

The complaint

Ms W, through her representative, complains that Short Term Finance Limited lent to her when she could not afford the loans.

What happened

Using information from Short Term Finance Limited (STFL) here is a brief loan table.

Loan	Date	Capital	Settled	Term (W)	Repay
1	25/05/2019	£100.00	08/08/2019	16	£6.66
2	08/08/2019	£200.00	08/10/2019	16	£20.00
3	18/10/2019	£300.00	31/01/2020	16	£30.00
4	31/01/2020	£350.00	27/05/2020	16	£35.00
5	01/06/2020	£100.00	12/12/2020	34	£5.00
6	01/06/2020	£400.00	04/09/2020	15	£40.00
7	04/09/2020	£400.00	03/12/2020	15	£40.00
8	03/12/2020	£400.00	04/03/2021	15	£40.00
9	12/12/2020	£300.00	Balance	34	£15.00
10	04/03/2021	£400.00	Balance	15	£40.00
11	09/03/2021	£200.00	Balance	20	£16.00

Ms W complained and STFL responded in its final response letter (FRL) dated March 2022 to say that it did not consider it had done anything wrong. It also referred to Ms W informing it in April 2021 of some issues with her bank account in relation to loans 9,10 and 11.

STFL also referred to this: *'In 2019 we were subject to FCA 166 phase 2 we took on board all the recommendations made by a skilled person and also the FCA. These were reviewed by the FCA [Financial Conduct Authority] who found all loans analysed to be 100% compliant, and were signed off by the FCA'*

And for the loans with outstanding balances – namely loans 9,10 and 11, - STFL said:

'...we are willing to write off the remaining balances of £643 if you accept this offer as full and final settlement.'

And in recent correspondence with the Financial Ombudsman adjudicator STFL has repeated that offer to write off the live balances.

Ms W rejected this offer and referred her complaint to the Financial Ombudsman Service.

One of our adjudicators considered the complaint and using information we had from both parties considered that STFL ought to put things right for Ms W for loans 7 to 11.

Ms W agreed to this outcome. STFL disagreed and reiterated its contention surrounding the FCA review it had undergone. It said: *'In 2020 we were subject to FCA 166 phase 2, we took on board all the recommendations made by a skilled person and also the FCA. As from June 2020 all recommendations were completed and implemented into our application and credit*

decisioning process'

STFL also said that for loan 7 it carried out an enhanced due diligence check which included obtaining bank account statements from Ms W and discussing that with her before lending. STFL has sent to us copies of those bank statements covering the period 8 July 2020 to 7 August 2020.

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 Ms W 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 Ms W'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 Ms W at loan 7.

STFL was required to establish whether Ms W 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 Ms W's complaint.

Ms W seems to have accepted what our adjudicator has said and from that it seems she has no issue with the outcome for loans 1 to 6. So, I am not deciding about loans 1 to 6 but they form part of the overall lending relationship and so I have kept them in mind.

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 to Ms W over the months and ultimately almost two years are the significant elements.

Loan 7 to 11

STFL has sent to us additional evidence which were copy bank statements and account notes.

Reviewing these I have seen that Ms W was already paying to STFL £5 and £40 each week for loans 5 and 6. The bank statements I have been provided with from STFL show those debits from the account for those sums.

The statements also show Ms W had two other home credit loan commitments with two different lenders for £15 and £40 each week. So, she was paying £100 a week to service those loans plus the two for STFL in July 2020. Ms W was borrowing from friends on several occasions. Ms W had two returned Direct Debits on 27 July 2020 for £43.58 and £7.05. All these details demonstrate that Ms W was not managing her money.

STFL has also sent to us some account notes which relate to the assessment of loan 7. And these reveal that STFL was aware of the delinquent account within the past 12 months – during the time STFL had been lending to Ms W. And it was noted that *'Customer has not had a break in ST loans so full review completed. Reviewed CRA, no sign of deterioration'*

And the notes further reveal that Loan 7 was to assist to pay off or 'clear' loan 6 leaving

loan 5 running for a further 3 months alongside the new loan 7. So, Ms W was left further indebted with a new 15 week loan for £400 plus interest. The notes do show that Ms W had said it was for a new cooker.

And I have utilised this new evidence, not available to our adjudicator, to show that even though STFL says that it carried out the new approach within its own procedure following the s166 FCA review, the copy bank statements show that it did not account for the fact that Ms W was already heavily indebted to other lenders and had negative entries on her credit file which could not be overlooked, and clearly further loans would have caused harm.

Ms W had been indebted to STFL for many months and this pattern of repeat lending was harmful. Ms W wasn't making any real inroads to the amount she owed STFL. Loan 11 was taken out after almost two years after Ms W received loan 1.

Loans 5 and 6 were taken out on the same day in June 2020 and the combined capital was £500, followed by another loan three months later for £400. And in March 2021 STFL lent her two loans just a few days apart with a combined capital of £600. Ms W had paid large amounts of interest to, in effect, service a debt to STFL over an extended period.

I think that Ms W lost out because STFL continued to provide borrowing from loan 7 onwards because:

- these loans had the effect of unfairly prolonging Ms W's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period.
- the number of loans was likely to have had negative implications on Ms W'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 loans 7 to 11 and STFL should put things right.

STFL's offer on loans 9, 10 and 11

As I have already outlined in the 'what happened' part of this decision, STFL said: *'...we are willing to write off the remaining balances of £643 if you accept this offer as full and final settlement.'*

This figure of a £643 write-off would have related to the balances as at the time of the FRL in March 2022.

We have no up to date information on the figures but STFL has told us recently that no contact (apart from the complaint) has been received from Ms W since October 2021. So, it's likely that the balances outstanding are the same.

That original offer information is duplicated here plus I have inserted some additional figures. I have used the information supplied to us by STFL and as these are not my records but those of STFL I cannot verify their accuracy. I have done this so that Ms W has some details with which to decide. Ms W is professionally represented and so she can take advice from it on the options open to her.

Loan number	Capital	Interest payable	Total to pay at beginning of loan terms	Amount paid so far	Amount left to pay
9	£300	£210	£510	£305	£205
10	£400	£200	£600	£350	£250

11	£200	£120	£320	£132	£188
Total proposed write-off £643					

I acknowledge that STFL has offered to refund Ms W's outstanding balances which effectively means clear her debt for loans 9, 10 and 11. This would include some capital write-off.

And here I recommend that Ms W's representative advises her on the best course open to her. Either to accept STFL's offer **or** to proceed to accept this final decision and with that be content with the usual redress to be calculated in the usual way and as set out below. Those redress calculations follow our usual approach and would not include the write-off of any capital sums as we would not consider that fair to STFL.

I do not want Ms W to be under the impression that acceptance of this final decision will mean that she receives redress calculated in the way I have set out below and also has the balances for loans 9, 10 and 11 written off.

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 Ms W from loan 7 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 Ms W 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 Ms W 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 W 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

If STFL has sold the outstanding debt on loans 9 to 11 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 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 Ms W 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 Ms W

which were considered as part of “A”, calculated from the date Ms W 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 (loans 9 to 11) and treat any repayments made by Ms W as though they had been repayments of the principal on all outstanding loans. If this results in Ms W 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 Ms W.

E) The overall pattern of Ms W’s borrowing for loans 7 to 11 means any information recorded about them is adverse, so it should remove these loans entirely from Ms W’s credit file.

STFL does not have to remove loans 9 to 11 from Ms W’s credit file until it has been 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 Ms W a certificate showing how much tax it has deducted if she asks for one.

My final decision

My final decision is that I uphold Ms W’s complaint in part and I direct that Short Term Finance Limited does as I have outlined in the ‘putting things right’ part of the decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms W to accept or reject my decision before 19 October 2022.

Rachael Williams
Ombudsman