

The complaint

Miss J through a representative complains Hamsard 3225 Limited trading as CLC Finance (Hamsard) gave her loans she couldn't afford to repay.

What happened

Miss J took four home collected loans between October 2018 and January 2019 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	£100.00	12/10/2018	15/01/2019	16	£10.00
2	£100.00	28/12/2018	19/06/2020	21	£8.50
3	£125.00	25/01/2019	03/07/2020	21	£10.63
4	£150.00	03/07/2020	outstanding	23	£11.40

The 'weekly repayment' column is the cost per week per loan, so where loans overlapped the cost per week will be more. For example, when loans 1 and 2 were running Miss J's weekly commitment to Hamsard was £18.50.

Hamsard considered Miss J's complaint and issued its final response letter on this matter in September 2021. Hamsard investigated the complaint and concluded it had carried out checks in line with the regulations applicable at the time as well as its own internal processes. It didn't uphold Miss J's complaint.

The complaint was referred to the Financial Ombudsman Service by Miss J's representative in January 2022.

The complaint was considered by an adjudicator who thought it was reasonable for Hamsard to have provided these loans. She said Miss J declared a sufficient amount of disposable income for Miss J to be able to afford the repayments. While Miss J did have repayment problems these didn't occur until after the loans had been granted.

Hamsard also said a credit search was carried out, but the results of the search aren't available. Miss J's representative provided details of some adverse information recorded on her credit file, but the information was applied to the credit report after the loans were approved.

While there were periods of non-payment the adjudicator thought Hamsard had treated Miss J fairly.

Hamsard didn't respond to the adjudicator's assessment.

Miss J's representative explained that it didn't agree with the adjudicator's assessment. It didn't provide any further comments but it did ask for an ombudsman to make a decision.

As no agreement was reached the case was passed to me for a decision. I then issued a provisional decision explaining the reasons why I was intending to uphold Miss J's complaint about loan 4.

A copy of the background to the complaint and my provisional findings follow this in italics and form part of this final decision.

What I said in my provisional decision

What I've provisionally 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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Hamsard had to assess the lending to check if Miss J 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. Hamsard's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss J'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 Hamsard should have done more to establish that any lending was sustainable for Miss J. These factors include:

- Miss J 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 J 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 J 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 J.

Hamsard was required to establish whether Miss J 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 J 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 J's complaint.

Loans 1 – 3

The adjudicator didn't uphold Miss J's complaint about these loans, and I agree with her, based on the evidence that I've seen from both Hamsard and Miss J.

For these loans Miss J declared she had a weekly income of between £208 and £367. And her declared weekly expenditure was declared as being between £115 and £201. This left Miss J with a weekly disposable income of between £67 and £97. Which was more than sufficient to afford the largest contractual repayments due under loan 2 and 3 of £19.13 per week. So, the loan repayments for these loans appeared affordable.

It looks like, based on what Hamsard said in the final response letter that a credit search may have been carried out before the first loan was approved.

Hamsard hasn't provided the result of any credit checks it carried out and Miss J's representative hasn't provided a copy of her credit report either. But, what Miss J's representative has provided is a summary of what it considers the adverse information was at the time each loan was approved.

However, and as the adjudicator pointed out, some of the adverse information the representative has mentioned wouldn't have been recorded or visible at the time in any credit check Hamsard may have carried out when these loans were approved. So, I can't place any weight on the summary of the credit check results which can be found in the letter of complaint.

Based on the information Miss J declared Hamsard could've been confident she was in a position to afford the contractual repayments she was due to make for these loans. Given this was in the early part of the lending relationship; I think the checks that Hamsard did were proportionate and it didn't need to do any further checks before agreeing to these loans.

There also wasn't anything else that Hamsard may have been aware of that may have indicated to it that Miss J was or likely having financial difficulties. I accept that Miss J had some problems repaying loans 2 and 3 and it took significantly longer than Hamsard had anticipated to repay these loans.

But at the time all these loans were approved, there wasn't anything else prior to this to indicate that Miss J may have been having problems.

I've also thought about the fact loan 3 was taken out shortly after loan 1 was repaid and while loan two was running at the same time. At this point, Miss J's weekly commitment had increased by 63 pence per week. But the weekly repayment was still fairly modest, and there didn't appear to have been any repayment problems when loan 1 was settled. So, overall, I think it was reasonable for Hamsard to still have relied on the information Miss J provided it.

There also wasn't anything else in either the information Miss J had provided or what Hamsard knew about Miss J that ought to have made it consider whether these loans were unsustainable for Miss J.

As this is the case, I'm intending to not uphold Miss J's complaint about these loans.

Loan 4

It isn't entirely clear why this loan wasn't considered as part of the adjudicator's assessment, because Hamsard provided the Financial Ombudsman Service with details of this loan as part of its original file submission. Hamsard's file was and is quite clear in stating that there were four loans, and so I've considered this loan to determine whether it should be upheld.

For this loan Miss J declared a weekly income of around £453 with weekly outgoings of around £330 leaving, around £123 per week in order to meet her commitment to Hamsard of £11.40. So Hamsard, may have purely based on the income and expenditure information that it gathered concluded that Miss J would've been in a position to afford the loan repayments.

However, I also think that Hamsard had to be mindful of Miss J's repayment history for her previous loans, it's reasonable to do this because it would've provided Hamsard with information as to how Miss J would likely repay her loan.

Looking at the statement of account Hamsard has provided it's clear that Miss J had significant repayment problems for both loans 2 and 3. These loans took significantly longer than Hamsard had expected to be repaid and there are also periods of time where no payments are made, I've outlined those periods below.

- 29/03/2019 – 31/05/2019.
- 16/08/2019- 31/10/2019.
- 2/11/2019 – 20/03/2020.

Based on the information available to me it isn't clear why no payments were made during this period of time. All I can see from the statement of account that Hamsard hasn't applied any extra fees or interest to the outstanding balance. However, Hamsard was on notice that Miss J was clearly having financial difficulties given the extended period of time when no payments were made.

Given, the repayment problems there is an argument that Hamsard ought to have carried out further checks before this loan was granted – for it to check whether Miss J had overcome whatever difficulties she had that led to her previous repayment problems.

But, I don't think, in this case that I need to consider what a proportionate check may have showed Hamsard because there were sufficient repayment problems to have alerted Hamsard to the fact that this loan was likely to be unsustainable.

In my view, it is irrelevant whether the checks carried out by Hamsard went far enough, it had enough information at its disposal to suggest that Miss J was having financial difficulties and it should've concluded that this loan wasn't sustainable because Miss J would likely have problems repaying it – which as I can see from the repayment history she did because an outstanding balance remains.

I'm therefore intending to uphold Miss J's complaint about this loan.

Response to provisional decision

Miss J (and / or her representative) as well as Hamsard were asked to provide anything further they wanted considering in response to the provisional decision as soon as possible, but no later than 19 May 2022.

Neither Miss J nor her representative responded to the provisional decision.

Hamsard said it didn't have anything further to add.

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.

As no new comments or evidence has been provided, I see no reason to change the outcome that I was intending to reach in the provisional decision. I still think, Hamsard shouldn't have approved loan 4 because Miss J had had significant repayment problems while trying to repay loans 2 and 3.

I've outlined below what Hamsard is required to do in order to put things right for Miss J.

Putting things right

In deciding what redress Hamsard should fairly pay in this case I've thought about what might have happened had it not provided loan 4, as I'm satisfied ought to have been the case.

Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Miss J 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 J 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 J would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Hamsard's liability in this case for what I'm satisfied it has done wrong and should put right.

I'm intending to direct Hamsard to pay compensation in relation to loan 4.

If Hamsard has sold the outstanding debt Hamsard should buy it back if Hamsard is able to do so and then take the following steps. If Hamsard is not able to buy the debt back then Hamsard should liaise with the new debt owner to achieve the results outlined below.

- A. Hamsard should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss J as though they had been repayments of the principal on all outstanding loans. If this results in Miss J having made overpayments then Hamsard 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. Hamsard should then move to step "C".
- B. However, if there is still an outstanding balance then Hamsard should try to agree an affordable repayment plan with Miss J. Hamsard shouldn't pursue outstanding

balances made up of principal Hamsard has already written-off.

- C. Hamsard should remove any adverse information recorded on Miss J's credit file in relation to loan 4.

*HM Revenue & Customs requires Hamsard to deduct tax from this interest. Hamsard should give Miss J a certificate showing how much tax Hamsard deducted, if she asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Miss J's complaint in part.

Hamsard 3225 Limited trading as CLC Finance should put things right for Miss J as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 22 June 2022.

Robert Walker
Ombudsman