlier decisions relating to STFL. For completeness I address it again here briefly.

STFL has referred to a report relating to an FCA '*skilled person report*' and it states that the outcome was good. It cites this report to demonstrate that '*our processes are fit and proper for use in the short term lending sector. We are confident, as is the skilled person and the regulator, that not only do we have robust methods of determining credit worthiness, but also that no customer is at harm from borrowing from STF.*'

But possession of a favourable report based on a sample of cases may have satisfied the regulator but it does not preclude individuals from bringing their complaints to STFL and after that to the Financial Ombudsman.

Added to which, STFL has said that this report was in October 2021 which post-dates the lending to Mrs W by several years. In which case I think its irrelevant to Mrs W's complaint.

Putting things right

In deciding what redress STFL should fairly pay in this case I've thought about what might have happened had it not lent loans 2 to 5 and had it stopped lending to Mrs W from loan 6 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 Mrs W 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 Mrs 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 [consumer] 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.

STFL ought to do as follows:

- refund all interest and charges Mrs W paid on loans 2 to 9;
- pay interest of 8% simple a year* on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- remove any negative information about loans 2 to 5 from Mrs W's credit file;
- the number of loans taken from loan 6 onwards means any information recorded about them is adverse. So, all entries about loans 6 to 9 should be removed from Mrs W's credit file.

* HM Revenue & Customs requires STFL to take off tax from this interest. It must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Mrs W's complaint in part and I direct that Short Term Finance Limited does as I have set out in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 10 June 2022.

Rachael Williams
Ombudsman