DRN-4388815

The complaint

Mrs S complains Mutual Clothing Supply Company Limited trading as Mutual ("Mutual") gave her loans while at the same time lending to her husband and having other loans outstanding from other providers. These loans weren't affordable for her.

What happened

Mrs S took three loans from Mutual and I've outlined a summary of her borrowing below.

loan number	loan amount	agreement date	repayment date	term (weeks)	weekly repayment per loan
1	£500.00	03/03/2018	31/01/2019	51	£13.72
2	£1,200.00	11/08/2018	outstanding	102	£18.23
3	£1,000.00	27/03/2019	outstanding	102	£15.19

Following Mrs S's complaint, Mutual issued its final response letter (FRL) in October 2022. Mutual didn't uphold the complaint about loan one. But it did agree that loans two and three ought to not have been granted and it made an offer to settle the complaint.

Mrs S didn't agree with the proposed outcome and instead referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who explained he wouldn't consider loans two and three because Mutual had already upheld her complaint about them. And in relation to loan one, given the loan amount, term and what it knew about Mrs S and her husband it ought to have verified her financial situation. But as the adjudicator didn't have bank statements, he couldn't say what Mutual may have seen.

Mrs S responded, to say she doesn't have a bank account, but instead she shares one with her husband, but the account is not in joint names. She also explained that there had been some form of lending relationship with Mutual since 2013 – through her husband. And at the time the loan was approved, she was in receipt of benefits.

The adjudicator let Mrs S know that the bank statements provided didn't change his mind about the outcome of the complaint and in response Mrs S said:

- At the time the loan was advanced, the household income was less than £500 per month and when loan one was approved, there was a negative balance each month.
- At the time this loan was approved, Mrs S's husband already had two outstanding Mutual loans – which have already been upheld by the Financial Ombudsman.
- Mrs S was only given this loan because her husband had been told he couldn't take any further loans.

As no agreement could be reached the complaint was passed to me. I issued my provisional decision explaining the reasons why I was intending to uphold Mrs S's complaint in full.

Both parties were asked to respond to the provisional decision as soon as possible, but in any event no later than 16 October 2023.

Both Mrs S and Mutual let us know they accepted the provisional decision and neither of them had anything further to add.

Although the deadline for a response to the provisional decision hasn't yet passed, as both parties have accepted the findings I see no reason to wait in order to issue the final decision.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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

We've set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Mutual had to assess the lending to check if Mrs S could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Mutual's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mrs S's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Mutual should have done more to establish that any lending was sustainable for Mrs S. These factors include:

- *Mrs S having a low income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- *The amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- *Mrs S having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);*
- *Mrs S coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).*

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

Mutual was required to establish whether Mrs S could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Mrs S was able to repay her loans sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mrs S's complaint.

Loan 1

For this loan, Mrs S explained that she was in receipt of benefits – and according to the application form, this is broken down to around £90 per week.

On top of this, Mutual has recorded weekly outgoings of £200. Now clearly, this couldn't all have been paid by Mrs S because that is more than twice her declared income. However, as part of the application it took details of her husband's work and income, and this has been recorded as £400 per week.

Mutual must have expected, that the majority of the weekly expenditure would be paid by Mrs S's husband given, he earned more, and the expenditure was more than Mrs S's income. However, and what hasn't been recorded, is how much of Mrs S's income did Mutual expect to be used to cover regular expenditure. Mutual hasn't discovered as far as I can see whether, for example, none of Mrs S's income went towards the expenditure or 50% or all of it. At the very least I think there needed to be some understanding of this, perhaps Mutual's agent did make enquires with regards to this, but if so, it hasn't been provided.

I would add, that as a household the loan looked affordable but I do have concerns about this because it relied on Mrs S's husband to contribute towards the expenditure and it had no idea of what his expenditure was – such as other credit commitments. So, I don't think it was correct, for Mutual to just have assumed that Mrs S may be able to access some of her husband's income in order to potentially either make the loan affordable and or cover her living costs.

In addition to this, I have also thought about the fact that Mrs S's husband had a lending relationship with Mutual for a number of years – since 2013. So, while this was Mrs S's first loan, the agent who provided this loan was the same one who had provided loans to her husband, so in that sense this wasn't a new relationship. And Mrs S wasn't a new customer in the traditional sense.

When Mrs S's loan was advanced her husband had two outstanding loans that needed to be paid to Mutual of around £58 per week. And this commitment wasn't noted in the application form in the expenditure section despite the agent being aware of this.

In my view, given that Mutual's agent would've likely been aware of the existing relationship that had already been ongoing for around five years, the fact that Mrs S's husband had outstanding loans – that weren't factored into the weekly expenditure and what I think is fair to say Mrs S's modest income made up of benefits. In my view this should have prompted Mutual to have carried out further checks before granted the loan.

Mutual could've carried out these additional checks, in a number of ways, it could've asked for evidence of her outgoings such as copy bills. It could've asked to see copies of Mrs S's bank statements or any other documentation it felt it needed to obtain in order to satisfy itself that it had carried out more robust checks. This might've helped verify information provided and revealed whether there was any other information which Mutual might've needed to consider about Mrs S's financial position.

However, that isn't the end of the matter. For me to be able to uphold the loan, I have to be satisfied that had Mutual carried out what I consider to be a proportionate check it would've likely discovered that Mrs S couldn't afford her repayments or discovered it that the lending was likely unsustainable for her for some other reason.

Mrs S has explained that she shared a bank account with her husband and didn't have one in her own name and in effect, there was one pot of money that was used to cover all the household expenditure. So, all the income was paid into one account and all the expenditure was paid from the same account. As his was how Mrs S and her husband operated their finances, I've had to consider the statements in light of this.

And Mrs S has provided a copy of her husband's bank statement for February and March 2018 – and so I've looked at these, in order to establish what Mutual may have seen had it made better checks.

In terms of Mrs S's income – this does appear to have been verified by Mutual before the loan was advanced. And in terms of Mrs S's income what it has recorded on the application form appears to be broadly correct.

However, looking at the statement as whole, for the month before this loan was advanced, I can see a monthly benefit payment of £222.60 as well as a weekly payment of another benefit of £62.70. On top of this, I can see tax credits being paid into the account of £146 per week. So, the household income, from benefits appears to have been around £264.35 per week or around just over £1,000 per month.

But the loan could only really be affordable based on Mrs S's husbands' wages, and these have been declared as being £400 per week (as per the application form). Having looked at the bank statements, there are transfers into the account – from what I know to be the business account, but these do not add up to anywhere near as much as £400 per week. At best I can see around £50 per week being moved into the account but even then, I can't be sure that it was a salary.

And we already know that Mrs S's husband had outstanding loans – well at the very least Mutual ought to have known given it appears to have been the same agent that dealt with Mrs S and her husband, the weekly total commitment after loan one was advanced would be £71.56 per week.

So, I do think, at best the household income was £1,200 per month with the majority of this being made up of benefits. The total household commitment to Mutual (or at least the commitments that needed to be made by Mrs S and her husband) amounted to around £286.24 per month.

Given the extended previous loan history with Mutual, and the overall cost (to either Mrs S solely or to the household) in my view, the repayment for loan one represented a significant proportion of both Mrs S's sole income and the combined payment Mrs S and her husband would have to make was also in my view significant.

In these circumstances, there was a significant risk that Mrs S wouldn't have been able to meet her or the households existing commitments without having to borrow again. So, I think it's unlikely Mrs S would've been able to sustainably meet the weekly repayments for this loan.

And this argument holds where I consider Mrs S's situation on her own i.e. a weekly income of £90 with a payment of £13.72 or whether I consider the whole household income and outgoings. The results is the same, I don't think this loan could be sustainable repaid.

I am therefore intending to uphold Mrs S's complaint about loan one.

Loan 2 and 3

Mutual has accepted that these loans ought to not have been provided to Mrs S. And it outlined in the FRL the steps it would take to put things right for her.

And the steps that Mutual has agreed to take to put things right for Mrs S in relation to these two loans, are the proposed redress is exact same ones that the Financial Ombudsman would use if we decided that these loans ought to not have been provided to Mrs S.

As Mutual has accepted these loans ought to not have been provided and has offered compensation to Mrs S there is no need for me to investigate whether these loans were correctly provided. But Mutual, should, if it hasn't already done so, arrange to redress these loans as it has outlined in the final response.

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 Mrs S and Mutual have accepted the findings of the provisional decision. So, I've reached the same conclusions I reached before, for the same reasons and I still don't think Mutual should've approved any of the loans for Mrs S.

I'm therefore upholding her complaint and I've set out below what Mutual needs to do in order to put things right.

Putting things right

In deciding what redress Mutual should fairly pay in this case I've thought about what might have happened had it not lent to Mrs S, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mrs S may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mrs S in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mrs S would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Mutual's liability in this case for what I'm satisfied it has done wrong and should put right.

Mutual shouldn't have given Mrs S any of her loans and I've incorporated in the below redress the offer Mutual made to resolve loans two and three.

If Mutual has sold the outstanding debts it should buy these back if Mutual is able to do so and then take the following steps. If Mutual can't buy the debts back, then Mutual should liaise with the new debt owner to achieve the results outlined below.

A. Mutual should add together the total of the repayments made by Mrs S towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Mutual have already refunded.
B. Mutual should calculate 8% simple interest* on the individual payments made by Mrs S which were considered as part of "A", calculated from the date Mrs S originally made the payments, to the date the complaint is settled.
C. It should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mrs S as though they had been repayments of the principal on all outstanding loans. If this results in Mrs S having made overpayments then Mutual should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Mutual should then refund the amounts calculated in "A" and "B" and move to step "E".

D. If there is still an outstanding balance, then the amounts calculated in “A” and “B” should be used to repay any balance remaining on any outstanding loans. If this results in a surplus, then the surplus should be paid to Mrs S. However, if there is still an outstanding balance then Mutual should try to agree an affordable repayment plan with Mrs S. Mutual shouldn’t pursue outstanding balances made up of principal Mutual have already written-off.
E. Mutual should remove any adverse information recorded on Mrs S’s credit file in relation to loan one. And in line with what Mutual agreed to do in the FRL to put things right for Mrs S, the overall pattern of Mrs S’s borrowing for loans two and three means any information recorded about them is adverse. So, Mutual should remove these loans entirely from Mrs S’s credit file. Mutual does not have to remove loans two and three from Mrs S’s credit file until these have been repaid, but Mutual should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires Mutual to deduct tax from this interest. Mutual should give Mrs S a certificate showing how much tax it has deducted, if she asks for one.

My final decision

For the reasons I’ve explained above and in the provisional decision, I’m upholding Mrs S’s complaint.

Mutual Clothing Supply Company Limited should put things right for Mrs S as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 10 November 2023.

Robert Walker
Ombudsman