

The complaint

Mrs J complains Jones Finance Company (Jones) provided her with loans that she couldn't afford to repay.

What happened

Mrs J has complained about 17 loans advanced between May 2018 and January 2022. A summary of Mrs J's borrowing, based on the information provided to us from Jones, can be found below.

loan number	loan amount	agreement date	repayment date	number of weekly instalments	weekly repayment per loan
1	£200.00	23/05/2018	11/09/2018	20	£16.00
2	£200.00	12/09/2018	09/01/2019	20	£16.00
3	£100.00	16/10/2018	26/02/2019	20	£8.00
4	£200.00	09/01/2019	23/04/2019	20	£16.00
5	£100.00	26/02/2019	16/07/2019	20	£8.00
6	£200.00	23/04/2019	13/08/2019	20	£16.00
7	£100.00	16/07/2019	03/12/2019	20	£8.00
8	£200.00	13/08/2019	31/12/2019	20	£16.00
9	£100.00	03/12/2019	21/04/2020	20	£8.00
10	£200.00	14/01/2020	02/06/2020	20	£16.00
11	£300.00	12/06/2020	10/11/2020	20	£24.00
12	£500.00	08/12/2020	13/04/2021	20	£40.00
13	£300.00	09/02/2021	08/06/2021	20	£24.00
14	£500.00	13/04/2021	20/07/2021	20	£40.00
15	£600.00	20/10/2021	outstanding	20	£48.00
16	£250.00	30/11/2021	outstanding	20	£20.00
17	£300.00	05/01/2022	outstanding	20	£24.00

The 'weekly repayment' column is the cost per loan per week. Where loans overlapped the cost per week would've been greater, so for example, Mrs J was due to repay Jones £24 per week when loans two and three were running concurrently. Mrs J's highest weekly repayment was £92 when loans 15 – 17 were running.

Mrs J has had some problems repaying her final three loans and Jones says an outstanding balance remains due.

After Mrs J complained to Jones it issued its final response letter (FRL) in August 2022. It concluded.

Regarding Irresponsible Lending the finance you obtained was within the affordability you provided. We know that your circumstances have changed and hence with forbearance we accepted a period of no payment...

I would also add there that I'm not entirely convinced the FRL sent to Mrs J is a FRL as defined by CONC 1.6.2 because for example no referral rights were provided to her. In any event, notwithstanding these concerns this hasn't impeded the progress of the complaint.

Unhappy with this response, Mrs J referred the complaint to the Financial Ombudsman.

An adjudicator reviewed Mrs J's irresponsible lending complaint and he thought the complaint should be upheld in part.

The adjudicator explained that Jones had treated Mrs J fairly when it approved loans 1 – 4. So, he didn't uphold the complaint about these loans.

The adjudicator also concluded that for loans 5 – 9 Jones ought to have been carrying out further checks to confirm the information Mrs J was providing. Jones could've done this a number of ways, such as asking for copies of her bank statements. While the adjudicators didn't think further checks were carried out, as Mrs J hadn't provided her bank statements (or any other documentation) he wasn't able to say what Jones may have seen, had it made better checks. Loans 5 – 9 were also not upheld by the adjudicator.

He then went on to explain that Jones had an obligation to make sure the lending wasn't unsustainable or harmful for Mrs J. Thinking about that and looking at the overall lending pattern the adjudicator was now satisfied that the lending was harmful for Mrs J by the time loan 10 was advanced. So, this loan and all remaining loans were upheld.

Mrs J appears to have accepted the adjudicator's findings.

Jones didn't agree with the adjudicator's assessment. I've read in full what has been provided and I've summarised Jones' responses below;

- Further guidance was requested about breaks in lending and when they ought to occur (it has been suggested this ought to be around 16 months).
- Further income and expenses forms were provided for when loan 11 was granted. Jones went on to say this loan was completed at the end of the first COVID-19 lockdown and at the time Mrs J didn't have any other loans.
- Jones provided detail notes about the contact with Mrs J since February 2022, the missed payments and her circumstances at the time.
- Jones is aware of a change in circumstances for Mrs J and that is why since July 2022 it has shown "extreme forbearance by agreeing a payment freeze".
- Overall, Jones says the lending was affordable and Mrs J confirmed she could afford her commitments.

In addition to its comments, Jones provided further documentation.

- Jones provided a document detailing Mrs J's circumstance at each loan (between 10 and 17) and what checks were done when these loans were approved.
- A spreadsheet containing details of the loans, highlighting breaks that it considered were relevant and provided reasons why Mrs J wanted loans 10 – 17.
- A customer update form – dated 12 June 2020 – for when loan 11 was granted. This showed, Mrs J has confirmed she didn't have any outstanding loans at the time.
- An income and expenditure form, showing benefit payments of £960 a month and that she had no outgoings – as these were covered by her husband apart from £50 per week on food.

Finally, Mrs J has, at the start of 2023, provided to us a copy of a recently completed budget

form which has been compiled by a well-known debt advice charity.

As no agreement could be reached the case was passed to me and I issued a provisional decision. I was intending to reach the same outcome as the one reached by the adjudicator, but I provided further details as to why, upholding loans 10 – 17 was the fair and reasonable outcome for the complaint.

Both parties were asked to provide any further information, evidence or comment for consideration as soon as possible, but in any event, no later than 27 January 2023.

Jones emailed the Financial Ombudsman Service agreeing with the proposed outcome which was outlined in the provisional decision. It also attached its settlement calculations based on the loans that were being upheld – the refund on the day it was produced comes to around £1,383.93.

Mrs J provided some details of an extremely sad situation surrounding the passing of both her sister and her mum and the costs that were involved in visiting Mrs J's late sister in hospital as well as the funeral costs for both relatives. She also says that Jones was aware of this due to her late mum also being a customer.

A copy of the provisional findings follows this in a smaller font and forms part of this final decision.

What I said in my provisional decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It may help, and for clarity for all parties concerned, that I outline the legal and regulatory environment when the lending was approved. So below I've outlined what I consider to be the key regulatory requirements on the part of Jones before providing the lending.

Regulation by the Financial Conduct Authority (from 1 April 2014)

Jones gave Mrs J all the above loans after the regulation of Consumer Credit Licensees had transferred to the Financial Conduct Authority (FCA) on 1 April 2014.

The FCA's Principles for Business set out the overarching requirements which all authorised Firms are required to comply with. The Principles themselves are set out in PRIN 2.1.1R. And the most relevant overarching principle here is PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.

The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities. It sets out the rules and guidance specific to consumer credit providers, such as Jones. CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

The starting point for the relevant rules in this case is Section 5.2.1R(2) of CONC which sets out what a lender needs to do before agreeing to give a consumer credit of this type. These rules were subsequently updated into CONC 5.2A but this didn't occur until November 2018, which is after some of these loans were approved. However, the wording of 5.2A while slightly different to CONC 5.2.1R(2) didn't significantly change Jones' regulatory obligation.

So, the wording of the rules applicable to the lending for Mrs J is a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the

information of which the firm is aware at the time the regulated credit agreement is to be made; and
(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

CONC 5.2.3 then details and outlines some of the factors that may be relevant to a lender when deciding what a proportionate check may look like for each loan application.

'The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

- (1) the type of credit;*
- (2) the amount of the credit;*
- (3) the cost of the credit;*
- (4) the financial position of the customer at the time of seeking the credit;*
- (5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;*
- (6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*
- (7) any future financial commitments of the customer;*
- (8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- (9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).'*

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

'A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.'

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

'In making the creditworthiness assessment or the assessment required by CONC 5.2.2R(1), a firm should take into account more than assessing the customer's ability to repay the credit.'

CONC 5.3.1G(2) then says:

'The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.'

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) states:

'(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer'

CONC 5.3.1G(6) also provides guidance, that beyond the loan being pounds and pence affordable the loan also has to be sustainable. It states:

'(6) For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:
(a) without undue difficulties, in particular:
(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and
(ii) without having to borrow to meet the repayments;
(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and
(c) out of income and savings without having to realise security or assets; and
"unsustainable" has the opposite meaning.'

And CONC 5.3.7R says that:

'A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).'

On 6 March 2019, The FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all firms allocated to the 'High Cost Lenders' portfolio, which Jones is part of. This letter was published after loans 1 – 5 were entered into. This letter didn't include any new rules but deals with how firms ought to be handling complaints about whether their previous lending was unaffordable. I do think that this offers some insight on the FCA's approach on its rules and guidance. So, I consider it to be of relevance in this case.

The letter sets out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:

- a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

The FCA sets out its areas of focus for all firms in the portfolio on page three of the letter. The section entitled 'Relending' says:

"Relending: We have seen a high volume of relending across all credit products in the portfolio. We aim to carry out diagnostic work across the portfolio so that we can better understand the motivation for, and impact of, relending on both consumers and firms. This work will examine aspects of relending such as customers' borrowing journeys, firms' marketing strategies for offering additional credit and the costs of relending for consumers. We want to understand what harm, if any, relending may cause consumers. As part of this work, we will proactively engage with home-collected credit firms to ensure they understand our expectations. We will also discuss any changes to their processes as a result of the new rules and guidance on

relending which we issued in our December 2018 Policy Statement on high-cost credit”.

The section entitled ‘Affordability’ says:

‘Affordability: We recognise that there is an inherent challenge for these firms in assessing affordability for both new loans and repeat borrowing. High-cost credit customers’ finances are often squeezed and they may have poor credit histories and low financial resilience. Nevertheless, firms must ensure that they are complying with all our affordability requirements. We gave an outline of these requirements in the Dear CEO letter we sent to HCSTC firms in October 2018. While this letter was aimed at HCSTC firms, the main principles are relevant to all firms in this portfolio.’

Finally, under the section entitled ‘Complaints’ it says:

“Complaints: We know that there have been increasing numbers of complaints about many of the products in this portfolio. Firms should ensure that they are handling complaints appropriately. We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service’s relevant decisions. We gave further detail about what we expect from firms’ complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio”.

I accept that this letter, refers to high-cost short term lenders, which Jones isn’t one. But I think it is useful to see how the FCA looked at some of the issues. Turning to the ‘Dear CEO’ letter issued by the FCA on 15 October 2018, which was mentioned in the ‘Affordability’ section of the March 2019 FCA letter.

“We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: <https://www.financial-ombudsman.org.uk/publications/technical.htm>). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)”.

Paragraph eight of the letter went on to say:

“We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing”.

The above, are the rules and guidance that I’m considering when thinking about whether Jones did anything wrong when it lent to Mrs J.

Questions for me to consider before deciding whether Jones did anything wrong when it provided Mrs J with her loans.

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Bearing in mind everything that I’ve set out above and our long-established approach to considering these types of complaints (which is also set out on our website), I think the overarching questions, I need to consider in deciding what’s fair and reasonable in the circumstances of this complaint are:

- *Did Jones, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mrs J would be able to repay in a sustainable way? If not, would those*

checks have shown that Mrs J would've been able to do so?

- Bearing in mind the circumstances, at the time of each application, was there a point where Jones ought reasonably to have realised it was increasing Mrs J's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?
- Did Jones act unfairly or unreasonably in some other way?

If I determine that Jones did not act fairly and reasonably in its dealings with Mrs J and that she has lost out as a result, I will go on to consider what is fair compensation.

Did Jones, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mrs J would be able to repay the credit in a sustainable way?

It is important to note the FCA at the time, didn't, and doesn't, specify exactly how an assessment of affordability is to be carried out but the "extent and scope" and the "types and sources of information to use" needed to be enough to be able to reasonably assess the sustainability of the arrangement for the consumer. Although, the previous Office of Fair Trading guidance does provide some examples of information a lender may wish to use. In other words, the assessment needs to be consumer-focussed. It is not an assessment of the risk to the lender of not recovering the credit but of the risk to the consumer of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.

As set out in CONC, the risk to the consumer directly relates to the particulars of the lending and the circumstances of the consumer. Therefore, a lender's assessment of creditworthiness would likely need to be adaptable to the individual needs and circumstances of a consumer. That is to say, what is sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one circumstance might not be so for the same consumer in other circumstances.

Bearing the above in mind, I would expect an assessment of creditworthiness to vary with the circumstance of each request for credit. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way.

But, certain factors might point to the fact that Jones should fairly and reasonably have done more to establish that any lending was sustainable for Mrs J. These factors include, but are not limited to:

- *the lower a customer's income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income);*
- *the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- *the longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and*
- *the greater the number and frequency of credit agreements, and the longer the period of time during which a customer has been given the credit (reflecting the risk that ongoing use of these agreements may signal that the borrowing had become, or was becoming, unsustainable).*

It seems for each loan Jones would've asked Mrs J for details of her income and expenditure for its assessment of whether to lend. It seems no other checks such as a credit search was carried out before approving these loans.

Loans 1 – 4

The adjudicator didn't uphold these loans because he hadn't seen enough to make him think that Jones had acted unreasonably when it approved these loans. As both Jones and Mrs J have agreed with the adjudicator's assessment about these loans they no longer appear to

be in dispute.

But for completeness, given the number of loans, the amounts borrowed and what Jones knew about Mrs J's circumstances at the time, I also agree a reasonable decision was taken to approve these loans.

I therefore intend not to uphold Mrs J's complaint about these loans.

Loans 5 – 9

Jones has shown, for these loans (such as loan 5) Mrs J signed a declaration to confirm that she could afford the loan repayments. In addition, Jones' income and expenditure information sheet shows Mrs J's income was made up of benefits and had no outgoings apart from food. Overall, Jones believed Mrs J had around £229.55 in weekly disposable income which it considered to have been more than sufficient for Jones to believe Mrs J could afford her repayments.

Similar checks were carried out before loans 6 – 9 were approved, which showed Jones a similar picture. Mrs J's income was made up of benefits and she had minimal weekly outgoings.

It seems, the details of Mrs J's income and expenditure may have been checked, but no details have been provided from Jones to show what these additional checks may have involved. Or has provided any evidence to demonstrate what it was provided with by Mrs J at the time to demonstrate that the figures in the documentation were correct.

While I've thought about the checks Jones carried out, by and from loan 5, I no longer think it was reasonable of it to have continued to have relied on the information being provided to it – even if it was checking that Mrs J was in receipt on benefits. I don't think, for the reasons, I'll go into below that Jones carried out proportionate checks before it advanced these loans. Given the fairly quick uptake of borrowing, Mrs J had overlapping loans and had returned for new lending shortly after previous loans were repaid. I think this ought to have prompted it to carry out further checks in order to make sure these loans were affordable for Mrs J.

Jones could've done this a number of ways, it could've asked to see copies of her bank statements, copies of benefit statements, utility bills as well as looking at her credit report – or at least try to establish whether there was any other outstanding credit that Mrs J owed. As I say, it wasn't reasonable to rely on Mrs J's declaration that she had no outstanding credit.

Overall, based on what I've seen I don't think that the checks from at least loan five were proportionate or went far enough and I'm satisfied this is compliant with CONC, whereby the checks being proportionate needed to change depending on what Jones knew. In this case Mrs J was coming back for new loans on the same day previous loans were being repaid and she was taking loans concurrently.

However, that isn't the end of the matter. For me to be able to uphold these loans, I must be satisfied that had Jones carried out a proportionate check it would've likely discovered that Mrs J couldn't afford them.

Mrs J hasn't, to date, provided copies of her bank statements or other supporting documentation. So, I don't know and can't say for sure what Jones may have seen had it verified the information she provided it as part of the loan application. I know she has sent us a debt advice charity income and expenditure form. My reading of this is that it is an up-to-date summary of her finances, rather than what they were at the time the loans were approved.

So, without any further information from Mrs J about her other living costs, it's difficult for me to conclude what Jones would've likely seen had it made better checks. Based on the information I've been given to date, had Jones done further checks, I can only

conclude that it would've thought these loans were affordable. So, I'm intending not to uphold Mrs J's complaint about loans 5 to 9.

Bearing in mind the circumstances, at the time of each application, was there a point where Jones ought reasonably to have realised it was increasing Mrs J's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

In addition to assessing the circumstances behind each individual loan provided to Mrs J by Jones, I also think it's fair and reasonable to look at the overall pattern of lending and what unfolded during Mrs J's lending history with Jones. This is because, there may come a point where the lending history and pattern of lending itself demonstrates that the lending was unsustainable.

It is also worth noting here that in August 2020 the FCA released its review to "Relending by High Cost creditors". Although this review came out during the lending relationship, it didn't include any new information or amendments to the rules but clarified the position that really was always there within the rules.

The review said;

'In that, we highlighted the risks in relation to repeat borrowing given that it could indicate a pattern of dependency on credit that is harmful to the borrower. Rigorous affordability assessments are key to avoiding harm in this area, and firms should ensure they are making proportionate and responsible assessments of the sustainability of borrowing'

I've already concluded above, and the same goes for here, that the checks Jones had carried out weren't by this time proportionate and so I can't fairly conclude that its checks were rigorous and so opens the door that Mrs J may have been taking these loans in an unsustainable manner.

I also acknowledge the document provided by Jones which provides further commentary around each loan application, but as I've said above, by now it wasn't fair or reasonable to solely rely on what Mrs J was telling it.

So, referencing the relevant rules and guidance as summarised in the earlier part of my decision, Jones was required to establish whether Mrs J 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 CONC defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time and while meeting other reasonable commitments.

It follows that a lender should realise, or it ought fairly and reasonably to have realised, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further. I think this point was reached for Mrs J by loan 10.

- At this point Jones ought to have realised Mrs J was not managing to repay her loans sustainably. Mrs J had been indebted to Jones for nearly 20 months. So, Jones ought to have realised it was more likely than not Mrs J was having to borrow further to cover the hole making her previous loan repayments was leaving in her finances and that Mrs J's indebtedness was now unsustainable.
- 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 at times increasing borrowing. I think having taken out ten loans, over this period, it was a strong indicator that Mrs J was starting to struggle financially.

- Mrs J had developed a pattern of taking out new lending (and repaying old lending) on the same day or very shortly afterwards, for example loan nine was taken out on the same day as loan seven. Loan 10 was also taken out only a couple of weeks after loan eight had been repaid. To me that shows that Mrs J had long term financial issues that she needed the money for and wasn't merely using these loans to plug a short term gap in her finances but to continue to make ends meet.
- And this is reflected in the information Jones recorded about why Mrs J was taking these loans. Some of these loans were used to fund 'yearly' expenditures such as Christmas. And 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 Mrs J with little alternative but to borrow again in the future, when these yearly expenditures were likely to be incurred again, as she did.
- From loan 10 onwards Mrs J was typically provided with new credit whilst she hadn't repaid other loans and by the end she had three loans running at the same time. Further supporting my view, that Mrs J was likely having financial difficulties as there was a continued need for credit.
- Mrs J wasn't making any real inroads to the amount she owed Jones. Loan 17 was taken out, over 43 months after Mrs J's first loan and the capital sum borrowed was slightly more than the first loan. However, this loan was taken on while loans 15 and 16 were still running, giving a combined weekly repayment due to Jones of £92. Which is significantly more than the £16 a week commitment she had at loan one. Mrs J had in effect paid large amounts of interest to service a debt to Jones over an extended period.

I think that Mrs J lost out because Jones continued to provide borrowing from loan 10 onwards because:

- these loans had the effect of unfairly prolonging Mrs J's indebtedness by allowing her to take credit over an extended period.
- the length of time over which Mrs J borrowed was likely to have had negative implications on Mrs J's ability to access mainstream credit and so kept her in the market for these loans.

Overall, I'm upholding Mrs J's complaint about loans 10 - 17 and I've outlined below what Jones needs to do to put things right.

Gaps in lending

I've thought about what Jones says about the gaps. For example, there was around 10 days between Mrs J repaying loan 10 and taking loan 11. I don't think this gap has any bearing on the outcome that I've reached, because it is too small for Jones' to have believed there had been a significant change in Mrs J's circumstances and that these loans were now, somehow, sustainable for her.

There was however, a slightly larger gap of three months between Mrs J repaying loan 14 and being granted loan 15. In some situations that may be enough, for me to have concluded that Jones could start the chain of lending again, and that break would've been enough to in effect re-set what a proportionate check could be.

However, in this case, I don't think the gap is long enough when considering the time Mrs J has spent almost continuously indebted to Jones and the fact loan 15 was her largest capital loan. Altogether, this makes me think the gap wasn't long enough for Jones to have been confident that Mrs J's financial position had improved to such an extent that the loans were now sustainable for her.

I appreciate Jones may feel that Mrs J only raised a complaint because it declined to offer her further credit in July 2022. Given what Jones says at the time, about the repayment plan it does seem to have been prudent to have declined any further request for credit. However, ultimately, Mrs J is entitled to raise a complaint about irresponsible lending and it is for Jones

to show that it has complied with the relevant regulations.

Did Jones act unfairly or unreasonably in some other way?

I've thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Jones acted unfairly or unreasonably towards Mrs J in some other way. Indeed, it does seem to have treated her fairly and with forbearance once it became aware of her financial difficulties.

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.

Firstly, Jones accepted the findings made in the provisional decision and made an offer in line with the recommendation. However, it does mention the settlement is the pre-tax figure, but Jones has requested "...*that the payment can be made without deduction of tax...*" But, tax is payable on the 8% simple interest so Jones may wish to discuss this matter with HMRC.

I'm sorry to hear about the passing of Mrs J's mum and sister. This must have been a very difficult time for her and given what she has told us she clearly needed to find additional funds to cover unforeseen additional costs.

Mrs J has clearly had a difficult time and I thank her for sharing this information with us. However, the information Mrs J provided doesn't unfortunately, give me with specific details of her finances during the time loans 5 – 9 were granted and so without this, it isn't possible for me to recommend that Jones pay compensation for these loans.

Overall, I still don't think Jones was wrong to have granted loans 1 – 9, based on the information that I have to hand. However, by loan 10, the pattern of lending was now harmful for Mrs J and so loans 10 – 17 shouldn't have been granted.

I've outlined below what Jones needs to do in order to put things right for Mrs J.

Putting things right

In deciding what redress Jones should fairly pay in this case I've thought about what might have happened if it had stopped lending from loan 10, 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 Mrs J 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 reconstruct now accurately. 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 Mrs J 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 Mrs J would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Jones's liability in this case for what I'm satisfied it has done wrong and should put right.

I direct that Jones does as follows because Jones shouldn't have given Mrs J loans 10 - 17.

- A. Jones should add together the total of the repayments made by Mrs J towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Jones has already refunded.
- B. Jones should calculate 8% simple interest* on the individual payments made by Mrs J which were considered as part of "A", calculated from the date Mrs J originally made the payments, to the date the complaint is settled.
- C. Jones should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mrs J as though they had been repayments of the principal on all outstanding loans. If this results in Mrs J having made overpayments then it 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. Jones 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 Mrs J. However, if there is still an outstanding balance then Jones should try to agree an affordable repayment plan with Mrs J.
- E. The overall pattern of Mrs J's borrowing for loans 10 – 17 means any information recorded about them is adverse, so it should remove these loans entirely from Mrs J's credit file. Jones does not have to remove loans 15 – 17 from Mrs J's credit file until these have been repaid, but Jones should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires Jones to deduct tax from this interest. It should give Mrs J a certificate showing how much tax it has 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.

Jones Finance Company should put things right for Mrs J as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 1 March 2023.

Robert Walker
Ombudsman