

complaint

Mrs T complains about irresponsible lending for home credit loans approved for her by SD Taylor Limited. She says that *"They did not take the correct actions to ensure the loans were affordable and stop lending. I was in a lot of debt and they kept offering these loans."*

background

Mrs T complained to SD Taylor around 12 February 2019. It asked for information from her including copies of her bank statements which she sent to it. SD Taylor's final response letter (FRL) was on 11 March 2019 and Mrs T sent to us her complaint form on the same day.

SD Taylor's FRL set out a table of the 20 loans it approved for her between August 2009 and December 2016. It said that the eight loans taken between August 2009 and July 2012 were 'Time Barred' and explained this to Mrs T. In relation to the other twelve loans (Loans 9 to 20) SD Taylor rejected her complaint grounds and did not uphold her complaint.

We asked for SD Taylor's file and it replied: *'The documents enclosed is what we have available. Some information may no longer be available due to these being destroyed in compliance with our data retention policy.'*

In November 2019 one of our adjudicators looked at the complaint and he considered *all* the twenty loans. He thought that *'the pattern of lending'* showed that they were unsustainable and that SD Taylor should not have given Mrs T *'...any of loans six onwards.'*

In December 2019, SD Taylor's response was to make clear submissions on the time issues. SD Taylor was right that the issue relating to its objection to us looking at loans earlier than February 2013 (Loans 1 to 8) ought to have been addressed first. Since then, Mrs T has elected to withdraw from her complaint the first eight loans. SD Taylor was informed of this.

The adjudicator's letter of opinion included a loan table and I use the loan numbers in that in this decision.

So Loans 9 to 20 are unresolved and the complaint has been passed to me for a decision.

my 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 on our website. These include all of the relevant rules, guidance and good industry practice about high cost credit lending - including for home credit.

The loans for Mrs T date back to April 2009 and I am looking at Loans 9 onwards which dates from February 2013. In 2009 businesses were licensed by the Office of Fair Trading (OFT). The OFT Guide to Irresponsible Lending (ILG) was published in March 2010 (updated in February 2011).

In April 2014, the Financial Conduct Authority introduced its Consumer Credit Sourcebook rules when it took over as regulator. This is referred to as CONC and reading the earlier versions of CONC there are clear references back to the specific ILG paragraphs. This demonstrates a continuity of the same concept of lending responsibly.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mrs T's complaint.

SD Taylor needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs T could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that SD Taylor should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include: where a customer's income is particularly low; where the repayments are particularly high; and/or where the frequency of the loans and the length of time over which a customer has been given loans need to be looked at: repeated refinancing could signal that the borrowing had become, or was becoming, unsustainable.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

SD Taylor was required to establish whether Mrs T could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

The loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the OFT ILG defined 'sustainable' as being the ability to repay without undue difficulties. In particular the customer should be able to make repayments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments. Later, CONC built on those same concepts enshrined in the OFT ILG.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower will not be able to make their repayments sustainably if they need to borrow further in order to do that. Mrs T explained:

'I hadn't complained before as they continued to provide me with loans. Also I didn't know you could complain about these, when you are struggling financially and these loans are the only option you continue to have then [sic] especially when they are offered to you and when I suffer from anxiety my gambling gets worse, it's a vicious cycle.'

I have seen some of Mrs T's bank statements for the 2009 to 2013 years, as well as the statements she had already sent to SD Taylor when it was investigating her complaint. Those were for 2013 onwards. And in the statements I have seen extensive use of gambling and gaming websites and Mrs T has explained that she had a problem at the time.

I have also looked at the overall pattern of SD Taylor's lending history with Mrs T, with a view to seeing if there was a point at which SD Taylor should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so SD Taylor should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mrs T's case, I think that this point was reached by Loan 9 and I say this because:

- from Loan 9 onwards Mrs T was provided with a new loan often to refinance the previous one and sometimes more than one at once. So SD Taylor ought to have realised it was more likely than not Mrs T was having to borrow further to cover the earlier loan and to carry on borrowing. I think it would have been apparent that her indebtedness was increasing unsustainably;
- by Loan 9 she had been in debt to SD Taylor for several years. Plus, Loan 9 was the same amount as each loan before it for over a year - £625. And the first £625 loan taken in December 2011 had been an increase on earlier loans. Mrs T – more often than not – had continued to take the same £625 loan amount from that date, which demonstrates she persistently required that amount for her daily life and it does not show that these were short-term loans to assist with a cash-flow issue. SD Taylor ought to have noticed that;
- Mrs T wasn't making any real inroads to the amount she owed SD Taylor. Mrs T had paid large amounts of interest to, in effect, service a debt to SD Taylor over an extended period;

I think that Mrs T lost out because SD Taylor continued to provide borrowing from Loan 9 onwards because:

- these loans had the effect of unfairly prolonging Mrs T's indebtedness by allowing her to take expensive credit use over an extended period;
- the sheer number of loans was likely to have had negative implications on Mrs T's ability to access mainstream credit and so kept her in the market for these loans.

So, I am upholding the complaint about Loans 9 to 20 and SD Taylor should put things right.

putting things right

SD Taylor needs to put things right by:

- refund any interest and charges already paid by Mrs T in respect of Loans 9 to 20;
- apply 8% simple interest per year to any interest and charges refunded from the date they were paid to the date of settlement*;
- remove each of Loans 9 to 20 from Mrs T's credit file.

*HM Revenue & Customs requires SD Taylor to take off tax from this interest and it must give Mrs T a certificate showing how much tax it's taken off if she asks for one.

my final decision

My final decision is that I uphold Mrs T's complaint in part and direct that SD Taylor Limited put things right in the way I have said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs T to accept or reject my decision before 14 May 2020.

Rachael Williams
ombudsman