The complaint

Ms G (by way of a representative) complains Mutual Clothing and Supply Company Limited, trading as Mutual, didn't carry out sufficient affordability checks before each loan was granted. If Mutual had done so, it would've realised Ms G wasn't in a position to take on these loans.

What happened

Ms G was provided with 11 home collected loans between April 2012 and December 2020. I've included some of the information we've received about the loans from Mutual in the table below.

loan number	loan amount	agreement date	repayment date	term (weeks)	weekly repayment per loan
1	£300.00	28/04/2012	19/12/2012	51	£8.23
2	£500.00	15/12/2012	06/11/2013	51	£13.72
3	£500.00	09/11/2013	24/09/2014	51	£13.72
4	£500.00	20/09/2014	12/08/2015	51	£13.72
5	£700.00	08/08/2015	27/07/2016	51	£19.21
6	£700.00	23/07/2016	28/06/2017	51	£19.21
7	£700.00	21/06/2017	30/05/2018	51	£19.21
8	£700.00	02/06/2018	29/05/2019	51	£19.21
9	£700.00	25/05/2019	27/05/2020	51	£19.21
10	£700.00	23/05/2020	28/04/2021	51	£19.21
11	£500.00	05/12/2020	18/08/2021*	51	£13.72

*the final response letter showed the final loan was outstanding. But in an email of April 2022 Mutual provided details of the loans Ms G was granted and the final loan is showing as repaid. For the purpose of this decision, I've assumed the information contained within the April 2022 email is correct and the final loan has been repaid.

Following a complaint by Ms G's representative, Mutual issued its final response letter, in which it explained why it had not considered Ms G's first four loans because in its view she had complained too late about them and so they were out of jurisdiction.

So, it only considered what happened when loans 5 – 11 were granted. It didn't uphold these loans because Mutual said it had carried out proportionate checks which showed Ms G was able to afford these loans.

Unhappy with this response, Ms G's representative referred the complaint to the Financial Ombudsman Service in December 2021.

The adjudicator who reviewed Ms G's complaint contacted her representative to find out when she realised, she could complain about loans 1 – 4 and what prompted that complaint. However, no response was received to her enquires.

Therefore, when our adjudicator considered the complaint, she explained that without a response from Ms G (or her representative) she had to say loans 1 – 4 were outside of our jurisdiction on the evidence she had.

She then concluded Mutual ought not to have provided loans 5 – 11 because in her view the lending was now harmful for Ms G taking into account the amount of time she had been indebted to Mutual and the fact the loans were increasing in value.

Ms G's representative acknowledged receipt of the adjudicator's assessment, but no further comments were provided.

Mutual disagreed with the adjudicator's assessment. In response, Mutual provided us a detailed response as to why it disagreed with the adjudicator. I want to be clear that I've read the document in full. But in summary, Mutual said:

- Its loans are not high cost – Mutual offers a mid-cost product.
- There isn't anything to suggest Ms G was reliant on these loans.
- There is no evidence of financial difficulties.
- Ms G was able to sustainably repay these loans in line with industry guidance and regulations.
- Mutual carried out *"… a borrower focused test which analyses the customer's income and expenditure and assesses whether the customer can afford to repay the weekly payments out of their disposable income without undue difficulty and without having to reborrow.*"
- There is no requirement for Ms G to have a break between loans.

As no agreement has been reached the complaint has been 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've set out our general approach to complaints about irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Neither, Ms G (or her representative) appear to disagree with our adjudicator's findings about loans 1 – 4 – that these can't be considered. It therefore seems that there is no longer a dispute about these loans. So, I say no more about them.

So instead, this decision will focus on whether Mutual did anything wrong when it lent loans 5 - 11.

Mutual has had other decisions from the Financial Ombudsman Service which detail our approach to complaints of this nature and what we think about the rules and regulations that surround the sale of this type of credit as well as the cost of the product. So Mutual should be aware of our approach to these issues. I don't intend to go into detail about that here. But a brief summary of this is below.

Mutual 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 Ms G could repay loans 5 - 11 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 suggest Mutual should have done more to establish that any lending was sustainable for Ms G. These factors include:

- Ms G 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);
- Ms G 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);
- Ms G 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 Ms G. The loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case.

At the time loans 5 – 11 were lent, Mutual was regulated by the Financial Conduct Authority, who had set out in its Consumer Credit Sourcebook ("CONC") 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 it means for Ms G's complaint.

Part of Mutual's response concerns how it defines the cost of the credit and the risk of it to Ms G. It also concerns our approach to repeat lending. We have responded to Mutual on these issues in detail through other final decisions it has received, and the published decisions on our website. So, I'm not going to deal with these points at length here.

I will say briefly that I consider it reasonable to describe this lending as high cost credit, as does the Financial Conduct Authority (FCA), which includes home collected credit within its identified 'high cost credit' portfolio. And while I note it has a longer term than, for example, a payday loan, that does not make it a low risk, or inexpensive, option for a consumer. And, as such, long-term use of these products can be harmful to a consumer. The FCA has not said anything to the contrary on this point. I have considered these issues alongside everything else in making my decision.

I haven't looked in any great detail about whether the checks for loans 5 - 11 were proportionate and I'll explain why below. But what I would say, is that I'm not convinced given the checks Mutual did carry out at the time, that its checks for these loans were proportionate.

It looks like, based on what has been provided (application forms from and including loan 5), that Mutual took the same sort of information for each loan. Mutual asked Ms G about her income and expenditure. It also took details of her partner's income.

Mutual has provided the application forms for the loans that I am considering as part of this decision. All the applications have been recorded to show that Ms G was in receipt of state benefits and so I think it is fair to conclude, given the details of the application form that her income was modest and was fixed in as much as state benefits are.

Furthermore, at this stage in the lending relationship, I don't think it was reasonable of Mutual to have relied solely on what Ms G was telling it. Taking into account the larger loans, the continued need for credit and the term of which the loans were repaid.

Mutual also says it carried out a credit check for at least the final loan. In the final response letter Mutual explained that it didn't show anything of concern in terms of arrears or defaults. Mutual also says there were no other signs of financial difficulty.

Mutual has also commented on the gaps between loans – it says ***"****There are however considerable gaps between the provision of credit."* But Mutual seems to be considering gaps as the difference in time between each new loan being approved. Whereas, any gap, in our view, needs to be considered from when a loan is repaid to when a new loan is taken out. So, looking at the loan history, in its totality, there, as far as I can see only five days in over nine years of intendedness when Ms G didn't owe Mutual money.

As I have explained, I haven't recreated individual, proportionate affordability checks for these loans because I didn't consider it necessary to do so. Indeed, I'd be inclined to think that from loan 5, Mutual's checks really needed to go further than just relying on the information Ms G told it. At this point in the lending relationship, I think Mutual ought to have been verifying Ms G's income and overall expenditure in order to have an accurate understanding of her actual financial position.

I say this because Ms G had been indebted for over three years and was now returning for her largest capital loan to date and therefore her largest weekly commitment. By this time, it ought to have been prudent of Mutual to have taken steps to make sure the information Ms G had been providing was accurate.

So, in addition to assessing the circumstances behind each individual loan provided to Ms G, Mutual also needed to consider the overall pattern of lending and what unfolded during the course of its lending relationship with Ms G. Having looked at the overall pattern of Mutual's lending history with Ms G, I agree with our adjudicator that Mutual should reasonably have seen that further lending was unsustainable, or otherwise harmful, at the time it provided loan 5. I say this because;

- Ms G had been indebted to Mutual for over three years. The loans were intended to run for around a year, so Mutual could have expected a longer-term relationship. But because these loans often overlapped, meaning her overall indebtedness and weekly repayments had increased over this this period.

- So, rather than a picture of decreasing indebtedness which would happen when a loan is taken and repaid, there was a pattern of repeated and increasing borrowing. I think taking out five high cost loans, over this period, was a strong indicator that Ms G was starting to struggle financially.

- Loan 5 was also Ms G's largest capital loan to date, to be repaid over a year and loan four was still outstanding. By loan 5, Ms G's weekly commitment to Mutual had grown to £32.93 per week. A significant increase compared to loan one, some three years before where Ms G was committed to paying £8.23. To me, it shows Ms G's overall indebtedness was increasing in an unsustainable way.

- The majority of these loans were used to fund 'yearly' expenditures such as holidays. It isn't necessarily or automatically unreasonable to use this type of credit to do this. But using a high cost form of borrowing over a prolonged period is still likely to have caused financial problems, and in this case the evidence suggests it left Ms G with little alternative but to borrow again in the future, when these yearly expenditures were likely to be incurred again, as she did.

- These loans show a broadly similar pattern of borrowing of relatively large capital loans. In total, over half were for sums equalling £700. I think it's most likely this consistent pattern of borrowing over the period showed that Ms G didn't just have a short-term cash-flow problem but was probably supporting regular living expenses or other financial commitments.

- I accept that Ms G's repayment history may have appeared good (in terms of absence of arrears). But the fact that she had taken a number of loans coupled with the fact that the loan amounts (and therefore the commitments) were increasing her overall indebtedness, supports my view that Ms G's indebtedness was unsustainable.

- By the time of loan 11, Ms G was making a commitment to make repayments to Mutual for another year, after being almost indebted constantly for well over eight years, further pushing her indebtedness out to well over nine years. The amount of time that Ms G spent indebted to Mutual meant that she was servicing a debt to Mutual over an extended period of time.

I think that Ms G lost out when Mutual provided loans 5 - 11 because:

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

So, overall, I'm upholding the complaint about loans 5 to 11 and I'll go on to set out what Mutual should do to put things right.

Putting things right

In deciding what redress Mutual should fairly pay in this case I've thought about what might have happened had it stopped lending to Ms G from loan 5. Clearly there are several possibilities, and all hypothetical answers to that question.

For example, having been declined this lending Ms G may have simply left matters there and not tried to obtain the funds from elsewhere – particularly as a relationship existed between her and Mutual 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 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 G 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 G would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Mutual's liability in this case for what I'm satisfied it has done wrong and should put right.

Mutual shouldn't have given Ms G loans 5 - 11.

A. Mutual should add together the total of the repayments made by Ms G towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything it has already refunded.
B. Mutual should calculate 8% simple interest* on the individual payments made by Ms G which were considered as part of "A", calculated from the date Ms G originally made the payments, to the date the complaint is settled.
C. Mutual should pay the total of A and B to Ms G.
D. The overall pattern of Ms G's borrowing for loans 5 - 11 means any information recorded about them is adverse, so Mutual should remove these loans entirely from Ms G's credit file.

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

My final decision

For the reasons I've explained, I uphold Ms G's complaint in part.

Mutual Clothing and Supply Company Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 25 August 2022.

Robert Walker
Ombudsman