

complaint

Mr L's complaint about SLL Capital Limited, trading as Safeloans, (SLL) can be summarised as follows:

- He believes SLL didn't carry out robust affordability checks and lent to him irresponsibly
- He's unhappy SLL obtained a County Court Judgement (CCJ) without his knowledge
- SLL wrote to his employer, causing him distress and embarrassment

background

This complaint was considered by an adjudicator in December 2017. The adjudicator thought the complaint should be upheld in part and made a number of recommendations about what SLL should do to put things right.

SLL didn't agree with the adjudicator and so the complaint was passed to me to decide.

I issued my provisional decision on 6 March 2018. A copy of it is attached (please note I've corrected two typographical errors) and it forms part of this final decision. As such I'm not going to reiterate its contents here.

SLL responded to the provisional decision on the same day it was sent, requesting the deadline for further submissions be extended to 9 April 2018. I agreed to this request.

Both parties made further points after my provisional decision.

Mr L accepted some of what I had said but queried the £100 I'd suggested for the trouble and upset caused by the letters SLL sent to his employer. The adjudicator had recommended more. And in relation to the CCJ, Mr L reiterated that he wasn't aware of it when SLL initially obtained it. He said he told SLL of his new address around six months after the default on the last loan so thinks it could have contacted him correctly.

SLL said it thought the proposed compensation of £100 for the letters sent to Mr L's employer was fair and that it had already apologised as well. It also said it had no record of Mr L contacting them to update his address prior to the CCJ being issued. It said the last contact it had with Mr L prior to the judgement was in September 2012 and that due to no further contact a judgment was issued at Mr L's last known address in January 2013.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've taken into account the law, good industry practice and any relevant regulations at the time.

I do appreciate Mr L's concern about the letters SLL sent to his employer. It wrote to his employer a number of times, over a number of years and the content of its letters was ambiguous. I understand Mr L's employer didn't provide the information SLL asked for – one of the letters has a handwritten note saying "*No action taken*" and is signed by a human resources manager. The note does suggest Mr L's employer contacted SLL (or its agent) but

only to say that it wouldn't be responding. This letter is dated 20 June 2013 but further letters were still sent by SLL after this date.

SLL couldn't give a clear explanation of why it wrote to Mr L's employer in the manner it did. And it doesn't seem that it stopped writing, even after Mr L's employer said it wouldn't be responding.

But in my provisional decision, I said it wasn't clear that Mr L was proactively keeping in touch with SLL. I think if he had been, it's unlikely SLL would've kept sending correspondence. I can also see that SLL did apologise for its actions.

Having considered all of this and the wider circumstances again, I still think £100 is a fair figure for the trouble and upset SLL caused Mr L.

Mr L also said SLL didn't contact him at the correct address in relation to the court action. He says he told it of his new address. SLL says it has no record of contact prior to when it obtained the CCJ.

Whoever is right, I think it's appropriate to step back and look at the big picture. From what I've seen I'm not persuaded that, even if Mr L was aware of SLL's intention to take court action, things would have worked out differently. As I mentioned in my provisional decision, it doesn't seem that Mr L proactively kept in touch with SLL, or took positive steps to repay a debt he knew was still outstanding. It seems to me that court action could have resulted anyway.

I'm therefore upholding this complaint in part, for the same reasons as given in my provisional decision. I remind SLL that it must comply promptly (DISP 3.7.12R) with my award and directions.

my final decision

I uphold this complaint in part. SLL Capital Limited must put things right by doing what I set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 July 2018.

Matthew Bradford
ombudsman

EXTRACT OF PROVISIONAL DECISION

complaint

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background

Mr L had 16 short-term loans with SLL between June 2011 and July 2012. SLL didn't agree any of these had been lent irresponsibly and didn't uphold Mr L's complaint. It couldn't explain why it had written to Mr L's employer – and offered to write off Mr L's outstanding debt under the CCJ (I understand this was around £90 at the time).

However, the final two payments of the outstanding debt were taken under an Attachment of Earnings Order (AEO) SLL had obtained. SLL said this was because it was too late for the Centralised Attachment of Earnings Payments (CAPS) office to stop the payments. I understand the compensation offered [has] not yet been paid.

An adjudicator considered the issue of irresponsible lending. He thought that SLL had carried out proportionate affordability checks in relation to the first two loans, but not for the rest. He thought that proportionate checks would've shown loans 6 to 16 were unaffordable and told SLL what he thought it should do to put that right. The adjudicator also recommended SLL pay Mr L £250 in recognition of the distress caused by the letters sent to his employer.

SLL didn't accept the adjudicator's recommendations, so the complaint's been passed to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've taken into account the law, good industry practice and any relevant regulations at the time.

was the complaint brought in time?

Mr L's first two loans appear to have been taken out more than six years before he complained to SLL. But I won't consider whether the complaint about these loans was brought in time, as Mr L has said he wishes to discontinue his complaint about them. So my provisional decision will focus only on the loans taken out from August 2011 onwards – loans 3 to 16.

should the complaint about the loan(s) covered by the CCJ be dismissed?

SLL says loans 13 to 15 were incorporated into loan 16 – and it obtained a CCJ in relation to the outstanding debt. It's asked us to therefore not consider these loans – it said, *"The court process allows a reasonable time and opportunity for the defendant to challenge any aspect of the claim issued relating to the loan product that they were not satisfied with, Mr L did not. The customer has a right to appeal to the court and this is the process that the customer should be pointed towards."*

DISP Rule 3.3.4A does say I may dismiss a complaint (or, as in this case, aspects of it) where *"(3) the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits..."*

As I understand it, the subject matter considered by the court wasn't alleged irresponsible lending – and there was no decision on the merits of the case as SLL obtained a default judgement. So I currently consider it appropriate for me to continue to consider the merits of the complaint about alleged irresponsible lending as they relate to loans 13 to 16.

the complaint about SLL's decisions to lend to Mr L.

All of Mr L's loans were taken out when the Office of Fair Trading (OFT) was the regulator. There were no prescriptive rules for what a lender should check to determine affordability at this time. But the OFT was clear that lenders had a responsibility to take reasonable steps to ensure that a borrower could sustainably afford to repay their loans. Those steps included carrying out proportionate affordability checks.

did SLL carry out proportionate affordability checks?

SLL told us it would've carried out credit checks and asked Mr L for income and expenditure details. It's told us that, due to system changes over time, it would be difficult to show us what information it obtained from Mr L and the credit reference agencies (CRAs). So I don't know what SLL saw from the CRA data. And I've only seen a few examples of what Mr L told SLL about his outgoings before it lent to him. I therefore only have limited information specifically relating to Mr L from SLL. The limited information I've seen relates to the last three loans. I've noted that the expenditure SLL recorded doesn't include a breakdown of other debts – long or short term.

I've gone on to consider the OFT's Irresponsible Lending Guidance to help me decide what sort of checks would've been proportionate. This says that, *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

The guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defines *"undue difficulty"* as being able to repay credit *"while also meeting other debt repayments and normal/reasonable outgoings"* and *"without having to borrow further to meet these repayments"*.

So even though it looks like Mr L repaid most of his loans in full (until the last loan), it doesn't automatically follow that the loans were affordable to him, or that they were repaid by sustainable means (*i.e.* that they were repaid from his normal income, without borrowing further.)

In order to decide what would be proportionate, taking into account the above guidance, I also need to consider how Mr L was required to repay the loans. SLL has highlighted that the credit agreements were for "running account credit". SLL has provided a copy of one of the loan agreements to show how this worked. From what I've seen, it looks like Mr L could draw down an amount up to a credit limit of £200, and would then repay the whole amount of capital drawn down plus the interest in one sum after 30 days. So I think a fair and proportionate assessment of affordability would take into account that Mr L could draw down up to the credit limit and would then have to repay that amount and the interest in one payment.

The information provided by SLL about the loans only tells me the principal Mr L borrowed (it doesn't make it clear if the amount borrowed was up to the credit limit offered) and the amount repaid with interest. I don't have any information about the term of the loans – I only know SLL offered terms of one to four months. In the absence of any other information, I've assumed the total repaid on each loan (except for the last four consolidated loans) reflects the original amount due under the agreements at inception.

loans 3 and 4 – were the checks proportionate?

SLL says it would've asked Mr L about his income and expenditure. It says the questions about expenditure included mortgage/rent, personal loans, credit cards and other payday loans. Although I think asking for information like this would've been proportionate, unfortunately SLL hasn't been able to provide the information it says it captured. So I'm unable to say there's enough evidence proportionate checks were carried out – and I'll go on to look at what I think proportionate checks would've shown.

loans 5 to 16 – were the checks proportionate?

By the time Mr L took out his fifth loan, he'd been taking out short-term loans for five consecutive months. The loans do not appear to be large relative to Mr L's income, but I think Mr L's apparent need to borrow month after month should've alerted a responsible lender to a potential problem with repaying sustainably.

Furthermore, the OFT's guidance stated that payday loans were designed *"to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable."*

So in order to satisfy itself it was responsible to continue lending, I think it would've been proportionate for SLL to obtain the fullest possible picture of Mr L's finances. This could've included asking for things like payslips and bank statements to verify Mr L's income and expenditure. As it seems SLL didn't ask for information like this, I don't think the checks it carried out were proportionate.

what would proportionate checks likely have shown?

I think if SLL had asked Mr L for information about his usual living costs as well as his regular and short-term financial commitments, it would likely still have found loans 3 and 4 to be affordable. I haven't been shown what income Mr L declared when he applied for these loans, but from everything I've seen I think Mr L would've said he was paid around £1,800 a month. Mr L says his usual living costs were around £400 for rent and £70 for utilities. He's also told us about a logbook loan, which seemed to have payments of around £100 a month. I can see other payments in September to an instalment loan lender of £165, which seem likely to be regular instalments and therefore a regular monthly commitment.

I can't verify the figures for rent and utilities from Mr L's bank statements as Mr L says they were paid in cash (the cash withdrawals at the time of loans 3 and 4 seem somewhat sporadic). But if I were to accept the figures provided, I don't think loans 3 and 4 would've seemed unaffordable to SLL – so I don't intend to uphold the complaint about them.

From loan 5 onwards, I've considered what I think it's likely proportionate checks would've shown if SLL had taken steps to verify Mr L's income and outgoings. I've relied on Mr L's bank statements to decide what I think such checks would've shown.

Mr L repaid about £220 for loan 5, taken out at the end of October 2011. I've looked at Mr L's bank statements for September 2011 and can see he was paid around £2,000. It looks like Mr L spent between £200-£300 on gambling and paid £100 towards the logbook loan. There are also payments of around £450 towards two instalment loans. If I were to allow about £500 for Mr L's normal living costs, he'd still have disposable of around £750. I don't think the overall size of the gambling transactions would've been a concern to SLL at this stage – and I don't plan to uphold the complaint about loan 5.

Mr L repaid about £110 for loan 6. He was paid around £1,800 in October 2011. Looking at his bank statements for October 2011, there are nearly 30 gambling transactions totalling around £800. There are also payments to logbook, doorstep and instalment loan creditors totalling around £900. About £850 of the payments are to instalment loan creditors – and Mr L borrows from the same creditors again in October shortly after repaying them. So SLL could've assumed from seeing this that Mr L would have similar payments to make in the following months.

It's not clear from the bank statements what Mr L's normal living costs were. But what is reasonably clear is that Mr L spent something like 90% of his income in October 2011 on either gambling or repaying existing short-term creditors. Mr L took out new short-term finance too.

I think at this point, SLL should've been concerned that further borrowing would likely negatively impact Mr L's financial position. I think proportionate checks would've shown Mr L wasn't using short-term finance to deal with unexpected cash flow problems, but to subsidise day-to-day spending and regular spending. I don't think a responsible lender would conclude that was a sustainable situation. So I think if SLL had carried out proportionate checks, it wouldn't have lent to Mr L. I'm therefore planning to uphold the complaint about this loan.

I'm aware SLL thinks it's unfair to take into account Mr L's spending on gambling. It thinks to do so would be asking it to compensate Mr L for his gambling losses. I don't agree. The point here is that gambling expenditure is a regular feature of Mr L's finances – and so is the sort of regular expenditure I think it's reasonable to take into account (from loan 6 onwards) when considering the affordability of new loans. The crux of the matter here isn't whether or not Mr L was a successful gambler, but that his regular gambling spend was a factor which was likely to mean new lending wouldn't be sustainable.

I've continued to look at Mr L's bank statements when he applied for loans 7 to 9 – and I don't think there's a substantial change in Mr L's situation when compared to loan 6. I'm therefore planning to uphold the complaint about these loans for broadly the same reasons as I've given for loan 6.

By about the time of loan 10, I think it's reasonable to say proportionate checks would have likely led SLL to realise Mr L was in an unsustainable situation. He'd been borrowing from it for around ten consecutive months, taking out new loans before paying off the preceding loans and was often borrowing again only shortly after being paid.

If SLL had carried out proportionate checks and sought to independently verify Mr L's financial situation from loan 10 onwards, I think it would've seen he was not using short-term finance to meet unexpected costs, but to subsidise an unsustainable level of regular spending and repaying other lenders.

I've looked at Mr L's banks statements from loans 10 onwards to help me understand his position and am satisfied that he couldn't repay these loans in sustainable way.

I currently think that if SLL had done what I consider to be proportionate checks it would've realised that Mr L was unlikely to be able to sustainably afford the repayments he needed to make on loans 10-16. So SLL wasn't acting as a responsible lender when it provided them. I therefore intend to uphold Mr S's complaint about these loans.

SLL writing to Mr L's employer

I've seen four letters SLL (or its agent) sent to Mr L's employer, dated 17 May 2013, 20 June 2013, 15 August 2014 and 8 September 2015. The letters say SLL was carrying out checks in relation to its obligations on money laundering and due diligence. SLL hasn't been able to say why it sent these letters. Mr L has said these letters caused him some embarrassment – although I understand his employer didn't respond to SLL's requests. The letters don't make any reference to payday lending, debt, or a CCJ but ask Mr L's employer to confirm his employment status and position in the business.

SLL says any embarrassment suffered by Mr L is mitigated by the fact it obtained an AEO, so his employers would've become aware of Mr L's debt eventually, even if it hadn't sent the letters.

I've taken this point on board. But SLL has been unable to explain why it wrote to his employer in the manner it did. At one point it has suggested such letters were sent to confirm employment details before lending – but these letters were all sent long after Mr L applied for his last loan.

I understand the AEO wasn't made until April 2016. So I think at the time the letters were sent, they'd have caused Mr L some inconvenience or embarrassment – particularly given that four such letters were sent over a period of three years, all apparently by mistake.

On the other hand, Mr L hasn't said what he did during this period to keep in touch with SLL or make arrangements about the debt – which could have led to SLL ceasing much of its ongoing correspondence. So I currently think only a modest award for the trouble the letters caused him is appropriate.

Taking everything into account, I currently think SLL should pay Mr L £100 in acknowledgement of any trouble and upset caused by the letters it sent to his employer.

obtaining the CCJ

Mr L has said SLL obtained a CCJ without his knowledge after he changed his address. But he hasn't said when he changed his address, or if he told SLL that he'd moved. So it's not clear that it's SLL's fault Mr L was unaware of the court action – and I don't intend to uphold this aspect of the complaint.

provisional conclusions

As I've explained above, I'm provisionally minded to say that I should not dismiss the complaint raised by Mr L in relation to loans 13 to 16, despite the CCJ obtained by SLL.

I also plan to say that I don't think SLL carried out proportionate affordability checks when it gave Mr L loans 3 to 16. And if it had carried out proportionate checks, I don't think it would've lent Mr L loans 6 to 16.

Finally, I've provisionally decided that SLL should pay Mr L £100 for sending letters to his employer, without it being able to give a reason for doing so.

what SLL should do to put things right

I plan to tell SLL to:

- refund the interest and charges paid by Mr L in relation to loans 6 to 15
- add interest at 8% per year simple on the above, from the date they were paid to the date of settlement[†]
- remove adverse information recorded on Mr L's credit file about these loans
- pay Mr L £100 for distress and inconvenience

[†]HM Revenue & Customs requires SLL to take off tax from this interest. SLL must give Mr L a certificate showing how much tax it's taken off if he asks for one

the court judgement and loan 16

I've thought carefully about what it would be fair to ask SLL to do in relation to the CCJ. Our usual approach to redressing consumers who were given a loan they shouldn't [have] been given is to tell the business to remove any adverse information recorded on the consumer's credit file (in the way I've said SLL should amend the information recorded on Mr L's credit file for loans 6-15). But given the particular circumstances of this case, I don't think it would be fair for me to ask SLL to take steps to have the record of the CCJ removed, as I think doing so would be disproportionate. I say this because it's my understanding that Mr L didn't make any payments towards loan 16 prior to SLL obtaining the CCJ and AEO. I also bear in mind that Mr L had the use of the money he borrowed and it's fair and reasonable to expect him to repay the capital. As SLL had a right to seek a CCJ to recover the capital Mr L borrowed (not just the interest he was required to pay), I think putting SLL to the cost and trouble of having this set aside would be disproportionate.

Equally, as Mr L didn't make any payments towards the loan before the AEO was made and I don't think it was unfair or unreasonable for SLL to obtain the CCJ, I don't intend to order SLL to refund fees and charges resulting purely from SLL obtaining the CCJ.

So overall I only intend to say SLL should refund Mr L any interest that he paid for loan 16. SLL should add interest at 8% per year simple[†] to this amount – from the point Mr L would've repaid any CCJ balance that would've existed had he not had to pay the interest for loan 16.

my provisional decision

I plan to uphold this complaint in part and to tell SLL Capital Limited to put things right by doing what I've set out above.

[signed]

Matthew Bradford

ombudsman

Appendix.

loan no.	date taken	principal amount	total repaid	repaid
3	31/08/2011	£137	£196.59	30/09/2011
4	06/09/2011	£100	£137.34	31/10/2011
5	31/10/2011	£125	£219.85	29/02/2012
6	03/11/2011	£62	£107.40	29/02/2012
7	07/12/2011	£85	£143.80	30/03/2012
8	23/01/2012	£100	£122.50	29/02/2012
9	20/02/2012	£100	£124.00	30/03/2012
10	05/03/2012	£125	£195.00	31/05/2012
11	21/03/2012	£100	£124.50	30/04/2012
12	05/04/2012	£150	£233.00	29/06/2012
13	09/05/2012	£150	£162.00	29/06/2012
14	11/06/2012	£100	£72.77	31/07/2012
15	15/06/2012	£50	£23.67	29/06/2012
16	09/07/2012	£125	-	-