The complaint

Mr S complains Mutual Clothing and Supply Company Limited ("Mutual") gave him loans which he couldn't afford to repay because he was on benefits and was self-employed at the time.

What happened

Mr S took seven loans from Mutual and I've outlined a summary of his borrowing below.

loan number	loan amount	agreement date	repayment date	number of weekly instalments	weekly instalment
1	£700.00	13/07/2013	05/08/2015	102	£10.63
2	£1000.00	18/01/2014	23/12/2015	102	£15.19
3	£1,719.96	22/11/2014	19/07/2017	150	£17.19
4	£1,500.00	19/12/2015	30/08/2017	102	£22.73
5	£1,000.00	27/05/2017	24/05/2018	51	£27.45
6	£2,000.00	22/07/2017	outstanding	102	£30.39
7	£1,200.00	15/09/2018	outstanding	102	£18.23

Loan 3 was a hire purchase agreement for furniture.

The weekly instalment is the cost per week per loan, and so where loans overlapped the cost per week would be greater. For example, when loans one and two were running at the same time Mr S was due to pay Mutual £25.82 per week.

Following Mr S's complaint about the sale of these loans, Mutual issued its final response letter (FRL) in October 2022. Mutual didn't uphold the complaint about loans 1 - 5. But it did agree that loans 6 and 7 ought to not have been granted. It then made an offer to put things right for Mr S.

Mr S didn't agree with the proposed outcome and instead referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who explained he wouldn't consider loans 6 and 7 because Mutual had already upheld the complaint about them. The adjudicator also thought for loans 1 – 3 given the term of the loans and the capital borrowed Mutual ought to have gained a full picture of Mr S's finances perhaps by reviewing his bank statements. But at the time, the adjudicator didn't have copies of the statements and so couldn't uphold the complaint about those loans. Finally, the adjudicator upheld Mr S's complaint about loans 4 and 5 because by now the lending was harmful for him.

Mutual responded to say that it agreed with the recommendation made by the adjudicator, and it explained that the total refund due to be paid was £3,128.16.

Mr S responded, not fully agreeing and he provided details of the benefits he was receiving when loans one to three were granted. He also explained that he had taken other loans from other companies throughout the time he was borrowing from Mutual. Mr S also said that during the covid period, he had made around £2,000 worth of payments, none of which he says have been registered with Mutual – and he provided a bank statements showing the payments. Later, Mr S provided copy bank statements for the period of time the adjudicator had requested.

The adjudicator then wrote to Mr S and explained why he thought he should accept the recommendation – to uphold loans 4 – 7 only. He also explained that even if Mutual had reviewed his bank statements, it would've still likely have thought loans one to three were affordable for him.

Mr S didn't agree saying at the time of loan one, the household income was around £200 per week and £80 per week when loan two was given. Mr S also queried why selling second-hand items – such as the ones visible in the bank statement from a third-party processing site have been counted as income. Finally, Mr S asked about the refund calculation.

The adjudicator explained how he had reached the income figures for the months when loans 1 – 3 were approved. Mr S disagreed with how the figures had been calculated and he also said the refund amount that Mutual was asking it to pay was incorrect.

What followed were a number of emails between Mr S and the adjudicator. Where Mr S queried the refund amount that Mutual was proposing to pay as well as querying the income and expenditure information the adjudicator had used to determine that further checks wouldn't have led to a different outcome for loans 1 – 3. Mr S also provided additional information in the form of a business account spreadsheet.

The adjudicator then explained why he thought the interest payment was correct, and he explained the Financial Ombudsman's approach to reviewing bank statements.

As no agreement could be reached the complaint has been passed to me for a decision.

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

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

- Mr S 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 S 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 S 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 S. The adjudicator thought this applied in Mr S's case from loan four.

Mutual was required to establish whether Mr S 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 S was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr S's complaint.

Loans 1 – 3

For these loans it does seem that Mutual asked Mr S for the same sort of information. Which included details of his income. For loan one, Mutual has provided a copy of the form that was likely completed but this is blank.

This could mean one of two things. The original completed copy is no longer available, which I think is likely due to the passage of time and I don't consider that to be unreasonable. Or, at the time the loan was granted no information was sough from Mr S about his income. Whatever the explanation, in this case, for the reasons I'll come on to below, it makes no difference to the outcome that I've reached.

When loan two was granted, loan one was still outstanding, so Mr S's weekly repayment to Mutual increased to £25.82 per week. Loan two has been noted as being taken for a holiday and Mr S has been noted as being a self-employed as a toy retailer earning £400 per week – which is a monthly income of around £1,700. Mr S's wife's details have also been noted as receiving benefits at a rate of £250 per week.

Taking information about Mr S's wife, isn't on its own unreasonable, if there was a reasonable expectation that Mr S would have access to those funds – if needed. In order to enable Mutual to have established this, it would've needed to have taken details about Mr S's wife's expenditure as well – which doesn't appear to have happened. But again, for the reasons I come on to below, this hasn't made a difference to the outcome that I've reached.

When loan three was advanced, loans one and two were still outstanding which meant Mr S's commitment to Mutual rose to £43.01 per week. A copy of any income and expenditure form that may have been completed hasn't been provided by Mutual. Again, I'm not sure why that is, but the lack of the form doesn't impact the findings I've reached.

In my view, given the term of each of these three loans – at a minimum of two years the fact that it doesn't appear Mutual made any enquires with Mr S about his living costs – and it also seems only limited information was collected about his income. These factors together, and in line with the adjudicator I do think this ought to have led Mutual to have concluded it didn't know enough about Mr S's finances before it advanced the first three loans.

This has led me to conclude, that Mutual needed to gain a full understanding of Mr S's actual financial position to ensure these loans were affordable beyond relying on what Mr S had declared about his income.

Mutual could've carried out these additional checks, in a number of ways, it could've asked for evidence of his outgoings such as copy bills. It could've asked to see copies of Mr S's bank statements or any other documentation it felt it needed to obtain in order to satisfy itself that it had carried out more robust checks.

However, that isn't the end of the matter. For me to be able to uphold the loans, I have to be satisfied that had Mutual carried out what I consider to be a proportionate check it would've likely discovered that Mr S couldn't afford the repayments or discovered the lending was likely unsustainable for him for some other reason.

Firstly, as noted by the Mutual agent on the income form for loan two, Mr S declared that he was a self-employed toy retailer. And he has provided as much information as he has been able to in order to demonstrate his likely income from the business. Mr S has explained he can't obtain business bank statements, but he has provided a spreadsheet that covers the profit and loss accounts of the business between May 2013 and April 2014. This covers the period of time when loans one and two were advanced.

According to the spreadsheet Mr S provided, the net profit for business during that period of time was £9,558 which all things being equal is roughly £796.50 per month although I do readily accept that this may not be the full amount of money that Mr S was withdrawing from the business at the time as a salary. I can also see from the screenshot of Mr S's tax returns from the year ending 2013 and 2014 that he paid no tax through the self-assessment process.

I also know from other information Mr S has provided (as well as details from the later loan applications) that he was also receiving certain benefits – so I've considered the bank statements provided to see how much in each month Mr S received.

Mr S provided his bank statements between June 2013 (the month before loan one was advanced) and December 2014 which is the month after loan three was given. So, I've taken a look at these to see what Mutual may have seen had it reviewed them.

It's also worth saying that Mutual, when looking the bank statements, wouldn't be expected to consider every single transaction line by line – as that wouldn't be reasonable. But what I think it ought to have done, is to at least considered the income that was clearly visible, payments for priority bills such as rent for example, consider any direct debits or standing order payments and anything else that may have caused it to have considered whether it was sustainable to have lent, By this I mean is there evidence of gambling and / or other evidence of payday or high cost credit loans and / or other signs of difficulties such as returned unpaid payments.

For loan one, it's likely that had Mutual asked to see bank statements – which is just one of the ways it could've gone about verifying the information Mr S had provided, it would've seen at the very least June 2013's statements. In those statements, I can see payment for benefits and working tax credits totalling around £1,140 per month. There is then one payment being received through a third-party processing site of £120 – but as that is the only payment in the month I think its likely Mutual would've disregarded that. And there are transfers of just under £400 made from another account.

Mr S says that this other account was his business account (ending 5616), which statements can't be provided for because he has since moved banking provider. But Mr S says and has highlighted that some of the money that was transferred in from the business account went towards business expenses, which Mr S says for the month of June 2013 totalled more than the amount he transferred in. But it isn't entirely clear whether Mutual would've either been told this at the time, or would've discovered this by reviewing the statements Mr S had provided.

In terms of outgoings, just on existing commitments such as two catalogue shopping accounts, two mobile phones and a tv subscription which was costing Mr S around £330 per month. And of course on top of that there also payments for food and other living costs that Mutual may have seen.

I can also see from the letters provided by Mr S, that the Department of Work and Pensions had stopped one of the benefits in July 2013 (around the same time loan one was granted) because according to it – Mr S didn't meet the criteria to receive it.

And that does appear to have happened, given through July 2013 and onwards no payments are received into the account for that benefit. And I've considered that in terms of affordability for all of the loans. But even doing so, for loan one I still think the loan would've been affordable for Mr S.

Having thought about everything, given the bank statements didn't show that Mr S's account was overdrawn, there were no returned payments, no signs of any other high-cost credit or payday loans. I think had Mutual asked to see the bank statements, it would've likely concluded Mr S could afford the repayments due for loan one of around £11 per week. I am therefore not upholding Mr S's complaint about that loan.

When loan two was advanced, Mr S's tax credits had reduced, and in December 2013 he received a weekly amount of £80.10 and over the course of the month this was around £400. As far as I can see there were no other benefits being paid at this time.

There are again further transfers from Mr S's business account into the account statements have been provided for of £650. Even assuming the best case scenario that this was all income – this gave Mr S an income of just over £1,000 for the moth – which is modest when you consider that he was committed paying just over £25 per week to Mutual for this loan.

As before there are the same sort of transactions, for television services, mobile phones and catalogue shopping. I accept there may be some discrepancy over how much of the £650 which was transferred in was actually income instead of being used for business expenses.

But taking account of the transaction I can see there are again, no obvious signs from the bank statements that Mr S was using unsustainable forms of credit, was overdrawn, or in financial difficulties. So again, I do think, if Mutual had reviewed Mr S's bank statements, it would've concluded that loan two was just about affordable.

For loan three, Mr S's commitment to Mutual increased again – and as I've said it reached a point where he was due to pay over £43 per week. However, whereas before the loans could be used for other purchases such as a holiday loan three was taken for a specific reason and the list of furniture purchased is outlined in the credit agreement.

By the time of loan three, Mr S's benefit had been reinstated and there were other benefits being received into the account. The total income for the month before the loan was approved was £1,211 solely from tax credits and benefits. Then there were payments into the account from the business account of around £150, transfers from another account of £150 and then a number of deposits from a well-known online retail outlet of around £500.

So further checks would've highlighted that the majority of Mr S's income was made up of various tax credits and benefits but in addition, there was a business that he was operating.

As with pervious loans there are the same sort of transactions to the catalogue shopping accounts and mobile phone. There are still the same sort of transfers from the previously known business account and another account where funds are being deposited and then moved too. But again, there isn't anything that would've alerted Mutual that Mr S was in financial difficulties or was struggling to repay these loans. So even though this was the largest weekly commitment Mr S had, I still think it was just about reasonable for Mutual to have advanced this loan.

I've also thought about what else Mr S has said about his circumstances at the time. That being he had other home credit loans outstanding, which as the payments would've been collected in cash wouldn't have shown on the bank statements.

For one of those lenders Mr S has had to enter a scheme to receive compensation. And while there are loan numbers within the scheme letter - the dates of the loan's aren't visible, so I can't be sure whether all or some of those loans were taken around the time of these three Mutual loans. And as there is no other evidence of those loans in the statements or anything else I can see, I don't think even if Mutual had carried better checks as it ought to have done that it would've discovered Mr S's other lending.

I am therefore not upholding Mr S's complaint about loans 1 - 3.

Loan 4 - 7

Mutual has accepted that these loans ought to not have been provided to Mr S. And it outlined in the FRL and in the follow up letter to Mr S in response to the adjudicator's assessment about the steps it would take to put things right for him.

And the steps that Mutual has agreed to take, are the exact same ones the Financial Ombudsman directed it to do in the adjudicator's assessment.

As Mutual has accepted these loans ought to not have been provided and has offered compensation to Mr S there is no need for me to investigate whether these loans were correctly provided. But Mutual, should, if it hasn't already done so, arrange to redress these loans as it has outlined in the letter to Mr S in response to the adjudicator's assessment. But for completeness I've outlined at the end of this decision what it needs to do in order to put things right for Mr S.

Other consideration

There are two other points that I've considered that Mr S has raised following the assessment by the adjudicator. The first one is to do with the payments he made during the pandemic – after Mutual switched from collecting payments in person, to collecting payments online. Secondly, Mr S has queried the redress that Mutual has agreed to pay (if it hasn't already done so) for loans 4 – 7.

Payments made during the pandemic

Mr S has been able to demonstrate – through a record of payments from his bank that he had indeed made payments of over £2,000 between February 2020 to January 2022 to Mutual.

Mutual responded to the Financial Ombudsman's questions about this and provided confirmation that between the above dates it did indeed receive just over £2,100 worth of payments from Mr S. However, at the time there were other outstanding loan accounts for other family members. And Mutual has said that with the agreement of the agent, any funds received from Mr S would be split across the active accounts.

Having looked at the payments Mutual received, these do indeed match with the payments made by Mr S. So Mutual has received all those payments. For example, on the 30 November 2020 a payment of £100 was split between £35 towards Mr S's account with the rest being credited to another active loan held by a family member.

I make no finding about what may nor may not have been agreed between Mr S and the agent about how funds would be split because this hasn't been investigated. Instead, I am merely happy to conclude that Mutual has received the payments that Mr S has evidenced were made.

Payment of interest

I can see that Mutual has sent a copy of a letter, which it says was sent to Mr S on 2 May 2023, and I've considered the content of that letter and how Mutual has calculated the interest and it does appear to be correct.

For example, for loan seven Mr S borrowed £1,200 so this is the amount he has to repay. According to Mutual's statement and letters, by May 2023 Mr S had repaid £1,572.50. So, based on this, Mr S has in effect overpaid Mutual by £372.50. And so this is the amount of interest that he will received back.

And of course, he would receive 8% simple on top of this amount. But the 8% will only start to accrue once Mr S had made sufficient payments to Mutual in order to repay the capital that was lent. So, what that means is that Mutual would take all of Mr S's payments towards this loan and deduct it from the capital. Only when Mr S in effect goes into credit does the 8% simple interest start.

According to Mutual, the original capital loan of £1,200 wasn't repaid to it until November 2021 and so 8% starts from the date. If we assume that the full overpayment was made in November 2021 – then Mr S is due 8% simple on £372.50 which is around £29 per year. Although in reality it will be less than that as the 8% is due on the overpayments when they are paid – this would be the maximum per year.

Of course, it is now nearly two years, so for loan seven Mr S will be due around £59 worth of 8% simple interest. But tax is payable on the sum as well, which would reduce the figure to around £47 plus the original overpayment amount of £372.50. Making a refund, assuming the overpayments occurred on the same day, and assuming the overpayment remained for two years Mr S would be due around £420 for loan seven.

Based on the credit agreements and what I've seen this is entirely in line with the approach the Financial Ombudsman takes and so on balance I'm satisfied that the proposed redress Mutual has agreed to pay has likely been correctly calculated.

Putting things right

In deciding what redress Mutual should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr S from loan four, 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 S may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them 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 S in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr S would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Mutual's liability in this case for what I'm satisfied it has done wrong and should put right.

Mutual shouldn't have given Mr S loans 4 to 7.

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

Mutual has written to Mr S about how much refund it is due to make, so it is possible, that a refund has already been paid. If it has, as long as Mutual has followed the below redress direction it won't have to pay any more. If the refund hasn't yet been paid, then below is what Mutual needs to do – and what it has already agreed to do in order to put things right for Mr S.

A. Mutual should add together the total of the repayments made by Mr S towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Mutual have already refunded.
B. Mutual should calculate 8% simple interest* on the individual payments made by Mr S which were considered as part of "A", calculated from the date Mr S originally made the payments, to the date the complaint is settled.
C. Mutual should remove all interest, fees and charges from the balances of loans 6 and 7, and treat any repayments made by Mr S as though they had been repayments of the principal towards them. If this results in Mr S having made overpayments then Mutual 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. Mutual 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 loans 6 and 7. If this results in a surplus, then the surplus should be paid to Mr S. However, if there is still an outstanding balance then Mutual should try to agree an affordable repayment plan with Mr S.
E. The overall pattern of Mr S's borrowing for loans 4, 5, 6 and 7 means any information recorded about them is adverse, so Mutual should remove these loans entirely from Mr S's credit file. Mutual does not have to remove loans 6 and 7 from Mr S's credit file until these have been repaid, but Mutual should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires Mutual to deduct tax from this interest. Mutual should give Mr S a certificate showing how much tax has been deducted, if he asks for one.

My final decision

For the reasons outlined above, I am upholding Mr S's complaint about loans 4 to 7 only.

So, my decision is that Mutual Clothing and Supply Company Limited should put things right for Mr S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 November 2023.

Robert Walker
Ombudsman