

The complaint

Miss S says My Finance Club Limited irresponsibly lent to her.

What happened

This complaint is about five payday loans My Finance Club provided to Miss S between June 2021 and July 2021. Miss S's lending history is as follows:

Loan	Date Taken	Date Repaid	Amount	Repayments	Highest Repayment
1	25/06/2021	13/07/2021	£200	1	£248
2	16/07/2021	16/07/2021	£250	1	£306
3	22/07/2021	23/07/2021	£100	1	£130.40
4	23/07/2021	31/07/2021	£200	1	£244.80
5	31/07/2021	12/10/2021	£180	1	£220.32

Miss S struggled to repay loan five and failed to meet repayments in agreed repayment plans until she repaid the loan in full.

Our Adjudicator upheld Miss S's complaint in part and thought loan five shouldn't have been given. My Finance Club didn't reply to the Adjudicator's view, so the complaint was passed to me for a final decision.

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 of the relevant rules, guidance and good industry practice - on our website.

My Finance Club needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss S could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, 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 My Finance Club should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer'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);
- 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);

- 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.

I think that it is important for me to start by saying that My Finance Club was required to establish whether Miss S 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 Consumer Credit Sourcebook ("CONC") defines 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 make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss S's complaint.

My Finance Club asked Miss S for information about her income and outgoings and it carried out credit checks for each loan. Miss S said her monthly income was between £1,300 and £1,350. She said her monthly outgoings ranged between £530 and £700. From what I can see, the credit checks that My Finance Club carried out didn't show anything that should have prompted further checks.

I think these affordability checks were proportionate and sufficient for loans one to three. Miss S looked to have sufficient disposable income to repay her loans sustainably. For loan four, the fourth loan in quick succession in a month, I think My Finance Club should also have asked Miss S about her other borrowing, both short-term and long term. But, from what I can see, if it had asked further questions it wouldn't have found anything concerning about Miss S's borrowing from other lenders. So I can't say that loans one to four shouldn't have been provided.

But I also think My Finance Club's checks for loan five didn't go far enough. I think by loan five, My Finance Club should have asked Miss S for details of her finances to verify what she had told it and to check that the loans were sustainable for her. It could for example have asked to see her bank statements. But I haven't been provided with these, so I can't say what better checks would have found.

But Miss S was borrowing and repaying loans in quick succession. Loans one to four were all repaid early and then she asked for a further loan the same day or a few days later. So by the time Miss S asked for a fifth loan in five weeks, I think My Finance Club should have been alerted that Miss S was showing signs of financial difficulties and that she was struggling to repay her loans without having to borrow again.

So I think by loan five, My Finance Club should have realised that there was a significant risk that Miss S would be unable to meet her repayment sustainably. And so I think it shouldn't have provided loan five.

Putting things right

In deciding what redress My Finance Club should fairly pay in this case I've thought about what might have happened had it stopped lending to Miss S from loan five, 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 S may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between her and this particular lender which she may not have had with others. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she 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 she 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 S 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 S would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce My Finance Club's liability in this case for what I'm satisfied it has done wrong and should put right.

I require My Finance Club Limited to do the following:

- refund all interest and charges Miss S paid on loan five;
- 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 loan five from Miss S's credit file;

† HM Revenue & Customs requires My Finance Club to take off tax from this interest. My Finance Club must give Miss S a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given above, my final decision is that I'm partially upholding Miss S's complaint. I require My Finance Club Limited to carry out the redress set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 June 2022.

Phillip Berechree
Ombudsman