

The complaint

Mr M complains that Hamsard 3225 Limited trading as CLC Finance, lent to him irresponsibly. He has said that the interest rates were high and he had to take out other loans to pay off these loans. He wants a refund of all interest and charges.

Mr M appears to have changed his name at some point, but for the purposes of this complaint I will use 'Mr M'. The agreements are in that name and his complaint form bears the name Mr M too.

What happened

Using information we have from CLC Finance, here is a brief table of the approved loans.

Loan	Date Taken	Principal	Term and Weekly Repayments	Date Settled
1	05/11/2015	£100	16 x £10	05/02/2016
2	15/01/2016	£50	16 x £5	15/04/2016
3	29/01/2016	£100	16 x £10	15/04/2016
4	06/04/2016	£125	16 x £12.50	29/07/2016
5	06/04/2016	£75	16 x £7.50	29/07/2016
6	25/07/2016	£125	16 x £12.50	21/10/2016
7	25/07/2016	£75	16 x £7.50	21/10/2016
8	11/10/2016	£150	16 x £15	03/02/2017
9	11/10/2016	£100	16 x £10	03/02/2017
10	10/11/2016	£120	16 x £6	09/06/2017
11	07/02/2017	£150	16 x £15	12/05/2017
12	07/02/2017	£165	23 x £12.75	09/06/2017
13	03/05/2017	£150	16 x £15	18/08/2017
14	02/06/2017	£125	23 x £9.50	08/12/2017
15	02/06/2017	£175	23 x £13.30	08/12/2017
16	10/08/2017	£150	16 x £15	12/01/2018
17	04/12/2017	£125	23 x £9.50	21/06/2019
18	04/12/2017	£175	23 x £13.30	23/10/2020
19	02/01/2018	£200	23 x £15.20	outstanding

One of our adjudicators looked at the complaint and thought that from loan 8 CLC Finance should put things right.

CLC Finance disagreed and so the unresolved complaint was 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 short-term, high cost and home credit lending - including all the relevant rules, guidance and good industry practice - on our website.

CLC Finance had to assess the lending to check if Mr M could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. CLC Finance's checks could have considered a number of different things, such as how much was being lent, the size of the repayments, and Mr M's income and expenditure.

I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest CLC Finance should have done more to establish that any lending was sustainable for Mr M. These factors include:

- Mr M 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);
- Mr M 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);
- Mr M 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 Mr M. Our adjudicator considered this to be the case for Mr M.

CLC Finance was required to establish whether Mr M could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr M was able to repay his 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, 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 Mr M's complaint.

Mr M has sent to us some bank statements, most of which bear his new name. And they relate to the years after the January 2018 (loan 19) was approved for Mr M and so are irrelevant for this complaint as they post-date all the lending period with CLC Finance.

Using the information CLC Finance has given us then I can see that it carried out a credit search in November 2015 and there was nothing in that search which likely would have given CLC Finance cause for concern. I note that it did not carry out a later credit search.

CLC Finance has said that Mr M told it that he was employed full time and I can see from the loan application forms CLC Finance has sent to us that he did declare that.

The fact that Mr T has mentioned he is unemployed and on benefits as part of his complaint may refer to the more recent years or the later lending years. I would have expected CLC Finance to have checked this out. As I have already pointed out, the bank statements I have for Mr M are not relevant as they post-date the lending. So, I cannot answer CLC Finance's point about whether Mr T was employed or not during the lending.

I think that by loan 8 CLC Finance ought to have realised that Mr M was developing a pattern. It was not the first time that he had taken two loans on one day (here loans 8 and 9) which had been used to repay two previous loans and then continued to do that going forward.

The amounts Mr M was asking for were increasing. I note that loan 10 was a 16 week loan and it took him 7 months to repay it which was a sign that matters were not easy for Mr T.

I think that by loan 8 CLC Finance ought to have realised that each new loan taken likely was filling a hole left by the repayments for the earlier loans. And the repetitive nature of the lending was otherwise unsustainable. I say this because he had been indebted to CLC Finance for a year. This was a reasonably long time to be using high cost credit. But at loans 8 and 9 Mr M was making a commitment to make repayments for a further 16 weeks.

I think that Mr M lost out because CLC Finance provided loans from loan 8 onwards:

- these loans had the effect of unfairly prolonging his indebtedness by allowing him to take expensive credit over an extended period.
- the number of loans and the length of time over which Mr M borrowed was likely to have had negative implications on his ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, I'm upholding the complaint about loan 8 to 19 and CLC Finance should put things right.

Putting things right

I understand that some of Mr M's loans remain outstanding.

In deciding what redress CLC Finance should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr M at loan 8, 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 Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between him 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 Mr 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 Mr M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce CLC Finance' liability in this case for what I'm satisfied it has done wrong and should put right.

CLC Finance shouldn't have given Mr M loans 8 to 19.

- A) CLC Finance should add together the total of the repayments made by Mr M towards interest, fees and charges on any upheld loans without an outstanding balance, not including anything CLC Finance have already refunded.
- B) CLC Finance should calculate 8% simple interest* on the individual payments made by Mr M which were considered as part of "A", calculated from the date he originally made the payments, to the date the complaint is settled.
- C) CLC Finance should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr M as though they had been repayments of the principal on all outstanding loans. If this results in Mr M having made overpayments then CLC Finance 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. CLC Finance 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 Mr M. However, if there is still an outstanding balance then CLC Finance should try to agree an affordable repayment plan with Mr M. CLC Finance shouldn't pursue outstanding balances made up of principal CLC Finance already written-off.
- E) The overall pattern of Mr M's borrowing by loan 8 means any information recorded is adverse, so CLC Finance should remove loans 8-19 entirely from his credit file. CLC Finance do not have to remove any outstanding loans from Mr M's credit file until they have been repaid, but CLC Finance should still remove any adverse information recorded about them.

*HM Revenue & Customs requires CLC Finance to deduct tax from this interest. CLC Finance should give Mr M a certificate showing how much tax CLC Finance deducted if he asks for one.

My final decision

My final decision is that I uphold Mr M's complaint in part. I direct that Hamsard 3225 Limited trading as CLC Finance does as I have directed in the 'putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 July 2022.

Rachael Williams
Ombudsman