final decision	
complaint by:	Miss H
complaint about:	Lender A
complaint reference:	
date of decision:	14 August 2018

complaint

Miss H has complained about a series of payday loans she took out with Lender A. She says she was in financial difficulties at the time and that Lender A should've done more checks before lending.

Miss H says "a proper credit check" would've shown that she couldn't afford to repay the loans because she was on benefits, wasn't working, and had outstanding county court judgments (CCJs) against her. Miss H says that she's needed to keep re-borrowing on the same day as repaying previous loans and has been "trapped in a cycle" as a result.

background

I attach my provisional decision of 16 July 2018, which forms part of this final decision and should be read in conjunction with it. In my provisional decision I explained why I intended to partially uphold Miss H's complaint. I invited both parties to provide any further comments they may have had, by 16 August 2018, before I reached a final decision.

Lender A responded to confirm it agreed with my provisional decision and it had nothing further to add. Miss H's representative also confirmed it agreed with my provisional decision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm pleased to see that Lender A has accepted my provisional decision. And as Miss H's representative hasn't provided any further arguments either, I see no reason to alter the conclusions I reached in my provisional decision of 16 July 2018.

my final decision

For the reasons set out above and in my provisional decision of 16 July 2018, I'm partially upholding Miss H's complaint. Lender A should redress Miss H in the way set out in my provisional decision of 16 July 2018.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss H to accept or reject my decision before 14 September 2018.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss H has complained about a series of payday loans she took out with Lender A. She says she was in financial difficulties at the time and that Lender A should've done more checks before lending. Miss H says "a proper credit check" would've shown that she couldn't afford to repay the loans because she was on benefits, wasn't working, and had outstanding county court judgments (CCJs) against her. Miss H says that she's needed to keep re-borrowing on the same day as repaying previous loans and has been "trapped in a cycle" as a result.

In her complaint, Miss H has indicated that she started borrowing from Lender A in 2010. But based on the lending history information provided by Lender A, it seems that Miss H's first loan was in December 2011. Lender A's records show that the lending then continued until September 2014 without any significant gaps.

Based on Lender A's customer account summary, it looks like Lender A gave Miss H 119 loans over this period. And on 16 occasions, Miss H increased the loan amounts after the initial funds had been provided. These additional advances are commonly known as "top-ups". So, in total, Miss H's complaint involves 135 separate lending decisions made by Lender A.

In its response to this provisional decision, I ask Lender A to confirm that there is no other lending to Miss H other than what I have set out here. I also ask Miss H and her representatives to confirm that they agree with this summary of the lending history – or to provide evidence of other lending.

background

In its response to Miss H's complaint, Lender A did not agree that its checks were inadequate. It says that, when Miss H applied for her loans, it assessed whether she could afford each loan using a range of information, including credit reference agency checks, personal data and any previous repayment history. Lender A says that it "approved Miss H's loans based on such an assessment".

Our adjudicators looked at Miss H's complaint and eventually concluded that some of Miss H's loans shouldn't have been given to her. Lender A agreed with our assessment. But Miss H's CMC disagreed with our adjudicator and asked for an ombudsman to review the case. As a result, the complaint has been referred to me for a decision.

In reaching my decision, I have taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

the legal and regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

Lender A gave Miss H her first 97 loans and 8 top-ups in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> *(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
>
> > *(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
> >
> > *(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
> >
> > *(c) practices and procedures that the applicant proposes to implement in connection with any such business;*
> >
> > *(d) evidence of the kind mentioned in subsection (2A)*
>
> (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
>
> > *(a) committed any offence involving fraud or other dishonesty or violence;*
> >
> > *(b) contravened any provision made by or under—*
> >
> > *(i) this Act;*
> >
> > *(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
> >
> > *(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
> >
> > *(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
> >
> > *(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*
> >
> > ***(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)*** *[my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and 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*** *[my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Miss H's case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*

treat borrowers fairly and with forbearance if they experience difficulties

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, 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 and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
    - *the borrower's financial situation at the time the credit is sought;*
    - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
    - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of “specific irresponsible lending practices” relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender’s treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower’s repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a “deceptive and/or unfair practice” where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

The purpose of payday loans is 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.

Section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an “Assessment of creditworthiness” was set out in section 55B of the Consumer Credit Act.

It’s important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor’s creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.".

By the time of loan 98 and for all of Miss H's subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

<u>*regulation by the Financial Conduct Authority (from 1 April 2014)*</u>

Lender A gave Miss H loans 98 to 119, plus the final 8 top-ups, after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. Lender A initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a high-cost short-term credit provider. Lender A's interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to providers of consumer credit like Lender A. CONC also replaced the requirements set out in Section 55B CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

*[**Note**: paragraph 4.1 of ILG]*

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

*[**Note**: paragraph 4.3 of ILG]*

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

*[**Note**: paragraph 4.2 of ILG]*

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

*[**Note**: paragraph 4.31 of ILG]*

CONC 6.7 sets out a firm's obligations in relation to its post contract business practices. CONC 6.7.21G, CONC 6.7.22G and CONC 6.7.23R contained specific obligations for high-cost short-term credit providers like Lender A.

CONC 6.7.21G says:

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

*[**Note**: paragraph 6.25 of ILG]*

CONC 6.7.22G says:

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

*[**Note**: paragraph 6.25 (box) of ILG]*

Section 6.25 of the ILG is set out on pages four and five of this decision and is concerned with what the OFT referred to as 'deceptive and/or unfair practices'.

CONC 6.7.23R (which applied from 1 July 2014) says:

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

CONC 6.7.17R defines refinancing and says:

(1) In CONC 6.7.18 R to CONC 6.7.23 R "refinance" means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:

(a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;

(b) exercising a contractual power contained in an existing regulated credit agreement; or

(c) other means, for example, granting an indulgence or waiver to the customer.

(2) "Exercise forbearance" means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:

(a) there is no charge in connection with the refinancing; or

(b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.

(3) *The term “refinance” within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.*

<u>Section 140 of the Consumer Credit Act 1974</u>

All of Miss H’s loans were given to her after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

(1) *The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-*

(a) *any of the terms of the agreement or of any related agreement;*

(b) *the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*

(c) *any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*

(2) *In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*

(3) *For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*

(4) *A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*

(5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) *An order under this section in connection with a credit agreement may do one or more of the following—*

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.

the law

I've also taken account of the Consumer Credit Act (including the provisions I haven't set out above), and other relevant legislation, including the law relating to negligence, misrepresentation and contract; as well as the law relating to causation and remoteness.

other relevant publications and good industry practice

The ILG and CONC set out the regulatory framework that regulated/authorised consumer credit providers have to adhere to. But they represent a minimum standard for firms. And as I've explained, I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

the OFT's Payday Lending Compliance Review Final Report

The OFT published its "Payday Lending Compliance Review Final Report" in March 2013, by which time Lender A had already lent to Miss H on at least 43 separate occasions and would go on to lend at least another 87 times.

The purpose of the review was "…to establish the extent to which payday lenders [were] complying with the Consumer Credit Act, other legislation and [were] meeting the standards set out in the ILG."

The review sought to highlight examples of what the OFT considered poor practice and evidence of non-compliance with the relevant law and failure to meet the minimum standards expected. The analysis was also put together to help the FCA's work on payday lending ahead of it assuming responsibility for regulating the sector from April 2014.

The report began with an overview section setting out the OFT's concerns. Page two of the report says that the OFT:

…is particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can't repay are encouraged to extend them, exacerbating their financial difficulties This is causing real misery and hardship for a significant number of payday users

Page three of the report says:

Our evidence paints a concerning picture of the payday lending market. It appears that irresponsible lending is not a problem confined to a few rogue traders, but it has its roots in the way competition works in this market. The evidence suggests that many consumers are in a weak bargaining position, and that firms compete on speed of approval rather than price

It then goes on to say:

Additionally, firms describe and market their product to consumers as one-off short term loans (costing on average £25 per £100 borrowed for 30 days), but in practice around half the revenue comes from loans which last longer and cost a lot more because they are rolled over or refinanced. Lenders do not need to compete hard for this source of revenue because by this time they have a captive market. This, and the misuse of continuous payment authorities to reclaim monies owed, may distort incentives for lenders, encouraging them to make loans to people who cannot afford to repay them first time.

<u>*the Consumer Finance Association Lending Code for Small Cash Advances*</u>

The principal trade association representing the interests of short-term lending businesses operating in the United Kingdom is the Consumer Finance Association ("CFA"). The CFA published its Lending Code for Small Cash Advances ("the code") in July 2012.

I accept that Lender A wasn't a member of the CFA. But as the code was published by the main trade association representing short-term lenders, I consider it to be indicative of the standards of good industry practice expected of lenders such as Lender A at the time.

What's more, most of the relevant parts of this code went on to be included in the 'Good Practice Customer Charter Payday and Short-term Loans' which members of all the relevant trade associations signed up to just four months later, in November 2012. The Finance and Leasing Association (FLA) was a signatory to this charter at its launch. Lender A was a member of the FLA at that time and, according to the FLA website, remains a member today.

Section 1 of the code sets out its purpose. Section 1b says:

Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online

Section 1c says:

This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months).

The loan is not designed for longer term borrowing, but to improve short term personal cash flow

And Section 1d says:

The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in the Code, and accordingly protects and benefit consumers

Section 3 sets out the general obligations expected of lenders. Amongst other things Section 3 says members shall:

> *b) trade honestly, responsibly and treat customers with respect.*
>
> *l) ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.*

Section 4 of the code sets out a lender's specific lending obligations. Part (a) of this section is concerned with advertising and marketing and amongst other things, it says:

> *iii) members shall ensure all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.*

Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

> *v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining…:*

- *that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.*

information on Lender A's website

In addition to the relevant considerations set out above, I also note that in December 2011 (around the time when Miss H first applied for a Lender A loan), the *How Lender A works* area of its website had a section entitled "Short-term credit". And it included the following statement (date stamped 6 December 2011):

*We don't want to keep you in debt. That may sound funny coming from any lender, but Lender A provides **short term loans** for a few days or weeks. We'll only lend you money for up to a month and you are always free to make an early repayment and save money, with no hidden fees. Unlike some lenders, we won't keep rolling your balance endlessly or encourage you to make minimum repayments.*

And, at around the same time, under the heading of "Transparency", Lender A's website said:

Our service has a Representative APR of 4214%, but bear in mind that APR is a measure of <u>annual</u> interest and assumes theoretical compounding. A Lender A loan is only for between one day and a month.

In 2012, Lender A had a section on its website entitled *Lender A & APR: the facts*. This section contained the following information:
It is impossible to borrow money from Lender A for a year

We do not offer long term loans and an annual product simply doesn't exist

Even if we were to launch a year-long loan at the same interest rate we charge now, the APR would be much lower than the current figure, more like 360%, because there would be no artificial compounding involved.

my findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Lender A, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay in a sustainable way?
    - If not, would those checks have shown that Miss H would've been able to do so?
- Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Miss H's indebtedness in a way that was unsustainable or otherwise harmful?
- Did Lender A act unfairly or unreasonably in some other way?

If I determine that Lender A did not act fairly and reasonably in its dealings with Miss H and that she has lost out as a result, I will go on to consider what is fair compensation.

In cases such as these, where there are a large number of loans and top-ups to consider, it can be useful to look for 'blocks' or 'chains' of loans. The two biggest gaps in lending are a 36-day gap between loans 2 and 3 and a 29-day gap between loans 97 and 98. I've thought about the length of these gaps and about the points in this lending relationship at which they occurred. But, in the circumstances of this complaint, I don't think either gap is long enough to represent a clean break in lending. And so I intend to look at all of Miss H's loans as one continuous chain.

<u>Did Lender A, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay in a sustainable way?</u>

Regulations in place throughout the period when Lender A was lending to Miss H required it to carry out a reasonable assessment of whether Miss H could afford to repay her loans in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

The affordability checks should’ve been “borrower-focused” – so Lender A had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss H*. In other words, it wasn’t enough for Lender A to think only about the likelihood that it would get its money back without considering the impact of repayment on Miss H herself.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In the light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income); and

- the *greater* the number and frequency of loans, and the *longer* the period of time during which a customer has been given loans (reflecting the risk that ongoing use of these loans may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should’ve be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I’ve thought about all the relevant factors in this case.

Before I look in more detail at whether the checks that Lender A completed for each of Miss H’s loans were proportionate, I have some overall observations about the evidence that Lender A has provided about its checks.

First of all, Lender A has given me the output of “credit bureau data” it collected about Miss H for loans 1 to 86 (there appears to be no credit bureau data for loan 87 onwards). However, in the cover letter provided with its business file, Lender A has said that this information:

> *“remains in the format that we receive it in from the Credit Bureau and is unfortunately very difficult to interpret as it is analysed by our decision engine which makes an automated decision as to whether to lend or not”*

Considering that this is information that Lender A itself has collected and, it says, used to inform its lending decisions, it’s disappointing that Lender A has been unable to tell me what the data reveals about Miss H’s circumstances when she applied for her loans. This service cannot search through dozens of pages of coded information (that Lender A itself describes as “very difficult to interpret”) looking for evidence to support Lender A’s defence of Miss H’s complaint. If Lender A can't describe what the data it has provided shows about Miss H, then I can't put any weight on it.

Lender A also appears to be relying heavily on the "automated decisions" reached by its "decision engine". For the avoidance of doubt, Lender A is responsible for any lending approved by its own systems. Given that Lender A insists that all of Miss H's loans were responsibly lent, it ought to know – and have explained – not only what data its decision engine analysed, but also how it used and interpreted this information to make a responsible lending decision.

Without this explanation from Lender A, I can't take it as read that these automated decisions were fair. Indeed, based on what Lender A has told me about its lending criteria prior to mid-2014, it seems to me that there's a real risk that its systems may have approved Miss H's loan applications even if the information it gathered as part of its checks showed her to be in a difficult financial situation. Again, I invite Lender A to provide more detail on these points in its response to this provisional decision.

- loans 1 and 2

It's important to note that loans one and two were Miss H's first with Lender A. So there cannot have been any established pattern in Miss H's borrowing needs at this stage. And at £81 (loan 1) and £85 (loan 2), the amounts requested by Miss H were relatively small. Together, these factors would indicate that even a less detailed affordability assessment could be proportionate for these loans.

Based on the information it has given to me, it looks like Lender A has asked Miss H for her income and her employment status. Provided the answers to these questions raised no concern, then I think Lender A could reasonably have satisfied itself that the loan was affordable based on these checks.

Lender A hasn't said that Miss H repaid her loans early, so I've assumed that Miss H generally repaid her loans on the day they fell due under the terms of her loan agreements. On this basis, it looks like loans 1 and 2 both had terms of six days. I think this is important.

Even though Miss H was borrowing roughly *weekly*, Lender A has logged her *annual* income as part of its affordability checks. It's not clear what assumptions, if any, Lender A made about how much of that annual income Miss H was likely to receive in the week before her loan was due to be repaid – and this is central to its assessment of affordability. By my calculations, her average weekly income was likely to be around £240.

This would mean that the loan repayment accounted for nearly 40% – a substantial slice – of what Miss H might typically expect to receive in income between the time she was given the loan and the time at which her repayment fell due.

Miss H's answers to Lender A's questions also revealed that she wasn't in work when she applied for her loan – she gives her employment status as "on benefits". I don't think that Miss H being on benefits, on its own, means that Lender A shouldn't have lent to her. But I do think that Lender A ought to have been on notice Miss H was on a fixed income. And, in these circumstances, I think that Lender A ought to have been particularly mindful that Miss H could ill afford to develop a dependency on payday loans or other high-cost credit.

I say this because I think that there was a greatly reduced prospect of a consumer, in Miss H's position, being able to come into increased funds and use them to completely clear a persistent cycle of borrowing – in the way an employed individual might've been able to. For example, as a result of working overtime or maybe getting a bonus.

So I think Lender A's check on Miss H's income should've raised some concerns. And even if these didn't cause Lender A to decline the application outright, it should've prompted it to ask further questions. But Lender A appears simply to have approved the loan straight away.

Lender A has also provided the data it received when it ran a credit bureau check. But, as I said earlier, without any commentary from Lender A about what this data shows, I can't place any reasonable weight, or reliance, on it.

On balance, I think that, even disregarding its credit bureau check and the concerns I have about Miss H's income, Lender A did just about complete reasonable and proportionate affordability assessments for Miss H's first two loans. And the information that Lender A uncovered placed it in a decent position to assess any further loan applications from Miss H in the near future.

- loan 3 onwards

Miss H requested her third loan some 36 days after she settled her second loan. I've thought carefully, given its early position in the loan chain, about whether such a gap could be said to represent a clean break in the lending relationship – as Miss H received a weekly income, she'd arguably gone five income cycles without having to borrow again. And this taken in isolation might've been enough to say that Lender A didn't need to place as much weight on Miss H's previous loans.

But I'm mindful of the particular circumstances of Miss H's case. And, in my view, given that Lender A knew Miss H was on benefits, and she was seeking a higher amount (£101) than in either of her first two loans, I think Lender A's checks for loan three ought to have built its upon what it already knows about Miss H from her earlier borrowing.

This means that, to remain proportionate, Lender A's affordability checks for loan 3 needed to be more thorough than they'd been for loans one and two. For example, I think it would have been reasonable and proportionate for Lender A to have asked Miss H for information about her normal monthly living costs and regular financial commitments. This would have enabled Lender A to assess whether she had enough disposable income (i.e. the money she had left after all of her committed outgoings and reasonable living expenses had been paid) to meet the repayment. Lender A didn't do this.

In fact, there's nothing to suggest that Lender A did any more checks for loan 3 than it did for loans 1 and 2 – notwithstanding the fact that it ought to have been aware of the factors I've already set out above.

So I don't think Lender A completed reasonable or proportionate checks for Miss H on her third loan. I can't see any signs that Lender A's checks got more thorough at any point after loan 3. And so I've also concluded that Lender A did not complete reasonable or proportionate checks on any of Miss H's loans other than the first two. I'd like to explore this more fully.

The following table summarises the affordability checks evidence that Lender A provided throughout Miss H's chain of 119 loans and 16 top-ups. In compiling this table, I have referred particularly to Lender A's document entitled "affordability evidence", though I can see that some of this information is also captured in Lender A's "customer account summary" document. In the final column, I summarise whether I think Lender A's checks were reasonable and proportionate for the loans in question:

	Income data	Employment status	Other info (as per FRL)	Credit bureau data	Verification data	Expenditure information	**Reasonable and proportionate checks?**
Loans 1-2	Yes	Yes	No	No weight	No	No	**Yes**
Loans 3-86	Yes	Yes	No	No weight	No	No	**No**
Loan 87 onwards	No	No	No	No	No weight	No	**No**

According to its "affordability evidence" document, Lender A continues to have recorded Miss H's income as being £12,000 per year and her employment status as being "on benefits" until loan 86 in January 2014. (Given that this information remained identical throughout over 2 years of borrowing, it's unclear whether Lender A carried forward this information from one loan to the next or whether Miss H continued to re-enter the same answers for each loan application).

And beyond loan 86, the income and employment status data no longer appears to have been captured as part of Lender A's affordability checks – which could indicate that the checks became less thorough from this point. At no point does Lender A appear to have gathered (much less used) the other personal data (such as marital status, dependents, homeowner / car owner status) that it told Miss H formed part of its checks for each loan. I say more about this under the next heading.

Loan 86 is also the last time Lender A appears to have "credit bureau data" logged.

From loan 87 onwards, Lender A has provided information that it has labelled "verification data". This data appears to be the only information that formed part of Lender A's affordability assessment from this point. The data looks different to the credit bureau data – results are no longer numeric values. Instead they show simply as "passed" or "failed" (and there are instances where some of these checks are marked as "failed"). Again, Lender A has provided no narrative about what this information told it about Miss H or how it has used it to check that her loans were affordable, so I have placed no weight on it in reaching my findings in this provisional decision.

From loan 87 onwards, Lender A's affordability data also has a heading entitled "expenditure data". However, there is no information contained under this heading in any of Miss H's loans. I can't say whether Lender A didn't collect this information or whether Miss H didn't provide the information when asked. Either way, it seems that it wasn't part of Lender A's affordability assessment for any of Miss H's loans.

Taking all of this into account, therefore, I don't think that Lender A's checks were reasonable and proportionate beyond loan 2.

<u>*would proportionate checks on loans 3 to 119 have indicated to Lender A that Miss H would have been unable to repay her loans in a sustainable manner?*</u>

- loans 3 to 7

I've already explained that I think a proportionate check for loan 3 would've involved finding out – for example – about Miss H's normal monthly outgoings and regular financial commitments.

Miss H's representative has compiled its own breakdown of Miss H's income and expenditure. But I don't think that this paints an accurate picture of Miss H's financial situation. It appears to include her *weekly* benefits income alongside items of expenditure which look like they are *monthly* (for example it has included an outgoing of £96 for council tax and £40 for phone and internet). And I think any affordability calculation made on this basis could prove misleading.

By comparing income received over a short period of time with expenditure incurred over a longer period of time, this analysis gives an overly negative impression of Miss H's finances and therefore her ability to repay her loans. The analysis suggests that – before any payday lending is included – Miss H was already living with a weekly shortfall of £81. As a result of the flaws in this analysis, I can't place much weight, if any at all, on it.

As Lender A didn't carry out proportionate checks for these loans and I can't place much weight on the submissions made by Miss H's representative, I can't say for sure what proportionate checks would most likely have shown. So I need to decide whether it is more likely than not that a reasonable and proportionate affordability check would've told Lender A that it was unfair to offer these loans to Miss H.

To help us understand for ourselves what Lender A would more likely than not have discovered if it had completed reasonable and proportionate checks on Miss H's loans, we asked her representative to provide us with a number of bank statements. But the only bank statements from before loan three (February 2012) cover 5 to 14 December 2011. This period is too short to give a full picture of Miss H's position – for example, there are no outgoings at all relating to council tax or phone / internet. It does show a weekly income of around £260 in benefits, which isn't too far off from what I think Lender A was working from with its £12,000 annual income measure.

And the next statements provided are from April 2013 – some 14 months *after* Miss H took loan 3, and by which time she had already taken her 50th loan. These statements are too remote from loan 3 for me to fairly and reasonably draw meaningful conclusions about Miss H's financial position in February 2012.

On balance, Miss H and her representatives haven't provided enough evidence to enable me to recreate the information that Lender A would've seen, if it had done proportionate checks. And so while I have concerns about the proportion of Miss H's weekly income that was going towards repaying these loans as and when they fell due, I don't have enough to make the finding that proportionate checks would more likely than not have shown Lender A these loans were unaffordable.

The same is also true of all of Miss H's loans up until I have further bank statements in April 2013. But I don't think it's necessary for me to recreate the results of individual, proportionate affordability checks in order to conclude that Lender A did something wrong. And so I haven't attempted to do this beyond loan 7.

<u>*Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Miss H's indebtedness in a way that was unsustainable or otherwise harmful?*</u>

In addition to assessing the affordability of each *individual* loan provided to Miss H by Lender A, I also think it's fair and reasonable to look at the *overall pattern* of lending. I'm mindful here of the short-term purpose of this type of credit and of the relevant rules, guidance and good industry practice at the time – as summarised in the earlier part of this decision.

It seems to me that there may come a point at which a responsible lender would reasonably question whether continuing to offer further short-term loans to a customer who appears to be persistently reliant upon them was unsustainable or otherwise harmful.

I've already concluded that, although proportionate affordability checks weren't completed from loan 3 onwards, based on the limited evidence on file, I can't say that proportionate checks would've shown particular loans to be *individually* unaffordable. But that doesn't mean that the pattern of lending overall was sustainable.

I've thought about the first few loans taken by Miss H to try to identify whether and when there are indications that the lending had become (or was becoming unsustainable).

Examples of the kind of indicators that I think are particularly important here include:

- the number of times that Lender A had lent to Miss H in total
- the time period over which it had provided those loans
- the amounts that Lender A was lending to Miss H, including any general trends
- the time between Miss H repaying one loan and Lender A providing the next

As I've already noted, I have no reason to think that Miss H's borrowing prior to loan 3 was unsustainable. She had only taken two loans for relatively modest amounts over a relatively short period of time. And loan three was taken some five weeks after Miss H had paid off her second loan. Because Miss H received her benefits weekly at that time, this represents five 'income cycles' without a loan.

Miss H then manages a further three income cycles without re-borrowing between repaying loan 3 (£100) and being given loan 4. Loan 4 was also for a similar amount to loan 3. Although loan 5 was taken very shortly (just two days) after loan 4 was repaid, it was for £60 – representing a reduction in the amount borrowed of nearly half.

Therefore, in spite of some early warning signs – such as uncovering that Miss H was reliant solely on state benefits and the number of loans continuing to grow in a relatively short period – I can't say that Lender A had enough information to conclude that its lending had more likely than not become unsustainable by loan 5.

Even so, I think Lender A ought to have recognised that the emerging pattern of Miss H's borrowing and the corresponding *risk* of unsustainable lending that had emerged by this point. And when Miss H sought loan 6 (her highest so far at £111) just two days after repaying loan 5, I think that emerging risk was becoming more established.

The factors at play when Miss H applied for loan 7 are mixed. At £68, it was for considerably less than loan 6 (£111), which might have been a sign that Miss H was becoming less reliant on Lender A's loans. On the other hand, these funds were taken just three days after she'd repaid loan 6. So the healthier gaps in borrowing that occurred between loans 2 and 3 and between loans 3 and 4 are no longer evident between loans 4 and 5, 5 and 6 or 6 and 7. This should have been a warning sign to Lender A.

Miss H's application for loan 8 was made the very next day after she had repaid loan 7. This was the fourth time in a row that she'd needed to re-borrow without a substantial gap. And it was the eighth loan she had applied for in less than four months. What's more, at £120, this loan was – again for nearly double the amount of loan 7 (and around 50% more than the amount she'd first borrowed from Lender A three and a half months earlier).

So I think that by loan 8, Lender A ought fairly and reasonably to have regarded what up until that point had been an emerging pattern – of Miss H persistently taking out new loans because she wasn't completely freeing herself from the effect of settling previous ones – as being established. And by this point, I think that Lender A ought fairly and reasonably to have realised that giving Miss H further loans, in these circumstances, would more likely than not unfairly perpetuate what was unsustainable cycle of debt for her.

This taken together with the fact that Lender A knew Miss H was reliant on benefits – which means she had little prospect of increasing her income and breaking out of this persistent and expensive cycle of borrowing – I think it acted unfairly in providing loans 8 to 119 (and associated top-ups) to Miss H.

What's more, I also think that Lender A itself was aware of the unfairness of continuing to lend to borrowers who were proving unable to sustainably repay their loans. That's why it promised on its own website that "*unlike some lenders we won't keep rolling your balance endlessly*" (see page 15).

With this statement, Lender A showed that it knew excessive re-lending for prolonged periods was not fair to borrowers like Miss H – and it made a commitment not to do this itself. So I now find it very hard to see why Lender A went on to lend to Miss H on a total of 135 occasions across 33 months – or why it maintains that this was fair.

So given all of Lender A's obligations, the short-term purpose of this kind of high-cost credit, and what I think is fair and reasonable taking into account the circumstances and everything I've covered in this section, I think that Lender A acted unfairly in providing Miss H with loans 8 to 119 (and all associated top-ups).

Did Miss H lose out as a result of Lender A's shortcomings in relation to loans 8 to 119?

I think that Miss H did suffer adverse consequences as a result of Lender A unfairly giving her loans 8 to 119 (and the associated top-ups). I think this is the case for two key reasons.

Firstly, these loans had the effect of unfairly prolonging Miss H's indebtedness to Lender A by allowing her to take expensive credit – which the rules and guidance made clear was only intended for short-term use – over an extended period of time.

These loans were very expensive. For regular and prolonged access to a significant proportion of her weekly income (an average of £94), Miss H paid many multiples in interest, fees and charges. And I think that the overall cost of these loans unfairly prolonged what was an adverse and precarious financial position for Miss H.

Secondly, the sheer number of loans and top-ups involved (even those successfully repaid by refinancing) is likely to have had implications for Miss H's ability to access mainstream credit. The greater the presence of short-term loans on Miss H's credit file the less likely Miss H was able to rehabilitate her finances and regain access to mainstream credit.

In my view, Lender A giving Miss H such a large number of loans (which it shouldn't have done) over such an extended period of time, unfairly placed her in a position where she was trapped into taking very expensive high-cost loans over an extended period as no-one else would lend to her. I think that, in these circumstances, Miss H had little choice other than to keep turning to Lender A for further loans, because it (as well other similar providers) was the only one prepared to lend to her bearing in mind everything that had gone on previously.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I'm intending to say that Miss H lost out because Lender A unfairly gave her loans 8 to 199, which it ought to have realised were unsustainable and harmful for her. And this means I'm intending to tell Lender A that it needs to put things right.

fair compensation – what I'm intending to say that Lender A needs to do to put things right for Miss H

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Lender A putting Miss H in the position she'd now be in if she hadn't been given the loans I'm upholding.

But when it comes to complaints about irresponsible lending this isn't straightforward. Miss H *was* given the loans in question and she used the funds – albeit in reality what she's effectively done is repaid previous loans with the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss H back in the position she would be in if she hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Lender A to put things right in the following way.

interest and charges on the loans Miss H shouldn't have been given

As I've explained throughout this decision, Lender A continually lending to Miss H left her in a position where she wasn't able to properly settle her debt. This was because Miss H kept having to find additional funds to pay the (increasing) interest and charges on her Lender A loans. And then she had to borrow again from Lender A to either repay others or cover the hole in her finances and she incurred more interest and charges when she did this. So to start with, I think that Lender A should refund the interest and charges Miss H paid on loans 8 to 119.

I'm also mindful that Miss H lost the use of the funds she used to pay the interest and charges, I now think that Lender A needs to refund to her. As Miss H lost the use of these funds, I think that she should be compensated for this. We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So Lender A should pay Miss H 8% per year simple interest on the interest and charges she paid from the date those charges were paid to the date it settles Miss H's complaint.

Miss H's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

But I'm upholding Miss H's complaint about loans 8 to 119 because I think the overall pattern of lending increased Miss H's indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of Lender A having given Miss H so many loans. Firstly it caused her to pay an excessive amount of interest and charges. And I've already explained how Miss H should be compensated for this.

I also explained that the sheer number of loans and top-ups involved is likely to have had implications for Miss H's ability to access mainstream credit. The greater the presence of short-term loans on Miss H's credit file the less likely Miss H was able to rehabilitate her finances and regain access to mainstream credit. And I think my direction in relation to Miss H's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Miss H's credit history and creditworthiness so that a lender can make an informed decision on whether lend to her, I think that the mere presence of this many loans on Miss H's credit file, in itself, constitutes adverse information. And I think that this many short term loans appearing on Miss H's credit file is likely to continue unfairly adversely affecting Miss H going forwards. In these circumstances, I think that it is fair and reasonable for Lender A to remove all reference to loans 8 to 119 from Miss H's credit file, as the number of loans in itself is adverse information.

All of this means that I think it would be fair and reasonable in all the circumstances of Miss H's complaint for Lender A to put things right in the following way:

- refund all the interest, fees and charges for loans 8 to 119 (and the associated top-ups); and

- add interest at 8% per year simple on the above interest and charges from the date they were paid by Miss H to the date of settlement†;

- remove all reference to loans 8 to 119 from Miss H's credit file.

† HM Revenue & Customs requires Lender A to take off tax from this interest. Lender A must give Miss H a certificate showing how much tax it's taken off if she asks for one.

requests for further submissions

Throughout this provisional decision, I've invited the parties involved on both sides of this complaint to submit further evidence, arguments, and/or comments about various aspects of the case. This includes information about what happened at the point Miss H applied for her loans and what has happened since she raised her complaint.

I'd like to remind all parties, firstly, of the value of these further submissions in ensuring that a fair outcome is reached. And secondly, it's important to reiterate that what I receive in response to this provisional decision could alter my findings.

my provisional decision

For the reasons given above, I am intending to uphold Miss H's complaint about Lender A and say it should pay Miss H compensation as set out above.

So unless the comments and evidence I get by 16 August 2018 changes my mind, that's what I'll tell Lender A to do in my final decision.

Jeshen Narayanan
ombudsman

appendix to provisional decision – 1: Miss H's loan history (grey loans currently upheld)

Loan number	Application Date	Date loan closed	Loan Amount (incl any top-ups)	Top Ups Requested
1	24/12/2011	30/12/2011	£81	
2	05/01/2012	11/01/2012	£85	
3	16/02/2012	22/02/2012	£101	
4	15/03/2012	21/03/2012	£100	
5	23/03/2012	28/03/2012	£60	
6	30/03/2012	04/04/2012	£111	
7	07/04/2012	11/04/2012	£68	
8	12/04/2012	20/04/2012	£120	
9	27/04/2012	04/05/2012	£111	
10	10/05/2012	18/05/2012	£102	
11	25/05/2012	30/05/2012	£86	
12	07/06/2012	13/06/2012	£91	
13	17/06/2012	27/06/2012	£80	
14	30/06/2012	11/07/2012	£110	
15	19/07/2012	27/07/2012	£90	
16	17/08/2012	24/08/2012	£50	
17	31/08/2012	07/09/2012	£110	
18	09/09/2012	12/09/2012	£40	
19	14/09/2012	21/09/2012	£85	
20	23/09/2012	26/09/2012	£85	
21	26/09/2012	05/10/2012	£120	
22	08/10/2012	10/10/2012	£30	
23	12/10/2012	19/10/2012	£140	
24	21/10/2012	24/10/2012	£90	
25	25/10/2012	02/11/2012	£150	
26	04/11/2012	07/11/2012	£40	
27	09/11/2012	14/11/2012	£80	
28	18/11/2012	21/11/2012	£80	
29	23/11/2012	28/11/2012	£95	
30	28/11/2012	30/11/2012	£40	
31	02/12/2012	05/12/2012	£70	
32	06/12/2012	12/12/2012	£80	
33	21/12/2012	28/12/2012	£210	
34	29/12/2012	31/12/2012	£40	

35	07/01/2013	09/01/2013	£40	
36	13/01/2013	16/01/2013	£40	
37	18/01/2013	25/01/2013	£120	
38	27/01/2013	30/01/2013	£70	
39	02/02/2013	06/02/2013	£70	
40	10/02/2013	13/02/2013	£40	
41	14/02/2013	22/02/2013	£140	
42	24/02/2013	27/02/2013	£70	
43	28/02/2013	06/03/2013	£125	
44	06/03/2013	08/03/2013	£41	
45	15/03/2013	20/03/2013	£145	
46	20/03/2013	22/03/2013	£90	
47	25/03/2013	27/03/2013	£53	
48	28/03/2013	03/04/2013	£135	
49	03/04/2013	05/04/2013	£70	
50	09/04/2013	10/04/2013	£46	
51	15/04/2013	19/04/2013	£70	
52	06/05/2013	08/05/2013	£100	
53	25/05/2013	29/05/2013	£110	
54	30/05/2013	31/05/2013	£40	
55	02/06/2013	05/06/2013	£70	
56	07/06/2013	12/06/2013	£140	
57	12/06/2013	14/06/2013	£90	
58	15/06/2013	19/06/2013	£100	
59	20/06/2013	26/06/2013	£120	
60	30/06/2013	03/07/2013	£50	
61	05/07/2013	10/07/2013	£140	
62	22/07/2013	24/07/2013	£100	
63	04/08/2013	07/08/2013	£72	
64	19/08/2013	21/08/2013	£40	
65	31/08/2013	04/09/2013	£70	
66	05/09/2013	06/09/2013	£40	
67	08/09/2013	11/09/2013	£60	
68	15/09/2013	18/09/2013	£80	
69	28/09/2013	02/10/2013	£125	
70	03/10/2013	04/10/2013	£50	
71	06/10/2013	09/10/2013	£66	
72	14/10/2013	15/10/2013	£50	
73	25/10/2013	30/10/2013	£50	
74	03/11/2013	06/11/2013	£40	

75	08/11/2013	13/11/2013	£100	
76	17/11/2013	20/11/2013	£60	
77	21/11/2013	27/11/2013	£140	
78	27/11/2013	29/11/2013	£60	
79	01/12/2013	04/12/2013	£70	
80	05/12/2013	11/12/2013	£60	
81	11/12/2013	13/12/2013	£50	
82	15/12/2013	18/12/2013	£70	
83	20/12/2013	24/12/2013	£120	
84	24/12/2013	27/12/2013	£150	
85	13/01/2014	15/01/2014	£90	
86	17/01/2014	24/01/2014	£200	
87	27/01/2014	29/01/2014	£40	
88	30/01/2014	05/02/2014	£150	
89	05/02/2014	07/02/2014	£80	
90	09/02/2014	12/02/2014	£70	
91	16/02/2014	19/02/2014	£110	
92	20/02/2014	21/02/2014	£40	
93	23/02/2014	26/02/2014	£60	
94	27/02/2014	07/03/2014	£172	4
95	08/03/2014	12/03/2014	£120	2
96	12/03/2014	21/03/2014	£220	2
97	21/03/2014	28/03/2014	£200	
98	26/04/2014	30/04/2014	£86	
99	19/05/2014	21/05/2014	£31	
100	23/05/2014	30/05/2014	£187	3
101	31/05/2014	04/06/2014	£70	
102	05/06/2014	13/06/2014	£216	1
103	15/06/2014	18/06/2014	£121	1
104	19/06/2014	25/06/2014	£193	1
105	25/06/2014	27/06/2014	£70	
106	29/06/2014	02/07/2014	£70	
107	03/07/2014	09/07/2014	£130	
108	09/07/2014	11/07/2014	£90	
109	12/07/2014	16/07/2014	£121	1
110	17/07/2014	25/07/2014	£220	
111	26/07/2014	30/07/2014	£77	
112	31/07/2014	08/08/2014	£198	1
113	25/08/2014	27/08/2014	£100	
114	30/08/2014	05/09/2014	£90	

115	07/09/2014	10/09/2014	£80	
116	14/09/2014	17/09/2014	£80	
117	17/09/2014	19/09/2014	£80	
118	22/09/2014	24/09/2014	£97	
119	27/09/2014	--	£200	