

The complaint

Mrs M, through her representative, complains that Short Term Finance Limited (STFL) lent to her irresponsibly. These were home-collected loans.

What happened

STFL has sent to us information on loans Mrs M has had since 2015.

Loan number - being the ones we know about	Agreement Date	Capital	Interest	Date loan settled	Terms and payments in weeks
1	25/12/2015	£700	£420	17/03/2016	16
2	25/03/2016	£750	£450	21/07/2016	16
3	29/07/2016	£750	£450	29/01/2019	16
4	20/06/2019	£100	£60	05/09/2019	16 x £10
5	05/09/2019	£200	£120	09/12/2019	16 x £20
6	09/12/2019	£300	£180	27/02/2020	16 x £30
7 overlap	13/02/2020	£100	£60	22/05/2020	16 x £10
8 overlap	27/02/2020	£300	£180	24/08/2020	16 x £30
9 overlap	16/09/2020	£240	£120	01/12/2020	15 x £24
10 overlap	16/09/2020	£100	£70	19/02/2021	34 x £5
11 overlap	01/12/2020	£400	£200	01/03/2021	15 x £40
12 overlap	19/02/2021	£200	£140	17/09/2021	34 x £10
13 overlap	01/03/2021	£400	£200	24/05/2021	15 x £40
14 overlap	26/05/2021	£600.00	£300.00	17/09/2021	15 x £60
15 overlap	17/09/2021	£770.00	£385.00	24/12/2021	15 x £77
16 overlap	17/09/2021	£200.00	£150.00	Due to end March 2022	15 x £23.33

Loan 3 took 131 weeks to pay off rather than 16 weeks.

One of the documents STFL sent to us gave an indication that Mrs M had taken a loan (possibly more than one) before the December 2015 loan. But neither STFL nor Mrs M have sent us any details of them. So, this loan table lists the loans to which this decision relates.

STFL sent to Mrs M its final response letter to her complaint in January 2022. The outstanding loan 16 was due to have been repaid in March 2022 and that may have occurred. But on the information I have now, it remains outstanding.

STFL said that it ought to have investigated the financial details for Mrs M more thoroughly at loan 6. So, it was content to put things right for Mrs M for loans 6 to 8. But it considered that a Financial Conduct Authority Review of STFL which took place in 2019-2020 meant that STFL approached loan applications in a different way from June 2020, and it did not consider that any of the other loans had been mis-sold.

The redress from Loans 6 to 8 payable to Mrs M was calculated to have been £472.16. STFL said it would remove reference to loans 6 to 8 from Mrs M's credit file as well.

After Mrs M had referred her complaint to the Financial Ombudsman Service, one of our adjudicators considered the complaint and thought that STFL had agreed to put things right for loans 6 to 8 and so she did not review them.

Our adjudicator also thought that loans 9 to 16 were a further set of loans for which STFL should pay redress to Mrs M. So, the combined uphold (what STFL had offered combined with our adjudicator's view) was for loans 6 to 16. Mrs M's representative has acknowledged the decision but has made no comment on it.

STFL disagreed with our adjudicator's view and its points are summarised here:

- Loans 9 and 10 were one loan split between weekly terms of 15 and 34 weeks to accommodate Mrs M
- A full enhanced due diligence check was undertaken at that point for loans 9 and 10, and STFL knew Mrs M had three home credit company accounts (with one loan company) which were delinquent and she was in a payment plan for them
- STFL says that the 'June' payment was missed (no year given) and the account was 'cleared' on 24 August 2020 (which must be reference to loan 8 which closed on that date)
- Loans 11 to 14 – STFL did an income and expenditure check (I&E) and there was no deterioration on her credit file
- Loans 15 and 16 were one loan split into 15 and 34 week terms to accommodate Mrs M's request

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 Mrs M 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 Mrs M'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 Mrs M at loan 9.

STFL was required to establish whether Mrs M 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 Mrs M's complaint.

The FCA s166 Review submissions

I have seen these submissions made by STFL before and I have – from other complaints – kept and re-reviewed the Report to which STFL refers.

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.'

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 across almost six years are the significant elements within the particular circumstances of this case.

Loans 1 to 3

As I have mentioned earlier in this decision, the handwritten application forms from 2015 and 2016 reveal several elements about Mrs M and her loan history. One is that she was a woman who had separated from her partner, was on benefits with three children and had her fourth child four weeks after loan 2 was approved.

The documentation I have for loan 1 shows me that she used the proceeds from that loan to settle the previous loan (about which we have no details), so of the £700 loan she took Mrs M used £176.52 to settle the previous loan and received £523.48 as cash in hand.

Loans 1, 2 and 3 were all used to repay the previous loan and Mrs M was scheduled to repay £70 or £75 a week for those loans. This was a high level of a commitment for a home-credit loan. I can see that according to the details on those written applications it seems that Mrs M was able to afford the loans as her benefits income was relatively high at between £555 and £632 a week.

However, I am aware that each loan was used to pay off the previous loan and that loan 3 was scheduled to be repaid in 16 weeks and took 131 weeks. So, the impression I receive is that it's likely she was not able to afford these loans as a single mother of 4 children and on benefits. But as I do not have any information from Mrs M about her finances in 2015 and 2016, and I have no further details about any earlier loans STFL may have approved for her before December 2015, and as she has not responded to object to the outcome for loans 1 to 3 after our adjudicator's view, then I do not have the foundation evidence to uphold these loans.

What this information has given me is the background, which I deal with next.

The gap

I am not entirely in agreement with our adjudicator that the gap in the lending between paying off loan 3 and taking loan 4 was enough to break the lending relationship. And I say this because the break was only five months and it followed an extraordinarily long period during which Mrs M was in debt to STFL – 131 weeks – which was about two and half years. Further, as I have outlined above, I do not think that this was the fourth loan Mrs M had taken – I think it's likely she had taken more.

However, five months was a gap and can't be ignored. So, I have factored into my decision both situations – that the five month gap did break the lending relationship and therefore loan 4 was the first of the new loan chain. And I have also looked at the complaint as if there was no break. I've done this as it's so borderline that I wanted to demonstrate to the parties I have looked at the complaint with both possibilities in mind.

Loans 4 and 5

Mrs M has not disagreed with our adjudicator about the outcome for loans 4 and 5. So that leads me to think that she is satisfied with the outcome. So those appear to be resolved and

I have not considered them further.

Loans 6 to 8

STFL said to Mrs M in the FRL it sent to her in January 2022 this: *'We do recognise that by loan 6 we could have looked deeper into your outgoings and completed an enhanced due diligence assessment, therefore we do uphold loan 6'*

And I think the reason for that may be because the copy credit search results list I have seen shows that in December 2019 – when Mrs M wanted loan 6 - Mrs M already had a default recorded for her and she had three loans which were delinquent in the previous 12 months.

And later in the FRL STFL made it clear it was conceding in relation to her complaint for loans 6 to 8. So, I need say no more about those and I have included in the redress below the sums for loans 6 to 8 as well.

Loan 9 onwards

Our adjudicator considered that by loan 9 STFL ought to have realised that it had been lending to Mrs M for a long time. It was fifteen months continuously and nearly five years overall from loan 1 – which as I have said before – I do not think it was loan 1 as I think STFL had been lending to her before that date. Our adjudicator considered that the loan sums were increasing and so it ought not to have lent to Mrs M from loan 9 onwards.

STFL's submissions to defend the situation surrounding loans 9 onwards were summarised in the 'what happened' part of the decision.

However, considering all the information I have about Mrs M's history of lending with STFL, considering what I have said earlier about the S166 Skilled Persons' Review outcome and considering that loan 9 was almost five years after STFL first lent to Mrs M, then I agree with our adjudicator. And even if the break of five months in 2019 is treated as a break in the lending, still I think that loan 9 was fifteen months down the line of the second loan chain and so still I consider that STFL ought to have realised that it should have ceased lending at this point. I explain here.

The two loans taken on the same day in September 2020 (Loans 9 and 10) were an escalation in the amounts Mrs M had been taking and followed what STFL knew about – namely- Mrs M was in a repayment plan for another home credit lender with which Mrs M had three outstanding loans.

Her credit file at that point – a copy of which STFL has sent us – showed that Mrs M had delinquent accounts and STFL knew she had two County Court Judgments (CCJs). And for a person to have been in debt for such a period that the creditors had succeeded in obtaining two CCJs against her shows that the debt had been longstanding.

STFL has sent to us copy bank account statements (dating from around July 2020) it obtained from Mrs M before approving loans 9 and 10. I have reviewed those. They do not shed much light on the situation on their own as a lot of the transactions are transfers by Mrs M between what appear to have been her own accounts. And a lot are what appear to be payments to friends which have not been explained. So, I think that STFL's reliance on these bank account statements reviews are not as comprehensive a check as it thinks. Normally where there are obvious transfers between accounts then I'd expect the bank account review to include that other account as well. But I do not have those other set of statements and as STFL has not sent any to me (I assume that they do not have them) and as I have said before, Mrs M has sent us nothing.

From Loans 9 and 10 taken on the same day, then it started to become apparent that Mrs M's needs for credit was increasing and she took overlapping loans and used, as she had in the past, new loans to repay older loans.

Examples are – loan 11 was used to repay one of the two loans taken on 16 September 2020 (loan 9). Then loan 12 was used to repay loan 10.

All this culminated in Mrs M being approved for two loans (loans 15 and 16) coming to a combined fresh debt of £970 principal sum which was a total debt of £1,500 and costing Mrs M £100 a week. And from the information on the loan table which is information from STFL, loans 15 and 16 were used to repay loans 12 and 14.

From June 2019 (loan 4) to September 2021 (loans 15 and 16) Mrs M's debt had grown from £100 to £970 and so Mrs M had, effectively, being paying large sums to continually repay a debt over a long time. And, considering my review of loans 1 to 3 (and what likely showed a history of earlier lending as well) then I think this would likely have been the second time Mrs M had found herself in this situation with STFL.

And if I consider that this was one long loan chain then STFL had been lending to her almost continuously for years by September 2021 (loans 15 and 16).

I think that Mrs M lost out because Morses continued to provide borrowing from loan 9 onwards because:

- these loans had the effect of unfairly prolonging her indebtedness by allowing her to take expensive credit over an extended period of time.
- the length of time over which Mrs 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.

STFL was wrong to have continued to lend to Mrs M from loan 9. And I uphold the loans for Mrs M from loan 9 as well as the ones – loans 6 to 8 – that STFL has already agreed to uphold.

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 Mrs M from loan 9 as I'm satisfied it ought to have. And STFL has already conceded in relation to loans 6 to 8. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mrs M 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 Mrs M 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 Mrs M 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

As I said earlier, it may be that loan 16 has been repaid. If it has not then if STFL has sold the outstanding debt on loan 16 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 STFL should liaise with the new debt owner to achieve the results outlined below. If loan 16 has been repaid then the redress calculations are simpler.

- A. STFL should add together the total of the repayments made by Mrs M 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 Mrs M which were considered as part of "A", calculated from the date Mrs M 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 and treat any repayments made by Mrs M as though they had been repayments of the principal on all outstanding loans. If this results in Mrs M 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 Mrs M.
- E. For loans 6 to 8, STFL has said it would remove them completely from Mrs M's credit file and so I am directing that it does that.
- F. The overall pattern of Mrs M's borrowing for loans 9 to 16 means any information recorded about them is adverse, so it should remove these loans entirely from Mrs M's credit file.

STFL does not have to remove loan 16 from Mrs M's credit file until 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 Mrs M a certificate showing how much tax it has deducted if she asks for one.

My final decision

My final decision is that I uphold Mrs M's complaint in part and I direct that Short Term Finance Limited does as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or

reject my decision before 25 October 2022.

Rachael Williams
Ombudsman