

complaint

Mrs C complains that SD Taylor Limited, trading as 'loansathome4u', lent to her irresponsibly in 2008. They were three home-collected credit loans. Mrs C raised her complaint with SD Taylor in March 2017.

background

Using the information I have received from SD Taylor and Mrs C I have done a brief summary loan table.

Loan	amount	Date approved	Date repaid	Weekly terms
1	£200 Total due £320	30 April 2008	24 November 2008	32 x £10
2	£250 Total due £410	23 July 2008	Due 6 May 2009 Settled 5 August 2015	41 x £10
3	£300 Total due £480	26 November 2008	Due 8 July 2009 Balance w/o December 2016	31 x £15

I have issued two provisional decisions and the recent one had a reply date of 30 January 2020. Mrs C has written to say she is content with it. SD Taylor has accepted the outcome for this case but reluctantly as it has made it clear it does not agree with my rationale. We approach all cases individually.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

As both parties have accepted the provisional decision for Mrs C then I have no reason to depart from the findings I made in my provisional decision dated 16 January 2020. A copy of it is attached and forms part of this final decision.

putting things right – what SD Taylor needs to do

SD Taylor ought not to have given Mrs C Loans 1 to 3.

A) It should add together the total of the repayments made by Mrs C towards interest, fees and charges on these loans. Mrs C's total repayments exceed the principal sums lent.

B) It should calculate 8% simple interest* on the individual payments made by Mrs C which were considered as part of "A", calculated from the date Mrs C originally made the payments, to the date the complaint is settled.

C) It may use the total of "A" plus "B" to repay any principal which it has written-off.

D) It should pay any remaining refund to Mrs C. If there is no refund left and still a

balance outstanding made up of written-off principal, it would not be fair for you to pursue this further.

Ordinarily I would direct that SD Taylor remove any negative payment information about Loans 1 to 3 from Mrs C's credit file. But as they were over six years ago they are not likely to appear on her credit file anyway and so I do not think that this is necessary.

* HM Revenue & Customs requires SD Taylor to take off tax from this interest. It must give Mrs C a certificate showing how much tax it's taken off if she asks for one. Any set-off has to be done after tax.

my final decision

My Final Decision is that I uphold Mrs C's complaint and direct that S.D. Taylor Limited put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 4 March 2020.

Rachael Williams
ombudsman

my provisional decision dated 16 January 2020

Mrs C has said that the lending was irresponsible and *'pushed me further into debt by [sic] doorstep lender'*.

Mrs C has said that at the time of the first loan the collector-agent looked at her passport and payslip and after that no further requests for documentation were made. Mrs C says that her credit file would have shown mortgage arrears and defaults.

SD Taylor has said that it would have asked Mrs C for evidence of her income and her expenditure and it would have carried out a credit search. But no records have been provided to us relating to that search. SD Taylor has said that *'no adverse data to warrant declining [Mrs C] for a loan'* was found.

Very few documents from 2008 are available but SD Taylor's 'Agreement History Reports' have been sent to us.

SD Taylor's response dated 31 March 2017 to Mrs C's complaint was that *'Our financial conduct authority requirements are that we assess each loan that is issued and complete a credit reference check. We have concluded that there is no substantiated evidence to support your complaint in light of the available evidence. Therefore, as a company, we have decided not to uphold your complaint.'*

In July 2017 one of our adjudicators looked at the complaint using the information he had been sent by both parties. Mrs C had sent us bank statements for the period covering December 2007 to January 2010. Our adjudicator thought that Mrs C was not able to afford these loans and that SD Taylor should put things right for Mrs C for all three loans.

Mrs C agreed with this opinion.

SD Taylor did not. It made a number of representations to explain why it did not agree. It said *'...at the outset of our relationship with a customer Loans at Home conduct a credit search, at this point we found no adverse data to warrant declining [Mrs C] for a loan. The initial loan and every loan thereafter is also supported with an Affordability Assessment to ensure the loan is issued responsibly and in accordance with regulatory guidelines.'*

Our adjudicator responded. SD Taylor continued to disagree and requested an ombudsman review the case in relation to the merits of the complaint.

Later in August 2019 an adjudicator looked at the complaint and came to the same view: that SD Taylor should put things right for Mrs C for all three loans. SD Taylor's response was detailed, and many representations were made to this service on a number of issues including the merits of the case. I do not set them all out here, but I mention it so that SD Taylor knows I have considered them all.

When I received the complaint, I asked Mrs C to provide more details and documents which she did, and I go into more detail in my provisional findings below using the information from these. Some of the figures used in the adjudicator's August 2019 view letter were incorrect and part of the reason for this provisional decision is to correct them.

The case remained unresolved and was passed to me for a decision.

I issued a provisional decision last month and am issuing a further provisional decision in response to some points raised with me by SD Taylor and to elucidate further. The outcome of my second provisional decision remains the same as my first.

my provisional findings

I have considered all the available evidence and arguments to decide what I consider to be fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

SD Taylor's own explanations about how this sector approached its lending is useful and I set it out here as I have kept this in mind when considering Mrs C's complaint. 'CRA' refers to credit reference agencies which SD Taylor has told us it used when assessing an applicant's request for a loan.

'The Home credit sector has always adopted a different approach, eschewing penalties. They relied on self-employed agents to visit the customers in their homes to conduct an affordability assessment with applicants taking into account CRA data customer information and thereafter customer repayment history. They also maintained regular weekly contact with the customers to anticipate problems. They flexed payments and allowed customers to miss payments without penalty. They placed the onus on the agent to get the lending decision right through first-hand knowledge of the customer's circumstances. The impetus for the agent was the fact they earned commission on collections. In fact their only income was derived from such collections.'

These loans date back to April 2008 and at that time these type of businesses were licensed by the Office of Fair Trading (OFT). Section 25 of the Consumer Credit Act 1974 (as amended) ("the CCA") required the OFT to ensure that consumer credit licences were only given to – and retained by – those who were fit to hold them.

Section 25(2) of the CCA contained specific matters which (alongside any matters it considered to be relevant) the OFT should have regard to when determining whether an applicant for a licence was a fit person to hold one. One of which, section 25(2)(d) said evidence of the kind mentioned in subsection (2A).

Subsection 2A(e) listed

"engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)."

Subsection 2B went on to provide an example of the type of business practice referred to in subsection 2A(e). It said:

"For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending."

In January 2008 the OFT produced general guidance on 'fitness and requirements'. The document's reference is OFT969.

This addressed the scrutiny the OFT was likely to carry out on businesses' activities and refers to one of the OFT's 'main regulatory interests' which was to ensure that businesses lend responsibly. It says in paragraph 2.13: "*'Irresponsible lending' is now cited specifically in the fitness test as a business practice that [it] may consider deceitful or oppressive or unfair or improper*". The significance being that such a practice may impinge on a business' ability to successfully apply for a consumer credit licence if the OFT found evidence of such practices.

And para 2.14 of the OFT969 document contained interim guidance on the test for irresponsible lending ahead of a public consultation on full guidance on this test. It says: "*...lenders should always take reasonable care in making loans...They should undertake proper and appropriate checks on the potential borrower's creditworthiness and ability to repay the loan...The checks should be proportionate, taking account of the type of agreement, the amounts involved, the nature of the lender's relationship with the consumer, and the degree of risk to the consumer.'*

The OFT Guide to Irresponsible Lending (ILG) was published after these loans to Mrs C were approved and the foundation for it was recognised and referred to in OFT969. In addition, I note that SD Taylor's July/August 2017 response to the first adjudicator's letter cites the ILG and addresses the '*irresponsible lending*' element. So, it seems to have accepted that the concept was relevant to Mrs C's complaint and addressed it accordingly.

One set of representations sets out SD Taylor's conclusion: '*Loans at Home have always and continue to uphold guidelines of both the FCA and previously the OFT to ensure that we lend responsibly and treat customers fairly in all cases.*'

In addition to taking into account the OFT969 document, the Lending Code 2006 ("the Code") was published by a trade body which I have used to give me further insight into the approach lenders were expected to take around that time. Whether or not SD Taylor was a member of that trade body in 2008 is somewhat irrelevant: I am able to think about these sort of publications as being an indication of market practice at the time.

The Code does cover personal loans and it refers to some key commitments. Some of these were to:

- *act fairly, reasonably and responsibly ...*
- *help you when you need information and guidance, including explaining how the products will affect your finances*
- *consider cases of financial difficulty sympathetically and positively.*

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mrs C's complaint.

SD Taylor has said that it would have carried out checks in 2008 but has not been able to send us many documents. Given the length of time that's passed since these loans were provided, I don't think that's unreasonable and I've not drawn any adverse inferences from this. So, I have looked at what Mrs C has sent us which includes additional documents and some clarification more recently. The bank statements provide a convenient way to obtain quite a lot of information about a person's finances from one source. It is not the only way to discover this information and I accept that SD Taylor may not have seen these at the time but it is what I have from Mrs C and I think that it makes sense for me to look at these as they provide some insight on Mrs C's financial circumstances at the time.

The bank account statements show that her income was regularly from one organisation and she received between £580 and £630 each month from January to March 2008. So, I have taken her average net earnings as £600. This was the period leading up to the first loan in April 2008. In my view, this was a low income.

Mrs C has sent to us documents to show me that Mr and Mrs C had a joint mortgage and they were in arrears to about £1,570 in April 2008. The usual monthly repayment was about £583 a month plus they had the arrears to pay on top. In September 2008 (this would translate to have been during Loans 1 and 2 and before Loan 3 was approved) the mortgage company repossession hearing was due to take place. This was an adjourned County Court Hearing date which likely means that proceedings had commenced well before that and so the arrears had likely been mounting for some time. So, I think it's more likely than not Mrs C was in arrears on the mortgage around the time she applied for Loan 1.

Mrs C has shown that she had a hire purchase agreement which had commenced in August 2007 which was meant to be £175 each month for 36 months. The statement for that account shows that Mrs C had some difficulty paying it around February 2008 which was just before she applied for Loan 1.

Mr and Mrs C's joint council tax bill for June 2008 which has been sent to us, shows that court proceedings were underway for some of the amount due.

SD Taylor has been insistent in its argument that it carried out credit searches as part of the application process for Loan 1. As I've explained, the length of time that's passed means that I don't consider it unreasonable that SD Taylor is no longer able to evidence the results of its credit check. But given the nature of the commitments concerned, I think that any credit check would more likely than not have shown some or all of these commitments and arrears and that Mrs C was already struggling with her finances.

I think this ought to have prompted additional checks for a person on such a low income and with these additional debt concerns, which I do not think it carried out. And I say this against the background outlined by SD Taylor of how it liked to conduct its business. One aspect was described as *'regular weekly contact with the customers to anticipate problems'* and this suggested that the close and face-to-face contact its collectors had with its customers meant that it knew those customers well and may have been able to mitigate issues. And I translate that to include that any initial assessment at the start of a lending relationship would have been equally focussed on the personal contact.

The bank statements also give me an idea of the household expenses to which Mrs C would have contributed. Mr C earned more than her and so I've looked at these expenses and kept in mind that Mrs C was likely to have contributed in proportion to their incomes. Mrs C's proportionate contribution was likely to have been about 40%.

Seeing Mrs C's low income plus the household expenses to which she likely would have contributed around 40% and I have calculated that her proportion would have used up all of her salary. This, together with the specific items I've outlined above which Mrs C, or she and her husband, were struggling to pay, then I think that a reasonable approach would have been not to lend to Mrs C in April 2008. Adding to Mrs C's debt problems was not, in my view, the right thing to have done. I have kept in mind that it was a modest repayment sum of £10 a week, but I do not think it was a manageable sum to Mrs C at that time. I do not think that she could have afforded to repay without experiencing difficulty in doing so.

For Loan 2, Mrs C already had a loan with SD Taylor and the records I have from it, show that Mrs C was in arrears in June 2008. And her repayments on Loan 1 had been variable and intermittent between 30 June 2008 and late November 2008. The note on the 'Agreement History Report' in November 2008 says *'Reloan Cash £70'* which seems to be a refinance of the outstanding balance into Loan 3 (which I refer to below).

The same points I have made earlier in this provisional decision for Loan 1, I make again in respect of Loan 2. The two sets of loan repayments together would have been the monthly equivalent of about £87 and this was just under 15% of Mrs C's net monthly income. So, I do not think that this was a reasonable sum to expect her to pay. Looking at her situation, I do not think that this was an affordable loan.

Added to this, the third loan appears to have been taken out on the day that Loan 1 was 'repaid', and I think it's highly likely that this loan was refinanced into the new Loan 3. I think that SD Taylor knew, or ought reasonably to have known, about the repayment difficulty for Loan 1, and that Loan 2 was outstanding and so it ought to have realised that Mrs C was not going to be able to afford Loan 3.

I am planning to uphold each of the loans but for different reasons to the ones outlined in earlier adjudications.

end of this extract of the provisional decision