The complaint

Ms M, through a representative complains that Street (UK) C.I.C. (Street) didn't carry out proportionate affordability checks before it granted her loans.

What happened

Ms M was advanced six loans by Street and I've produced an overview of her lending history in the table below.

loan number	loan amount	agreement date	repayment date	number of weekly instalments	weekly repayment per loan
1	£400.00	04/11/2013	02/06/2014	48	£11.00
2	£400.00	30/05/2014	16/12/2014	52	£9.97
3	£400.00	16/12/2014	21/07/2015	52	£9.88
4	£400.00	20/07/2015	08/11/2016	52	£9.53
5	£400.00	07/11/2016	23/03/2018	52	£9.81
6	£400.00	23/03/2018	11/02/2020	52	£10.15

Following Ms M's complaint Street wrote to her representative to explain that it wasn't going to uphold it. Although it does appear at this time, it only dealt with the complaint about the final loan. It explained the affordability checks that were carried out which showed the loan to be affordable. Ms M's representative didn't accept the outcome and referred the complaint to the Financial Ombudsman Service.

An adjudicator reviewed the complaint. She thought Street had made a reasonable decision to provide loans 1 – 3 so she didn't uphold Ms M's complaint about these loans. The adjudicator said by the time loan 4 was granted the lending was now harmful for Ms M and so loan 4 and all future loans should be upheld.

Street didn't respond to or acknowledge the adjudicator's assessment and Ms M's representative confirmed she accepted the outcome proposed by the adjudicator.

The case was then passed to an ombudsman to make a decision about the complaint.

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

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

- Ms 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);
- Ms 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);
- Ms 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 Ms M. The adjudicator thought this applied in Ms M’s complaint from loan 4.

Street was required to establish whether Ms M 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 Ms M 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 Ms M’s complaint.

Ms M accepted the outcome the adjudicator had reached, which included not upholding her complaint about loans 1 – 3. I therefore no longer think these loans are in dispute. So, I say no more about them.

And as Street hasn’t responded to the adjudicator’s assessment, I don’t know what it thinks the adjudicator may have got wrong when she assessed the complaint. But as loans 1 – 3 weren’t upheld I’ve assumed it would also have accepted the outcome the adjudicator reached. So, instead this decision will focus on loans 4 – 6 only.

Loan 4 - 6

For these loans, Street has shown that it asked Ms M for details of her income and expenditure. And it does seem for each loan that Ms M’s partner’s income was included in the weekly income figure. So, for loan 4 the weekly income was recorded as being £512, £446 for loan 5 and then £214 for loan 6.

An income and expenditure form has also been completed for each loan and the weekly outgoings including the existing credit commitments Street was aware of came to £318 at loan 4, £280 at loan 5 and £219 at loan 6.

On top of this, by loan 6 Street knew Ms M was no longer working and her sole source of income was benefits – which likely explains the decrease in the weekly income figure Street has recorded for this loan. In addition it was also on notice of a recent default because there is a note on the paperwork to suggest that the loan couldn't be approved until an arrangement was put in place to repay what was owed.

In addition, for each loan a credit search was carried out and Street also took copy bank statements from Ms M before each of these loans were granted.

In terms of the credit file, it knew at loan 4 that Ms M had defaulted on at least four accounts, but these were between 2010 and 2012 and so I don't think it would've been too concerned by it. However, between loan 4 being granted and loan 6 being approved, Ms M defaulted on a further four accounts. So, I consider this to have been an indication, that while Ms M was using these loans, she was having difficulties managing and maintaining her existing commitments.

In addition, during the course of Ms M repaying loan 5 a County Court Judgement (CCJ) was recorded against her. So, the credit checks alone ought to have highlighted concerns and suggested to Street that Ms M was having financial difficulties and therefore further lending may not have been appropriate.

While it is arguable, purely on the information gathered by Street, that the checks may have been proportionate because it did gather quite a significant amount of data. This was only part of the consideration. And indeed, the credit checks ought to have indicated to Street that Ms M was having current and ongoing financial difficulties. The regulations also said the loans had not only to be affordable but also sustainable for her – which is what I've gone on to consider below.

So, in addition to looking at the checks that Street did I've also looked at the overall pattern of Street's lending history with Ms M, with a view to seeing if there was a point at which Street should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Street should have realised that it shouldn't have provided any further loans. Given the circumstances of Ms M's case, I think that this point was reached by loan 4. I say this because:

- At this point Street ought to have realised Ms M was not managing to repay her loans sustainably. Ms M had taking out her fourth loan in 20 months. So, Street ought to have realised it was more likely than not Ms M was having to borrow further to cover a long-term short fall in her living costs.
- From her first loan, Ms M was generally provided with a new loan around the same day a previous loan was repaid and / or was granted while another loan was still outstanding. To me, this is a sign that Ms M was using these loans to fill a long-term gap in her income rather than as a short-term need.
- Over the course of the lending relationship, Ms M's weekly commitments stayed broadly similar. There was no time when her weekly commitment significantly decreased. However, the fact that these loans were lent in generally a consecutive and concurrent manner, ought to have led it to realise these loans weren't sustainable anymore.
- Ms M wasn't making any real inroads to the amount she owed Street. Loan 6 was taken out over four years after Ms M's first loan and was to be repaid over a similar term. Her final loan was for the same capital amount as all other loans and Ms M had paid large amounts of interest to, in effect, service a debt to Street over an extended period.

Loans 4 – 6 were due to repaid within a year, but as can be seen from the repayment date, it took Ms M longer to repay them than contracted – a further sign in my view these loans were unsustainable for her.

I think that Ms M lost out when Street provided loans 4 - 6 because:

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

Overall, I'm upholding Ms M's complaint about loans 4 – 6 and I've outlined below what Street needs to do in order to put things right.

Putting things right

In deciding what redress Street should fairly pay in this case I've thought about what might have happened had it had stopping lending from loan 4, 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 M may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she 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 she had done that, the information that would have been available to such a lender and how she 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 Ms 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 Ms M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Street's liability in this case for what I'm satisfied it has done wrong and should put right.

Street shouldn't have provided Ms M with loans 4, 5 and 6.

A. Street should add together the total of the repayments made by Ms M towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything it has already refunded.
B. Street should calculate 8% simple interest* on the individual payments made by Ms M which were considered as part of "A", calculated from the date Ms M originally made the payments, to the date the complaint is settled.
C. Street should pay Ms M the total of "A" plus "B".
D. The overall pattern of Ms M's borrowing for loans 4 - 6 means any information recorded about them is adverse, so Street should remove these loans entirely from Ms M's credit file.

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

My final decision

For the reasons I've explained above, I'm upholding Ms M's complaint in part.

Street (UK) C.I.C. should put things right for Ms M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 26 July 2023.

Robert Walker
Ombudsman