

The complaint

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

What happened

Information from STFL and Miss P led our adjudicator to create a loan table of 33 loans from August 2012 to March 2021 and as the last three loans have outstanding balances then they remain open.

That loan table was used when our adjudicator sent his view and since then many of the loans appear to have been resolved. And so, I have not reproduced the whole table – just those for which there remains a dispute.

Loan	Approved	Capital sum	Settled	Term in weeks	Repayment amounts if known
20	16/06/2018	£300.00	17/08/2018	16	£30
21	13/07/2018	£200.00	12/10/2018	23	£15
22	24/08/2018	£400.00	30/11/2018	16	£40
23	19/10/2018	£200.00	27/02/2019	23	
24	30/11/2018	£400.00	27/02/2019	16	
25	27/02/2019	£200.00	19/06/2019	23	
26	27/02/2019	£400.00	13/05/2019	16	
27	13/05/2019	£400.00	19/09/2019	16	
28	19/06/2019	£200.00	19/09/2019	23	
29	02/12/2019	£300.00	20/11/2020	16	
30	21/11/2020	£400.00	16/02/2021	15	
31	18/02/2021	£370.00	Balance	15	
32	23/03/2021	£100.00	Balance	20	
33	23/03/2021	£200.00	Balance	34	

One of our adjudicators did not have enough information to conclude on some of the earlier loans but he did think that STFL should put things right for loans 6 to 9 and loans 15 to 33.

STFL responded to say that it agreed to the uphold for loans 6 to 9 and loans 15 to 19, but it gave specific reasons for not agreeing to the others from loan 20 onwards and those are set out in the main body of this decision and I address them there.

Miss P agreed to that view by our adjudicator but did not agree to what STFL had said. So, the disputed loans appear to be loans 20 to 33. The partially 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 high cost short-term and home credit 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 Miss P 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.

STFL was required to establish whether Miss P 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 Miss P's complaint.

Our adjudicator had proceeded on the basis that loan 10 was the first loan of a new lending chain and I agree with that assumption from looking at the details of the loans.

Our adjudicator said that for loans 6 to 9 in that lending chain, and from loan 15 to loan 33 the pattern of lending showed some of the key indicators to lead him to think this was repetitive lending. Those were the frequency of the lending, the length of time Miss P had been in debt to STFL, the fluctuation in amounts lent and sometimes the fact they overlapped. Our adjudicator considered that these all pointed towards Miss P being reliant on the credit. So, our adjudicator thought this was likely harmful to her and was keeping her out of the mainstream credit available to most consumers.

STFL agreed with this for some of the loans, but it said that the gap in lending between loans 19 and loan 20 meant this showed Miss P was not reliant on the credit from STFL. I have looked at the closure date of loan 19 provided to us by STFL and that was 6 July 2018 and loan 20 was approved for Miss P on 16 June 2018. There is no gap there as they loans overlapped. And reviewing the details I have for the loans after loan 15 there are no gaps in the lending. So, I do not agree with what STFL has said.

Another point STFL has raised after our adjudicator's view is that on issuing loan 20 it knew of her County Court Judgment (CCJ) and so asked for a 30 day bank statement to consider and carry out an 'enhanced due diligence' check. STFL has not sent to us a copy of that bank statement or its findings from reviewing that and so I don't attach much weight to what STFL has said about it carrying out an enhanced due diligence exercise as I do not know what that revealed.

I have also looked at the overall pattern of STFL's lending history with Miss P, with a view to seeing if there was a point at which it should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so STFL ought to have realised that it shouldn't have provided any further loans.

Given the circumstances of Miss P's case, I think that this point was reached by loan 6 in the first lending chain and by loan 15 after that in the same way that our adjudicator did. I say this because:

- from Loan 15 onwards Miss P was provided with a new loan within days of settling a previous one and often they overlapped. Sometimes Miss P was approved for two loans in a day. So STFL ought to have realised it was more likely than not Miss P was having to borrow further to cover the hole repaying her previous loan was leaving in her finances and that Miss P's indebtedness was increasing unsustainably.
- Miss P wasn't making any real inroads to the amount she owed. Miss P's last loan was approved for her in March 2021 which was five years after the first in this lending chain

In fact, the last approval date was 23 March 2021, and STFL gave her two loans with a combined value of £300 and she already owed it money on loan 31. Loan 10 had been for £50.

Miss P had paid large amounts of interest to, in effect, service a debt to STFL over an extended period.

I think that Miss P lost out because STFL continued to provide borrowing from loan 6 to 9 and loan 15 onwards because:

- these loans had the effect of unfairly prolonging Miss P'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 Miss P'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 the loans the adjudicator upheld and for clarity I am including them all into the redress section here – loans 6 to 9 and loans 15 to 33. STFL should put things right.

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 Miss P for loans 6 to 9 and for loans 15 to 33, 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 P 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 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 P 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 Miss P 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 shouldn't have given Miss P loans 6 to 9 and loans 15 to 33. My understanding is that there are some outstanding balances on some of the loans.

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

A) STFL should add together the total of the repayments made by Miss P 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 Miss P which were considered as part of “A”, calculated from the date Miss P 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 Miss P as though they had been repayments of the principal on all outstanding loans. If this results in Miss P 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. If this results in a surplus then the surplus should be paid to Miss P. However, if there is still an outstanding balance then STFL should try to agree an affordable repayment plan with Miss P.

E) The overall pattern of Miss P’s borrowing for loans 6 to 9 and loans 15 to 33 means any information recorded about them is adverse, so it should remove these loans entirely from Miss P’s credit file. STFL does not have to remove loans 31 to 33 from Miss P’s credit file until they have been repaid, but STFL should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires STFL to deduct tax from this interest. STFL should give Miss P a certificate showing how much tax it has deducted if she asks for one.

My final decision

My final decision is that I uphold Miss P’s complaint in part and I direct that Short Term Finance Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss P to accept or reject my decision before 27 July 2022.

Rachael Williams
Ombudsman