

The complaint

Miss M complains that S.D. Taylor Limited (trading as Loans at Home (LAH)) lent to her irresponsibly.

What happened

Our adjudicator thought the complaint should be upheld in part. LAH disagreed with the adjudicator's opinion. The complaint was then passed to an ombudsman.

I issued my provisional decision saying that Miss M's complaint should be upheld in part. A copy of the background to the complaint and my provisional findings follow this and form part of this final decision:

What I said in my provisional decision:

Miss M took 22 home credit loans between August 2003 and May 2013. I've included some of the information we've received about these loans below;

<i>Loan Number</i>	<i>Loan Amount</i>	<i>Date of Loan</i>	<i>Actual Repayment Date</i>
1	£648	28/08/2003	16/09/2004
2	£600	16/03/2006	19/07/2007
3	£600	19/07/2007	17/04/2008
4	£200	22/11/2007	08/05/2008
5	£450	03/01/2008	04/09/2008
6	£450	03/01/2008	04/09/2008
7	£600	17/04/2008	02/07/2009
8	£250	08/05/2008	11/12/2008
9	£600	04/09/2008	10/12/2009
10	£600	04/09/2008	10/12/2009
11	£250	11/12/2008	02/07/2009
12	£250	02/07/2009	25/02/2010
13	£250	02/07/2009	25/02/2010
14	£450	10/12/2009	30/09/2010
15	£450	10/12/2009	30/09/2010
16	£375	25/02/2010	30/09/2010
17	£375	25/02/2010	30/09/2010
18	£450	30/09/2010	25/04/2013
19	£375	30/09/2010	13/09/2012
20	£375	30/09/2010	13/09/2012
21	£450	30/09/2010	25/04/2013
22	£500	02/05/2013	25/12/2014

Our adjudicator thought we could only consider loans 3 to 22 – those loans taken out after LAH came under our jurisdiction on 6 April 2007. And having looked at Miss M's complaint

about these loans, she didn't think it was wrong for it to have lent loans 3 to 6.

However, the adjudicator thought LAH should've stopped lending when Miss M applied for loan 7. This was because she thought Miss M appeared to have become reliant on the lending and that further loans would've been harmful. So, the adjudicator said that LAH should refund the interest and charges Miss M paid for loans 7 to 22 together with 8% simple interest. In addition, she thought these loans should be removed from Miss M's credit file. LAH disagreed with the adjudicator's assessment that this service could consider loans 3 to 22. And it has requested that the jurisdiction of Miss M's loans should be reviewed by an ombudsman before this service decides whether the loans were lent responsibly. LAH says that:

- *Miss M's statement of complaint suggests she was aware that she could've complained earlier than 2020 (when she was watching a TV programme);*
- *when Miss M fell into arrears, she was sent arrears letters in 2009, 2010, 2011, 2012 and 2013, all pointing her towards free money advice organisations if she was struggling financially and which included a copy of its complaints process.*
- *it isn't reasonable to suggest that Miss M wasn't aware that she could've complained earlier than she did 'based on her recognition at the time of lending, that the loans were unaffordable.'*

As no agreement has been reached, the case has been passed to me for a decision.

What I've provisionally 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.

Which loans I can look into and why

loans 1 and 2

This service isn't able to consider any lending decision taken before 6 April 2007 (loans 1 and 2). This is because LAH didn't come under this service's remit until this date. So I'm not able to consider whether an error was made when these loans were approved.

loans 3 to 22

For these loans the relevant time limits for bringing a complaint to this service are set out in the Dispute Resolution (DISP) section of the FCA's handbook at DISP 2.8. It is these time limits I must apply when considering if Miss M's complaint was brought in time.

This service's approach to applying these limits in complaints about the affordability of has been set out at length in previous decisions which are available on our website – so I don't intend to repeat all the arguments set out in the same level of detail.

DISP 2.8.2R says:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service: ...

(2) more than:

- (a) six years after the event complained of; or (if later)*
- (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint..."*

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or

(4) the Ombudsman is required to do so by the Ombudsman Transitional Order; or

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired.

The six year period and what this means for Miss M's complaint

For each of loans 3 to 22, Miss M's complaint was referred to this service more than six years after the event she's complaining about – LAH's decision to lend to her. But the three-year period set out at DISP 2.8.2R (2)(b) can potentially extend the deadline for complaining, depending on when a complainant became aware, or ought to reasonably to have become aware, they had cause for complaint.

So, I've considered when Miss M was aware, or she ought reasonably to have been aware, she had cause to complain.

When did Miss M become aware she had cause for complaint?

Miss M has told us she only became aware she had reason to complain in 2020 when she was watching a TV programme about financial matters.

She's said that the repayment of the loans caused hardship and problems which resulted in the need to borrow more money. But she says she wasn't aware that she could complain about this until 2020. I accept what LAH says that a complaint procedure letters were sent in 2009, 2010 and 2011 so I think it's likely Miss M knew she could complain. Just not about the specific issue of irresponsible lending.

Having reviewed everything provided on this case, I've not seen anything which clearly shows Miss M knew she had cause to complain about irresponsible lending before 2020. For example, there isn't anything to suggest that she tried to complain earlier than this or anything she's said which confirms she knew she had reason to complain earlier. I also find Miss M's account of when she realised that she had reason to complain to be plausible. So, I think that Miss M didn't realise she had cause to complain until 2020.

Is it the case Miss M ought reasonably to have been aware of cause for complaint more than three years before she complained?

While I think that Miss M complained within three years of when she had actual awareness of cause to complain, this doesn't, on its own, mean she complained within the three year part of the time limit.

It still might be the case that she ought reasonably to have known this earlier – i.e. because a reasonable person in her circumstances should really have known they had reason to complain.

I think that for it to be the case that Miss M ought reasonably to have been aware of cause for complaint, it would have to be the case that she ought reasonably to have been aware of three things:

- that there was a problem – in this case her loans were unaffordable;*
- that her unaffordable loans caused her loss; and*
- that Loans at Home's actions (or its failure to act) may have caused the loss.*

Given what Miss M has said about her financial position and what LAH has said about the arrears on the lending and the communication that surrounded this, I think that Miss M ought reasonably to have been aware that these loans may not have been affordable. And that they might have been causing her loss (in other words, Miss M ought to have been aware of the first two parts of the test set out above).

That said I don't think that it was the case that Miss M ought reasonably to have been aware that LAH might've been responsible for her problem. For example, I'm not aware LAH suggested this in the letters it sent about her arrears (although it hasn't sent us copies of the letters to consider) – and I've also not seen other evidence to suggest this to be the case.

In some instances, it'll be quite clear that a business might have (at least) some responsibility for what happened to a consumer. So, for example, it's likely that a consumer taking out a product based on information given to them by a business would normally have reason (or ought reasonably to have had reason) to think the business might have done something wrong when they later found out that the information was misleading. Usually, a reasonable person would attach some blame on the person providing them with information they relied on if that information turned out to be inaccurate or untrue.

But equally it's possible (and sometimes perfectly reasonable) in some situations, for a consumer to not realise someone else might have some responsibility for their problem until something or somebody else made that connection for them. And I think that's what happened here.

And the bulk of information about complaint handling was, and is, fairly specialised and it's unlikely to be the sort of thing of which a reasonable consumer would be aware - especially when Miss M was borrowing. So, unless Miss M actually saw such information when she took the loans, and I've seen nothing persuasive to suggest that she did, I don't think the general availability of information about responsible lending means Miss M ought to have reasonably complained earlier than she did.

Bearing in mind all of this and having taken everything into account, I don't think Miss M ought reasonably to have had cause to make this complaint about LAH at any stage more than three years before she complained. I think Miss M recognised that the lending resulted in financial difficulty and that the unaffordable loans caused her loss. But I don't think she was aware that it was Loans at Home's actions (or its failure to act) that may have caused the loss.

So, I think Miss M complained in time about loans 3 to 22 because she complained within three years of becoming aware, or when she ought to have been aware, of the reason she's now complaining.

I think therefore that we can look at her complaint about loans 3 to 22.

I appreciate LAH has asked this service to resolve the jurisdiction aspect first before considering whether any loans should've been lent. I don't think though that this is necessary as both parties have already received the adjudicator's view about jurisdiction and the

outcome of the complaint about the loans that she felt we can consider. This provisional decision also gives each party the opportunity to respond with any further arguments or information they would like to provide.

What I've provisionally decided about the complaint (loans 3 to 22) – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Miss M doesn't appear to disagree with our adjudicator's findings that LAH wasn't wrong to lend loans 3 to 6. It seems therefore that this lending isn't in dispute and so I no longer think that I need to make a finding about Loans 3 to 6. But I've kept this lending in mind when thinking about the overall lending relationship between Miss M and LAH.

At the time LAH provided the loans to Miss M it was licensed by the Office of Fair Trading (OFT). LAH had to act responsibly although I acknowledge that in 2007 there wasn't too much by way of guidance to those businesses as to what that meant in practice. Broader good practice dictated that responsible lenders should ensure that all loan applications went through sound and proper credit assessments and that the interests of the borrowers should be taken into full account.

But for the lending in dispute here the OFT had also issued guidance aimed at lenders in January 2008 ("Consumer Credit Licensing – General Guidance for Licensees and Applicants on Fitness and Requirements"). The available guidance explained that the aim of the OFT was to ensure that an appropriate standard of consumer protection was in place and that it would focus on a several things when assessing fitness of applicants for licenses. One of those considerations was integrity, adding that,

"The way you operate any aspect of a business may well be relevant to your fitness to hold a consumer credit licence."

It went on to provide examples of the kind of evidence that may involve integrity issues. The final example stated:

"evidence of business practices that appear to the OFT to be deceitful or oppressive or otherwise unfair or improper whether unlawful or not and whether arising in relation to the licenses business or otherwise with particular regard to any breaches of OFT guidance. This could include evidence of irresponsible lending".

The guidance added that:

"Lenders may take different approaches to responsible lending in line with variations between the needs of different sectors of the market. However, lenders should always take reasonable care in making loans or advancing lines of credit and should take full account of the interests of consumers in doing so. They should undertake proper and appropriate checks on the potential borrower's creditworthiness and ability to repay the loan and to meet the terms of the agreement. 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."

So, to me, the avoidance of unfair practices that may result in detriment to consumers was central to the OFT's guidance. The annex in the guidance listed a number of practices that the OFT deemed unlawful and/or considered unfair. The final one of these was as follows:

“Irresponsible lending irresponsibly contrary to the provisions of section 25(2B) of the Consumer Credit Act 1974, by failing to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so”. In summary, when granting licences, the OFT had thought about whether a credit provider was being run with integrity with particular concerns around whether licence holders were carrying out unfair practices of which irresponsible lending is an example.

So before granting credit to Miss M, LAH had to do proportionate checks. These had to take account of the type of credit, the amounts involved, the nature of LAH's relationship with Miss M, and the degree of risk to Miss M.

LAH has said that ‘we made lending decisions based on a loans affordability and sustainability, as well as the appropriateness of the lending, that is ensuring it won't result in any financial detriment.’ It hasn't though provided details of the checks that it did to show the loans were affordable and sustainable.

I also appreciate that LAH has said that it didn't add any interest or charges when Miss M fell into arrears. But, overall though I agree with our adjudicator that LAH should reasonably have seen that further lending was unsustainable, or otherwise harmful, at the time it provided loan 7. I say this because, not only had the OFT issued guidance and clarified the obligations on licensed credit providers, but also because of the overall pattern of Miss M's borrowing by loan 7. I say this as:

- By loan 7 it was over two years into the second lending relationship (since loan 2 when Miss M started to borrow again following a break in lending) with no breaks between loans. Some of the loans also overlapped. In my view, Miss M's loan history up until this point was a clear indication that her underlying financial situation didn't seem to be improving;*
- Miss M took some loans on the same day previous ones were repaid. For example, loans 3 and 7 were taken out after repayment of loans 2 and 3 respectively. So, LAH ought to have realised it was more likely than not Miss M, on these occasions, was having to borrow further to cover the hole the repayment of her previous loans had left in her finances and that this was indicative of her indebtedness not being sustainable.*
- The loan amounts were broadly similar ranging between £200 and £600. I think it's most likely this consistent pattern of borrowing over the period showed that Miss M didn't just have a short-term cash-flow problem but was probably supporting regular living expenses or other financial commitments;*
- Miss M's lending history was prolonged with loans being taken out throughout 2008 and into 2009 and 2010. And shortly after two loans (taken out in 2010) had been repaid considerably late (in 2013), loan 22 was lent shortly afterwards. The amount of time that Miss M spent indebted to LAH meant that she was in effect servicing a debt to LAH over an extended period.*

I think that Miss M lost out when LAH provided loans 7 to 22:

- these loans had the effect of unfairly prolonging Miss M's indebtedness by allowing her to take expensive credit over an extended period and;*
- the sheer number of loans was likely to have had negative implications on Miss M's credit file and kept her in the market for these types of loans.*

So, I'm intending to uphold Miss M's complaint about her borrowing from loan 7 to loan 22. And I've set out what LAH should do to put things right as detailed below.

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.

Both LAH and Miss M accepted the findings I reached in the provisional decision and neither party had anything further that it wanted to add.

So, I see no reason to depart from the findings that I reached in the provisional decision. So I still think LAH was wrong to have provided Miss M with loans 7 – 22.

Putting things right

In line with what LAH has agreed to do to put things right:

- refund all interest and charges Miss M paid on loans 7 to 22;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement*;
- remove loans 7 to 22 from Miss M's credit file entirely, this is because the period of time Miss M owed LAH money means that any information still recorded about these loans is adverse.

*HM Revenue & Customs requires LAH to take off tax from this interest. It must give Miss M a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above and in my provisional decision I partly uphold Miss M's complaint.

S.D. Taylor Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 27 November 2020.

Robert Walker
Ombudsman