

The complaint

Miss S, through a representative complains that Estone Personal Credit Limited (“Estone”) provided her with loans without carrying out appropriate affordability checks.

What happened

A summary of all the information Estone has been able to provide about Miss S's loans can be found in the table below. Although Miss S's representative has provided what it describes as the 'starting balances' for loans 1 – 4, these are the total amounts Miss S was required to pay on each of these loans – so the amount borrowed and interest without any indication of what proportion of the total amount paid went to each of these elements. Without either the repayment term, weekly amount or the interest amount it isn't possible for me to now reconstruct the amount Estone advanced to Miss S for loans 1 - 4.

Loan number	loan amount	agreement date	repayment date	number of weekly instalments	weekly repayment per loan	overlapping weekly cost
1	unknown	16/12/2015	13/07/2016	unknown	unknown	unknown
2	unknown	30/03/2016	13/07/2016	unknown	unknown	
2a	unknown	30/03/2016	05/10/2016	unknown	unknown	
3	unknown	08/06/2016	14/09/2016	unknown	unknown	
3a	unknown	08/06/2016	07/12/2016	unknown	unknown	
4	unknown	07/09/2016	07/12/2016	unknown	unknown	£37.45
5	£100.00	14/12/2016	08/03/2017	14	£9.15	
5a	£200.00	14/12/2016	21/06/2017	27	£10.50	
5b	£200.00	14/12/2016	16/08/2017	36	£8.50	
5c	£300.00	14/12/2016	06/12/2017	52	£9.30	
6	£180.00	08/03/2017	11/10/2017	29	£9.00	£37.30
7	£300.00	05/07/2017	13/12/2017	29	£15.00	£41.80
8	£110.00	16/08/2017	06/12/2017	18	£8.19	£41.49
9	£200.00	13/12/2017	18/07/2018	31	£9.50	£39.83
9a	£100.00	13/12/2017	21/03/2018	14	£9.15	
9b	£300.00	13/12/2017	18/07/2018	39	£11.88	
9c	£300.00	13/12/2017	15/12/2018	52	£9.30	
10	£300.00	21/03/2018	10/10/2018	29	£15.00	£55.58
10a	£250.00	21/03/2018	05/12/2018	39	£9.90	£31.30
11	£100.00	18/07/2018	05/12/2018	22	£6.25	
11a	£450.00	18/07/2018	19/06/2019	45	£15.75	£58.74
12	£100.00	12/12/2018	08/05/2019	16	£8.25	
12a	£200.00	12/12/2018	21/08/2019	33	£9.14	
12b	£200.00	12/12/2018	16/10/2019	45	£7.00	
12c	£600.00	12/12/2018	08/04/2020	52	£18.60	
gap in lending						
13	£1,000.00	25/11/2020	03/11/2021	52	£31.00	£31.00
14	£1,000.00	15/12/2021	outstanding	52	£31.00	£31.00

The 'weekly repayment' column is the cost per loan per week. Where loans overlapped the cost per week was greater – as shown in the end column.

The types of loan provided

Estone says that Miss S was provided with two types of products. The first type was more akin to a typical loan where a single sum was advanced, and the total amount was repaid in scheduled (in this case) weekly instalments until the total amount was repaid. An example of such a loan would be loan 6 in the table above.

However, Miss S also took out a number of loans, under what was Estone's "*Loan Plan*". These were loans where the total amount to be advanced was agreed at the outset however, she entered into separate credit agreements for portions of the total amount and each portion advanced could have a different repayment term.

An example of such a loan would be loan 5 in the above table. For this loan, Miss S was advanced a total of £800 and was provided with this in portions of £100, £200 twice and then £300. Miss S entered into four separate credit agreements for these portions each with a different repayment term and weekly payment amounts. And as can be seen in the table above, the individual portions of loan 5 were fully repaid at different times.

Miss S ran into difficulty repaying her final loan and Estone says an outstanding balance remains due.

My provisional decision of 21 November 2023

I issued a provisional decision on 21 November 2023. In this provisional decision I set out why I was minded to partially uphold Miss S's complaint. I won't repeat my provisional decision in full here but instead provide a summary of what I concluded.

I began by setting out the regulatory framework that was in place at the time Estone advanced these loans to Miss S and also some useful information published by Estone's regulator. Rather than setting all of this out again, I have included this in a document which is attached to this final decision.

I began my provisional decision by explaining that I wouldn't be considering loans 1 – 4 as Miss S had effectively withdrawn the complaint about them. I then went on to set out my conclusions on the remaining loans.

I explained that in light of the relevant rules and regulations, I considered that there were three overarching questions that I needed to answer in order to determine the remainder of the complaint. These questions were;

1. Did Estone, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss S would be able to repay in a sustainable way? If not, would those checks have shown that Miss S would've been able to do so?
2. Bearing in mind the circumstances, at the time of each application, was there a point where Estone ought reasonably to have realised it was increasing Miss S's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?
3. Did Estone act unfairly or unreasonably in some other way?

In relation to question one, I was satisfied that as a result of CONC 5.2 and then CONC 5.2A (when it came into force in November 2018), Estone was required to have carried out an assessment of affordability.

Loans 5 to 8

I explained that I had concerns regarding the level of checks Estone had carried out before it provided loans 5 to 8 to Miss S, I said this was because Miss S had continued to borrow from Estone and during the course of these loans Miss S had County Court Judgements (CCJs recorded against her). So, for these loans it was not fair and reasonable for Estone to have relied on the information that it obtained, which essentially amounted to a declaration from Miss S about her income and expenditure.

Bearing in mind Miss S had proven unable (or unwilling) to repay other credit as it fell due, I thought that Estone needed to have a more in-depth understanding of Miss S's financial position. But in saying that, I wasn't able to find that such an understanding of Miss S's financial position would have made a difference. I hadn't been provided with sufficient information from Miss S such that I could reasonably conclude Estone having this more in-depth understanding of Miss S's financial position at this time would have shown it that these loans weren't affordable. As this was the case, I wasn't intending to uphold Miss S's complaint about these loans.

Loans 9 to 12

For loans 9 – 12, while it remained the case that I did not have sufficient information to be able to safely conclude that the loans were individually unaffordable for Miss S, I also considered it fair and reasonable to look at the overall pattern of lending and what unfolded during the course of Miss S's history with Estone.

I was particularly mindful that the relevant rules and guidance made it clear that a firm shouldn't continue providing further loans where those loans were unsustainable or otherwise harmful and/or it was apparent that the customer may be experiencing financial difficulties. I then proceeded to explain why it was my view that loans 9 – 12 had been provided in circumstances where Estone ought reasonably to have realised that they were unsustainable or otherwise harmful for Miss S.

Taking into account the number of loans Miss S had taken, the time period she had borrowed from Estone and at times she had a number of loans running at the same time. I explained that it was my intention to uphold Miss S' complaint about these loans as a result of the second of the overarching questions that I had set out.

In other words, I was minded to conclude Estone had provided loans 9 to 12 in circumstances where it ought reasonably to have realised it was increasing Miss S's indebtedness in a way that was unsustainable or otherwise harmful for her and so shouldn't have provided further credit.

Loans 13 and 14

For loans 13 and 14, I explained that there had been a break between loan 12 being repaid and the application for loan 13. So, I was satisfied that when Miss S returned for loans 13 and 14, Estone was reasonably entitled to place less weight on loans 1 to 12 and treat these applications afresh, rather than as part as a series of short-term loans being used over an extended period.

In these circumstances, I was satisfied that Estone carried out reasonable and proportionate checks before agreeing to provide loans 13 and 14. As these checks showed these loans to be affordable for Miss S, I was satisfied that it was reasonable for Estone to provide these loans to Miss S and I was not intending to uphold Miss S's complaint about these loans.

Overall, this left me intending to issue a final decision that upheld the complaint about loans 9 to 12 but did not uphold the complaint about loans 1 to 8, or loans 13 and 14.

Miss S's response to my provisional decision

Miss S didn't provide an initial response to the provisional decision.

Estone's response to my provisional decision

Estone responded to my provisional decision. Its response was split into sections. Part 1 of the response dealt with the regulations and the various policy papers the FCA has issued. In summary it said;

- CONC 5 cannot be applied to home credit in any common-sense way. It wasn't drafted with home credit providers in mind – taking account of how the product works or the repayments. So, it's not right to solely rely on the contents of CONC 5.
- The analysis of the regulatory environment in my provisional decision was misconceived and in error.
- My remit when consider a complaint is set out in s228 of the Financial Services and Markets Act 2000 ("FSMA"). This requires me to consider what is fair and reasonable in all the circumstances of the case. A credit product's features and the way it operates are themselves circumstances and I failed to take account of the particular features of home credit. In Estone's view, this means that I failed to take account of relevant circumstances.
- My provisional decision had confused home credit with high-cost short-term credit ("HCSTC"). It was essential for me not to do this. This was particularly important when it came to considering '*sustainability*'.
- It specifically referred to CP14/10¹, its conclusions on HCSTC and the fact that the findings do not read across to the home credit product it offered.
- Estone also referred to CP17/27² which was a consultation on proposed changes to the rules and guidance relating to affordability in CONC 5. Estone says that the changes were primarily directed to firms who still made profit from customers who couldn't make payment from the stream of default fees and interest charges generated each month. Home credit providers did not fall within this group of lenders as they did not add further interest or charges in the event of missed payments. They therefore lost money in the event that a customer couldn't repay.
- This was followed by PS 18/19³ which reiterated that the outcome being sought (by the rule changes) was for firms to make a reasonable assessment of a customer's ability to repay affordably without this affecting their wider financial situation in order to minimise the risk of financial distress. This would require taking into account matters such as the costs and risks of the credit to the individual consumer.
- CP18/12⁴ was the home credit equivalent of CP14/10. It said that the absence of charges for missed payments was a mitigating factor for home credit, that there were significant differences between HCSTC and home credit and finally that while repeat

¹ Consultation Paper 14/10 '**Proposals for a price cap on high-cost short-term credit**' published by the Financial Conduct Authority in July 2014.

² Consultation Paper 17/27 '**Assessing creditworthiness in consumer credit Proposed changes to our rules and guidance**' published by the Financial Conduct Authority in July 2017.

³ Policy Statement 18/19 '**Assessing creditworthiness in consumer credit Feedback on CP17/27 and final rules and guidance**' published by the Financial Conduct Authority in July 2018.

⁴ Consultation Paper 18/12 '**High-cost Credit Review: Consultation on rent-to-own, home-collected credit, catalogue credit and store cards, and alternatives to high-cost credit Discussion on rent-to-own pricing**' published by the Financial Conduct Authority in May 2018.

and multiple borrowing was prevalent in-home credit, this was not in itself harmful.

This was followed by the findings in paragraph 2.4 of CP18/43⁵ where the FCA made (in Estone's view, very important observations based on its survey work) on home credit users. This survey work suggested that there were few obvious differences between longer- and shorter-term borrowers where home credit was concerned and there was no systematic worsening for longer term borrowers. There was a rise in arrears rates for customers who used home credit for a longer period but this could not be taken as a clear cut indicator of financial distress given there were no fees for late payments. It referred to following and said:

- CP 18/12 was aimed at home credit loans. Indeed, this paper in section 3.13 makes clear repeat borrowing in home credit isn't harmful – as long as creditworthiness assessments are carried out.
- CP 18/43 it made reference to conclusion 2.4 where the FCA concluded that long term use of home credit loans isn't harmful.

Part 2 of Estone's response dealt with the specifics of Miss S's complaint and the reasons why it disagreed with the uphold for loans 9 – 12c.

- My provisional decision was incorrect to reach the conclusion that by loan 9 Miss S had not repaid earlier loans sustainably. This conclusion appears to be solely based on the fact that Miss S had been borrowing for two years. However, this fails to take into account that before loan 9 – Miss S had settled all other loans and had a zero balance.
- It isn't right to look at the number of loans in isolation – other factors such as the purpose of the loan should be considered for example loan 9 was taken for the purposes of Christmas.
- Miss S hadn't had any problems in repaying previous loans – as noted in the decision.
- No evidence has been provided to show that granting the loans was harmful or caused distress to Miss S.
- The credit checks didn't show a worsening financial position.
- Proof of income was taken for loan 12 and the income figure was broadly the same for loans 9 – 12.
- The loans didn't unfairly prolong Miss S's indebtedness because she was able to bring the loans to a zero balance.
- Miss S was able to borrow from a credit union after taking loans from Estone therefore showing there was no financial harm.
- Reviewing other ombudsman's decisions that were issued around the time of loans 9 – 12 shows different outcomes and therefore may have impacted any response issues by Estone under DISP 1.4.
- The example decisions provided by Estone were issued in 2016 and 2017 showed the Financial Ombudsman wasn't taking account of the rules and regulations that were applicable at the time.
- Estone says that had it addressed the complaint in 2017, in line with the decisions it found, then it wouldn't have needed to provide a refund.
- It provided the credit check results Estone received in October 2021.

The initial request to see Miss S' bank statements

⁵ Consultation Paper 18/43 '**High-cost Credit Review** Feedback on CP18/12 with final rules and guidance and consultation on Buy Now Pay Later offers' published by the Financial Conduct Authority in December 2018.

Estone requested that I provide it with a copy of the bank statements that I'd relied on in reaching my provisional decision. Following further engagement with Estone, whereby I explained that I hadn't required bank statements from Miss S, or relied on them in relation to loans 9 – 12c, Estone then provided some further comments. These comments partially echoed what it said in part 2 of its initial response to the provisional decision (which I've detailed above). In addition Estone also stated:

- It would be fair and reasonable to request bank statements for the disputed loans (9 – 12c) and by not requesting the statements my provisional decision didn't meet the standard of evidence required to show that the loans were as a matter of fact unaffordable for Miss S.
- As well as having to bear the costs of my proposed remedy, it would also have to deal with the reputational risks that my proposed decision brought.
- Loan 9 was taken for Christmas – which Miss S had taken the year before and it was marginally more expensive than the previous Christmas loan – this isn't enough to say it was unaffordable but bank statements would show whether or not this was the case.
- Loans 10 and 12 cannot have been unsustainable for Miss S when the payments represented only 11% of the weekly income.
- The later credit check results showed these loans didn't create adverse consequences.
- For loan 12 – Miss S completed a customer survey stating she thought the payments were affordable. These surveys are now expected to be completed especially with the introduction of the FCA's Consumer Duty.
- Miss S was able to take four loans from a credit union between 2019 and 2020 – that had a cheaper rate of interest.
- Overall, there was insufficient evidence to point to Miss S being in financial difficulty to the extent that she's financially lost out. A more logical conclusion to draw is that the lending may have reached the point of harm but without sufficient evidence from Miss S clearly demonstrating that this is the case then her complaint about these loans should not be upheld.

Developments post Estone's request for the bank statements

In light of Estone's further response, I sought to obtain copy bank statements from Miss S's bank to cover the period of time leading up to loan 9 being granted. After I received these statements, I sent them to both Miss S and Estone and invited any final comments the parties wished to make ahead of my final decision.

I also asked Miss S to explain how she paid for her bills and other living costs. She confirmed that she paid her main bills - such as her utilities - in cash and that she had a water bill, which accrued arrears and she's still repaying to this day.

Estone's said:

- The bank statements show that Miss S could afford the loan payments in question.
- Estone said that had it requested and viewed these statements at the time - in keeping with CONC 5.3.1G – this wouldn't have shown Miss S's full financial picture. Furthermore, these statements don't appear to show that any lending would've been detrimental to Miss S.
- Estone says there were no '*triggers*' such as frequent use of payday loans, gambling or excessive use of the overdraft. There wasn't any indication of significant financial issues such as a 'debt spiral'.

- Miss S was making other discretionary payments that shouldn't be counted over the priority loan payment.
- It provided a summary of the (what it considered to be) limited number of non-discretionary commitments that Miss S had during the time and the level of income that she received. It did also highlight that there were at times returned direct debits for a communication bill – but these were usually paid the following day.
- Miss S was also moving funds to another account and so it's clear that she had other current accounts that she was utilising.

I wish to make it clear that while this is a summary of all the events and submissions received in the course of Miss S's complaint, I've read and considered everything both parties have said and provided, in reaching this final 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.

Following the provisional decision, neither Estone nor Miss S disagree with the following conclusions.

- Loans 1 – 4 wouldn't be considered
- loans 5 – 8 and loans 13 and 14 weren't upheld

As there is no ongoing dispute about these loans, I won't revisit them again in this decision. I'll simply focus on setting out my thoughts on whether Estone acted fairly and reasonably when providing loans 9 to 12 to Miss S.

I also want to reassure both parties that where I haven't commented on a specific issue which has been referred to, or a comment that may have been made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I'm satisfied that I don't need to do so in order reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

I'll start by setting out my thoughts on Estone's comments regarding the regulatory environment.

Regulations

Estone's response to the provisional decision is detailed and I want to reassure it that I have considered everything that it has said. However, I do not agree that my analysis of the legal and regulatory environment was erroneous. The further materials that Estone has referred me to haven't persuaded me that I've referred to or interpreted rules that did not apply to Estone at the respective time.

Estone has argued that the provisions in CONC 5 weren't designed with home credit providers in mind. It has said that literal adherence to CONC 5 would generate absurd and irrational results and I should rely on the principle rather than just the specific wording of the rule. For the avoidance of doubt, I wish to make it clear that while Estone has referred to principle of the rule, it is effectively arguing that I should apply a purposive interpretation of CONC 5, rather than a literal interpretation of it.

I make this observation because CONC 5 is contained in the FCA's Handbook of Rules and Guidance ("the handbook") and the handbook also contains overarching Principles which are 'a general statement of the fundamental obligations of firms and the other persons to whom they apply under the regulatory system'. These Principles are rules set out in PRIN 2 and a respondent firm is required to adhere to these overarching obligations as well as the requirements of the specialist sourcebook for the area it operates in. For the sake of clarity, I've therefore used purpose when addressing Estone's arguments on the principle of the rules.

In the first instance, I agree that each provision in the FCA Handbook is to be interpreted in light of its purpose. This is confirmed in GEN 2.2.1R. But GEN 2.2.2G goes on to state that the purpose of any provision in the FCA Handbook is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.

I think that this is important as Estone argues that CONC 5 cannot be applied in any common-sense way to home credit. However, Estone was entering into a regulated credit agreement as lender when providing loans to Miss S (it also exercised the lender's rights under a regulated agreement when collecting the payments). Therefore, Estone, was carrying out consumer credit lending. CONC 5.2 (up until 31 October 2018) and CONC 5.2A.1R (from 1 November 2018 onwards) make it clear that the rules in relation to responsible lending and creditworthiness assessment apply to all lenders carrying out this activity. So even applying a purposive interpretation, I'm satisfied that CONC 5 does apply to home credit lenders, irrespective of any unique features of the particular product offered.

In saying this I accept that not all of the provisions in CONC 5 apply to firms carrying out all consumer credit lending. For example, there are provisions in CONC that only apply to providers of certain types of credit – such as the cost cap for high-cost short term credit providers contained in CONC 5A. However, I've not considered Estone's actions against these provisions and I've limited myself to the relevant sections of CONC 5.2 and 5.3 which applied to Estone up until 31 October 2018 and the relevant sections of CONC 5.2A from 1 November 2018 onwards.

I've nonetheless considered the various policy papers Estone has highlighted. However, while I have done so, I should be clear in stating that these documents are not part of the rules. Therefore, while they offer some useful perspective in relation to what the FCA was looking to address with its later rule changes, the content of these documents cannot and do not alter the text of the rules. And the rules in CONC 5 take precedence over all of the Consultation Papers and Policy Statements that Estone has referred to.

Other final decisions

I've also noted Estone's concerns around DISP 1.4 and the three decisions it has sent to me. Estone will know that DISP 1.4 relates to how it handles complaints and what it must do – and it rightly points out that one such consideration is what the regulator and the Financial Ombudsman has said "*....concerning similar complaints...*"

Estone is saying there has been a change of approach by the Financial Ombudsman because if it had considered the complaint about loans 9 – 12c at a previous time, say in 2017 than a different outcome would've been reached.

However, Miss S didn't complaint about these loans in 2017. So, I don't see the relevance of the decisions Estone has provided, particularly as our approach to irresponsible and unaffordable lending complaints can be found on our website.

Furthermore, while Estone has referred to three decisions which it says didn't consider the rules, it will no doubt as part of its response seen numerous other decisions from ombudsmen making detailed reference to the rules and guidance and which have upheld complaints made about loans from a similar period to when Miss S was lent to.

In any event, it isn't my role to offer a critique of other final decisions which Estone may have found. My role is to consider the individual facts and circumstances of each complaint and determine whether the respondent firm acted fairly and reasonably. For the reasons, I'll go on to explain, I'm satisfied I've considered the individual circumstances of the complaint. The final decisions Estone has referred to hasn't persuaded me to alter my conclusions.

Comments relating to Miss S's complaint about loans 9 – 12

I now turn to my thoughts on loans 9 to 12.

Estone appears to accept the possibility that the pattern of lending may have reached a point where harm could have been caused and the FCA may foresee a situation where there is harm within this marketplace especially if robust affordability checks aren't conducted.

In reaching my conclusions I've seen that Estone has referred to Policy Statements and consultation papers. It has highlighted the concerns the regulator had about high-cost short term credit being used over extended periods and suggests that the FCA had no concerns about home credit being used this way. However, while I've considered the documents Estone has referred to. I don't reach the same conclusions that it does.

To start with, I accept that the documents do set out that the FCA had a number of concerns with high-cost short term credit and Estone did not provide Miss S with such loans. However, I would also emphasise that my provisional decision did not state that Miss S was provided with high-cost short term credit. Neither did it refer to any of the specific rules relating to high-cost short term credit providers either.

It simply referred to the fact that the regulator issued a Dear CEO letter to firms in the high-cost lending product portfolio, which Estone is in, in March 2019. And this letter said that firms should take note of some of its concerns regarding affordability, relending and complaints and referred to a Dear CEO letter that it had sent to high-cost short term credit providers. As I appreciate that home credit isn't high-cost short term credit, I don't propose to consider the papers regarding high-cost short term credit in any depth or detail.

Turning now to the publications which specifically refer to home credit, I note that Estone has referred to CP18/12. It has specifically referred to paragraph 2.4 which states:

"In summary, our analysis shows that consumers who use home collected credit over long periods do not appear to suffer significant economic harm as a result in the same way that can be seen in other parts of the high-cost credit markets. We set out our more detailed results below. These are based on analysis of the credit reference agency (CRA) data that we have collected (we describe these data in FS17/2 Technical Appendix)."

However, it is important to note that this was the FCA's response to feedback that its proposed changes to the rules didn't go far enough and that a price cap and limit on refinancing needed to be implemented.

I don't think that the FCA stating that it considered the economic harm suffered by a borrower using home collected credit to be less than that suffered by a borrower using high-cost short-term credit, is the same as saying there is no harm suffered by an individual using

home collected credit over an extended period. Equally, I don't think that the FCA choosing not to introduce a cost cap or a limit on refinancing means that a lender will have acted fairly and reasonably in providing a number of home collected loans over an extended period.

I also note that Estone has referred to some of the FCA's comments in CP 18/12. Paragraph 3.10 states:

"3.10 We have found that repeat borrowing is common in the home-collected credit market. CRA data analysis of a representative set of home-collected credit users from 2015 to 2017 shows that most consumers (74%) spend up to 12 months in continuous debt, and that approximately 5% were in debt for the whole of the two year sample period (Figure 3.1). A majority of consumers (75%) had more than one loan during the period and around 10% had 12 or more loans. Around 50% of consumers had 2 accounts or more in debt at the same time."

I note that in the period between loan 1 beginning and loan 12 ending, Miss S had been borrowing for an almost unbroken period of over four years. Based on the content of paragraph 3.10, this would immediately place Miss S in the same position of just 5% of the customers in its analysis. So, Miss S's circumstances suggest that she falls outside of most of the customers it surveyed and analysed. Indeed, this is also without even considering that Miss S was in debt for the whole of a much longer than two-year period.

I'm also mindful of the content of paragraphs 3.13 and 3.14 of CP 18/12 which state:

"3.13 Repeat borrowing and multiple borrowing is clearly a prevalent feature of home-collected credit use. We do not consider that this in itself is harmful. Providing creditworthiness assessments are carried out effectively, weekly repayments should be affordable and sustainable. Repeat borrowing can be a useful means of managing cyclical income shortfalls."

3.14 However, we are concerned that there is a small core of customers who are using home-collected credit over an extended period and that some customers are being unduly influenced by firms' representatives to keep borrowing."

I've already explained why (and Estone's response to my provisional decision appears to accept) I think that effective creditworthiness/affordability assessments weren't carried out for loans 9 to 12.

But for the sake of completeness, I think the checks it conducted before these loans weren't proportionate because Estone had continued relying on more superficial checks, despite Miss S being a repeat borrower and she was returning for her largest loan to date.

I accept that Estone did go on to request proof of income from Miss S. However, this wasn't until loan 12. And it doesn't alter the fact that Estone merely relied on a statement of those matters made by Miss S prior to this.

Furthermore, Estone had information that ought reasonably to have seen it question whether Miss S's finances were as secure as the more superficial checks had suggested. For example, it was aware a CCJ had been obtained against Miss S in the months before loan 9 was granted. I think that it is reasonable to expect Estone to have taken steps to understand how and why this had happened, because it could reasonably conclude that Miss S could afford to repay more credit.

I'm also mindful of Miss S' overall pattern of borrowing (i.e. being indebted to Estone for over four years). In my view, it is possible that Miss S's pattern of borrowing could have seen her

regarded as one of the small core of customers using home collected credit over an extended period, which the FCA was concerned about. After all, only 5% of customers had been borrowing for the full two years of the study.

Indeed, I note that Estone's credit agreements contained instructions for its agent to point out a number of key features of each section before Miss S signed the agreement. Section 2 states:

"Type of credit. Point out the nature of short term credit if appropriate and emphasise the unsustainability for longer term borrowing".

Having considered this statement, it seems to me that Estone recognised that its home credit loans were only suitable for short term use. And that using them for longer term borrowing was unsustainable.

So, while I appreciate the arguments that Estone has made regarding the regulator's policy and consultation papers, its own literature from the time that it was lending to Miss S appears to suggest that it recognised that using home credit loans for longer term borrowing was unsustainable.

In my view, Miss S's pattern of borrowing was indicative of a customer whose debt had become unsustainable. And Estone continuing to provide Miss S with loans in this way, meant that she was paying Estone high amounts of interest for the privilege of it allowing her to continue with her unsustainable debt. As I've explained, Estone's own literature from the time suggests that it knew that home credit was unsuitable for longer term borrowing.

I accept that providing a consumer with more than one home credit loan and/or a consumer being lent to for longer than the originally agreed term, won't, in itself, always produce an unfair outcome for a consumer. And for the avoidance of doubt, I want to be clear in saying that isn't the conclusion I reached in my provisional decision or this decision.

What I'm doing in this case is deciding whether it was fair and reasonable for Estone to have provided this many loans to Miss S, for these amounts, in the way that it did for this extended period of time. And I don't think that it was fair and reasonable for Estone to provide Miss S with this series of loans over this extended period when the effect was the same as it providing a single loan encompassing this period, whilst knowing that it'd never provide a single loan on these terms.

In any event, while I acknowledge that the FCA has said that repeat lending won't always lead to an unfair outcome for consumers, I think it would be helpful for me to restate why I that loans 9 to 12 were unsustainable for Miss S given the circumstances of this case. The conclusion that I reached in my provisional decision have not changed as a result of anything Estone has told me. I will now go on to explain why I consider this to be the case in more detail.

Pattern of lending – loan history

To start with, I think that the pattern of Miss S' borrowing showed that Miss S wasn't ever really clearing her indebtedness. I accept that some of the loans (loans 5, 5a, 5b, 5c, 9, 9a, 9b, 9c, 12, 12a, 12b, 12c) were taken in December and therefore could have been taken as a result of needing money for Christmas. However, I don't think that it would be fair and reasonable to say that all of the loans were taken for such discrete events. For example, loans 2 to 4, loans 6 to 8, loans 10 and 10a, loans 11 and 11a were all taken at other times of the year.

Indeed, I note that Miss S regularly took out further loans shortly after repaying previous ones. For example, Miss S took out loan 6 the same day that loan 5 had been repaid and loan 8 was taken out on the day loan 5b had been repaid.

In my view, this was a pattern of Miss S constantly seeking out new credit when either a loan (or part of a loan had been repaid). To me, this demonstrates, Miss S's borrowing history displays the hallmarks of an individual that was dependent on credit and who was stuck in a cycle of borrowing funds.

I'm also mindful that by loan 9 Miss S had been continuously indebted to Estone for two years (bar the odd day – there were no significant breaks in the lending relationship) and one part of loan 9 was due to run for another year, so Miss S was, by agreeing to the loan, further extending her indebtedness for at least a further year.

By the time loan 12c was repaid, Miss S had spent around 4 years and 4 months indebted to Estone. The overall length of time in Miss S's indebtedness leads me to think it ought to have been apparent to Estone that Miss S was unlikely to have been using these loans as a means of managing temporary income shortfalls.

This is especially as the loan amounts did generally increase over the time of borrowing and that she borrowed again quickly after repaying previous loans and so it's likely that the next Estone loan was needed to be taken as a result of the payments being made to its previous loans.

I also think that it is worth considering this in that by loan 9 Estone, would have been aware that Miss S had had a further CCJ recorded against her in July 2017. This CCJ coupled with what else Estone already knew about Miss S ought reasonably to have altered it to the fact that Miss S was likely to be experiencing harm.

In reaching these conclusions, I'm mindful that the CCJ had been obtained before loan 8 had been granted to Miss S. However, I've given Estone the benefit of the doubt on loan 8 as it was provided in August 2017. Given the length of time that it can take for credit reference agencies to update records, I can't reasonably say that it is more likely than not that the CCJ would've shown on the credit search Estone conducted.

However, I'm satisfied that as loan 9, was provided around five months after the judgement had been obtained against Miss S, Estone's credit check will more likely than not have shown this. Regardless, of whether this CCJ related to historic difficulties, or it related to some other form of creditor, I'm satisfied that that it was evidence that Miss S had proven unable to settle a debt even when a creditor took her to court to enforce it.

I also think it's worth mentioning that Miss S had a further CCJ obtained against her a mere matter of months after loan 12 (and its parts) had been provided. This was now the third CCJ that had been obtained against Miss S in the period she had been borrowing from Estone. In these circumstances, while I accept that the CCJs hadn't been obtained by Estone, I don't agree that there is no evidence of Miss S experiencing harm during the period that she was borrowing from Estone in the way that it suggests. I don't think the fact that Miss S may have been able to obtain and then repay loans from a credit union changes this.

Percentage of income needed to repay the loans

I acknowledge that Estone has argued that these loan payments represented no more than 12% of Miss S's income – which it may consider to be a small amount. I can understand and appreciate why it considers this to be a small percentage and of course, the percentage of

income is one of a number of factors that I've thought about while considering Miss S's complaint.

But I don't think I can fairly not uphold a complaint purely when the percentage of income maybe low. After all, this is just one of the factors that needs to be considered. When I've already highlighted, earlier on in the decision that the FCA highlighted could be problematic, the repeated nature of the borrowing and the CCJs all led me to place more weight on those factors than purely Miss S may have needed to have spent a small percentage of her income on payments.

Other lending from a Credit union

Estone has argued that harm wasn't done to Miss S because while she was repaying Estone she was able to borrow from a credit union – and the argument would go that if Miss S was able to borrow from another lender, then it can't be argued these loans caused any harm.

I can't comment on whether the checks carried out by the credit union were proportionate or what the credit union may have done to assess Miss S's affordability. That would have to be subject to another complaint.

The first credit union loan was granted while loan 12 was being repaid. But a credit union loan isn't the same type of lending as these home credit loans. Indeed, depending on the interest rate that was charged by the credit union the rules and regulations around what it is required to do isn't the same as what Estone is required to do.

So, the fact that Miss S was able to borrow from a different type of creditor shouldn't be seen that Estone didn't do anything wrong. While I understand why this argument is being made, as, Estone suggests that there was no detriment to Miss S because she was able to access credit from other sources at the time, I suggested this was just one of a number of harms that could've been done.

I also can't ignore the reasons that I've outlined above that demonstrate, that Miss S had a constant need for what is relatively expensive credit. Estone's arguments around the credit union loans haven't persuaded me to change the outcome I've reached.

Customer satisfaction survey

I've also considered what Estone has said about the customer satisfaction survey that Miss S completed at around the time loan 12 was granted. But a customer completing a survey saying the loan was affordable for them, doesn't and didn't negate Estone's responsibility under the rules and regulations at the time. Furthermore, I suspect that Miss S is likely to have wanted to continue borrowing from Estone at this stage. Given this isn't a proportionate check in relation to determining whether Miss S could afford to repay these loans, I think it offers limited insight on what such a check would show..

I also understand that Estone only mentioned the Consumer Duty for what it has to do now. But, for completeness Consumer Duty didn't and doesn't have any bearing on what happened at the time given the dates of the loans I've considered in this section of the final decision.

Forbearance

I accept that what Estone has referred to as '*superforbearance*' is a product feature that is different to other loans available. I also accept that this means that a borrower is limited to

paying the total amount due at the outset irrespective of any late payments or other adverse payment events.

However, I'm not persuaded that this means it is not possible for Miss S to have suffered harm over the period she borrowed. Indeed, these loans were expensive, for example loan 12 had an APR of 285.6%. I want to be clear though that I am not solely upholding the complaint because of the APR of the loan because there is no cost cap for this type of product. But I don't think that it is unreasonable to say that any benefits of superforbearance are likely to be reflected in the initial cost.

Furthermore, while a borrower would not incur further charges as a result of adverse payment events, any repayment issues were still reported to credit reference agencies. I can see from the credit report provided by Estone for loan 14 that Miss S did have repayment problems while repaying loan 12, as detailed above.

I would and do argue that those markers would cause harm – regardless as to whether any late fees or charges were levied on the balances because those late payment markers would've had an impact on her credit score. And while I've seen that Estone has said that arrears shouldn't necessarily be regarded as a sign of financial difficulty given the lack of a direct financial penalty, my experience of cases tells me that the threat of adverse credit information being recorded leads to customers taking whatever steps necessary to avoid this.

This includes things like immediately borrowing to cover the hole making payments may have left in their finances. I've already explained why Miss S's repayment record suggests that is precisely what she may have been doing here.

Finally, the offer of support in the manner Estone has explained means that it couldn't lend unsustainably to a Miss S. It just meant that should difficulties arise then there wasn't the risk of the consumer's debt spiralling.

Bank statements

As I've set out earlier, in an attempt to reassure Estone, I sought to obtain Miss S's main account statements with a view to determining whether loans 9 to 12 were as a matter of fact unaffordable.

I acknowledge that Miss S did have another account – which I don't have statements for. But given the frequency at which funds are moved to and then back from the other account – and given Miss S's limited income, I think it is more likely than not that she was moving the money around as a means of budgeting and or to prevent charges being applied.

The bank statements, do in my view show that Miss S was already likely experiencing difficulties because there are several returned direct debits – due to Miss S having insufficient funds to meet them. There are some returned direct debits – and CONC 1.3 says that missed direct debit payments could be a sign of financial difficulties. In any event, it does to me, in the lead up to loan 9 being approved that Miss S was having difficulties managing her existing payments.

The bank statements show that the income was made up of benefits – as noted by Estone on the application form. I'm not saying that this in itself means that Miss S shouldn't have been lent to. Such an approach would be arbitrary and therefore unlikely to be fair and reasonable. However, Miss S was on a fixed income and therefore was less likely to have been able to catch up should she fall behind with payments or end up in a cycle of debt – in the way that an employed person may have been able to catch up through overtime.

At the time of loan 9 Miss S was in receipt of various benefits that totalled around £900 per month. She had existing commitments for rent top up of around £35 per week, as well as a £5 commitment per week to another creditor. On top of this, after loan 9 was granted, she needed to repay Estone just under £160 every four weeks for her loans. There was also a payment for either a phone or internet of around £45 per month. But there is very little in the way of obvious non-discretionary living costs- especially in the weeks in leading up to the loan being granted.

For example, there are no utilities and only limited food costs. But I know that Miss S had a child and so you'd expect to see payments for associated costs. Miss S has also said she paid cash for her utilities, and she was and still is in arrears with her water bill. The food costs and utilities payments may have been coming out of the other account, or more likely being paid with cash withdrawal.

Indeed, Estone's own loan payments aren't as far as I can see visible in the statements which is to be expected given the type of loan she advanced. This means I don't consider Miss S's submissions – that living costs were paid by cash to be unreasonable, given how the Estone loans were repaid.

Estone has highlighted a number of non-discretionary payments that Miss S was making at the time. Estone has argued these shouldn't take priority over its loan payments. If Miss S did not make the payments, then she would've had ample disposable income to afford the payments.

These payments do appear to have increased in frequency and value in the weeks leading up to the loan being approved – and this – had Estone would've led I believe to further conversation about the nature of the payments and why Miss S was making them. But given, Miss S was already in the small core of borrowers that the FCA warned off, I don't think in the circumstances that Estone could've been confident these payments would stop or that Miss S wouldn't continue to make them.

I accept that there were no obvious triggers in the statements such as existing payday loans or gambling. Of course, those are only a number of identifiers that if visible may lead to a lender calling into question whether it ought to have lent. But for the reasons I've outlined above, including what the bank statements and her pattern of lending show have led me to conclude Miss S was more likely than not under financial strain.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss S in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

In deciding what redress Estone should fairly pay in this case I've thought about what might have happened if it had not lent loans 9 – 12c, as I'm satisfied it ought to not have done. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Miss 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 Miss 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 Miss S would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Estone's liability in this case for what I'm satisfied it has done wrong and should put right.

Finally, I've thought about the cost of the remedy that I've proposed will have on Estone and the reputational risk this decision may bring. As a regulated lender, then there will be of course occasions where things have gone wrong – as I think is the case here – and as such compensation ought to be paid.

Unfortunately, in the circumstances of this case I don't think it would be fair nor reasonable to amend the compensation that I've recommended solely because Estone will have to bear the cost of paying it and so I've set out below what Estone needs to do in order to put things right.

I direct that Estone does as follows because Estone shouldn't have given Miss S loans 9 - 12c.

- A. Estone should add together the total of the repayments made by Miss S towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Estone has already refunded.
- B. Estone should calculate 8% simple interest* on the individual payments made by Miss S which were considered as part of "A", calculated from the date Miss S originally made the payments, to the date the complaint is settled.
- C. Estone can, if it wishes it can use the amounts calculated in "A" and "B" to repay any outstanding balance due for loan 14. If this results in a surplus, then the surplus should be paid to Miss S. However, if there is still an outstanding balance then Estone should try to agree an affordable repayment plan with Miss S.
- D. The overall pattern of Miss S's borrowing for loans 9 - 12 means any information recorded about them is adverse, so it should remove these loans entirely from Miss S's credit file.

*HM Revenue & Customs requires Estone to deduct tax from this interest. It should give Miss S 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 S's complaint in part.

Estone Personal Credit Limited should put things right for Miss S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 25 April 2025.

Robert Walker

Ombudsman