

## **complaint**

Mrs J complains about a number of payday loans she took out with WDFC UK Limited (Wonga). She is unhappy that Wonga let her take out the loans as she could not afford them. She believes it was irresponsible to lend the money to her in her circumstances.

## **background**

Between July 2011 and October 2012 Mrs J took out ten new and five top up loans with Wonga. The loans varied in amounts up to £1,000. Although the loans were all repaid Mrs J says this was only possible because she took out further loans with different payday lenders. Mrs J argues that it was not responsible to lend her the money and that it should have been clear to Wonga that she was a 'desperate woman' who was getting 'deeper and deeper into trouble'.

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 18 July 2013. In my provisional decision I explained why I felt Mrs J's complaint should be upheld. I explained that in addition to the loans with Wonga Mrs J had a number of other payday loans with around ten other lenders. I considered what Mrs J had said and provided about her financial position at the time she took out the loans and did not think that the loans were actually affordable to her.

I thought that considering the number of loans that Mrs J took out with Wonga over such a short period it should have alerted Wonga to the fact that Mrs J could have had some financial issues. I considered what Wonga said about the checks it carried out before granting the loans but did not believe these were sufficient. I felt that had Wonga made further enquiries it would have been apparent that Mrs J could not afford to repay the loans.

I explained that I was minded to instruct Wonga to refund what Mrs J had paid to Wonga, with interest, less what she had received in capital sums from the loans. I asked both parties to provide any further submissions before I considered the complaint again.

Mrs J responded to my provisional decision and said that she accepted my conclusions. However, she feels she has been treated abysmally and believes the additional payment of £250 recommended by the adjudicator should also be paid. She also explained that her husband is struggling to obtain finance for a car and she believes this is because of the number of loans that she took out with Wonga. She would like the loans removed from her credit file and believes this is the least it can do as it has caused her a great deal of heart ache and 'financial destruction'.

Wonga responded to my provisional decision to say that it does not agree with or accept my provisional conclusions. In summary, Wonga says it is satisfied it has met with its regulatory requirements and it has not breached a code of practice that refers to its lending requirements. It has again referred to the checks that it carried out before agreeing to lend to Mrs J and is satisfied that Mrs J's credit file did not indicate she was in financial difficulties or that she could not afford the proposed borrowing.

It does not believe my provisional decision is fair, reasonable or accords with the law. It refers to the requirements set out in the Office of Fair Trading's (OFT) *Irresponsible Lending* guide and the Finance and Leasing Association's (FLA) *Lending Code* and explains why it feels that it has complied with them both. It thinks that the reasonable factors used to assess

each application were proportionate to the loans being applied for and its checks formed a sound a proper credit assessment.

It notes that Mrs J had a responsibility to ensure the loans she was applying for were affordable to her and she failed to inform or alert it to any concerns she would have had about the loans being affordable. It says that had Mrs J contacted it at any time to say she was in financial difficulties it would have acted appropriately and worked with her to find a solution.

### **my findings**

I have reconsidered all the available evidence, including Mrs J's and Wonga's further comments to decide what is fair and reasonable in the circumstances of this complaint. Wonga's response to my provisional decision was substantial and although I have only summarised the response above I have carefully considered its response in full.

Wonga has referred to the guidance set out by the OFT and FLA and what is expected of a lender when accepting a loan application. This guidance sets out a number of things that a lender *may* consider when assessing a potential customer's likely ability to repay a loan. The guidance suggests that the lender looks at a combination of factors and Wonga feels that it has complied with this guidance. It is not for this service to stipulate what factors a potential lender must consider when assessing a customer's ability to repay a loan. The overriding requirement of both the OFT and FLA guidance is to ensure the borrowing being applied for is affordable.

Wonga is satisfied with its own process and that based upon what it says it was aware of at the time it feels the loans were affordable. However, Wonga has accepted that the checks it made with the credit reference agency did not allow it to check whether Mrs J had other current payday loans at the time. Wonga also accepts that it did not ask Mrs J anything about her monthly expenditure as it says it requires information that can be independently verified.

Wonga did ask Mrs J what her income was but I see little benefit of recording a potential customer's income without establishing how much of this would actually be available to meet the required loan repayment. I accept that it may not be practical to ask a consumer to provide an extremely detailed breakdown of their income and expenditure when applying for a loan. I also realise that the OFT and FLA guides do not state that income must be assessed against expenditure.

However, I think it would be prudent for a lender to be confident that a borrower did have sufficient disposable income to meet the required repayment when it is due. It could be argued that this is possibly more important when a borrower is required to repay the entire capital and interest in one month, rather than repaying the loan in smaller repayments, as this is likely to have a greater impact on their disposable income. Wonga argues that any assessment should be 'proportionate' and implies that the duration and size of the loan is something that should be considered when assessing affordability. The size or duration of a loan would not alter the fact that a lender must be satisfied the borrowing is actually affordable. Wonga also believes that affordability is evidenced by Mrs J repaying the loans but this appears to have only been achieved by Mrs J taking further borrowing with additional lenders.

I agree that it is reasonable for a lender to consider a customer's previous repayment history when considering a new loan application. Previously repaying a loan is not however, in isolation, clear evidence that a new and possibly greater loan is actually affordable to a customer.

While I note that Wonga says it considered many factors when assessing Mrs J's ability to repay the loans I am still not persuaded that there is sufficient information to show that Wonga could be satisfied the loans were actually affordable.

Mrs J has told us what her income and expenditure was at the time that the first loan was taken out, along with two further statements for other times during her relationship with Wonga. It is clear from the first income and expenditure statement that there was very little disposable income available. It is also clear that there is insufficient disposable income to meet the required £439 that needed to be repaid for the first loan with Wonga.

Wonga has asked that each loan is considered separately and although my provisional decision did not explicitly refer to each time a loan was taken with Wonga, I have however considered Mrs J's circumstances at each time she took out a loan. Having done so, I have not seen sufficient evidence to persuade me that any of the loans were actually affordable to Mrs J. This becomes even more obvious when considering the loans that Mrs J had taken out with other payday lenders. An example of this was referred to in my provisional decision where in August 2011 Mrs J took her third loan with Wonga but had already borrowed £983 from three different payday lenders earlier in that month. In September 2011 Mrs J took out both a top up and new loan with Wonga, as well as borrowing £635 with two other payday lenders that month.

Wonga argues that Mrs J also has a responsibility to ensure the loans she is applying for are affordable and I agree. However, it is Wonga's overriding responsibility to ensure that Mrs J could actually afford to repay the loans. I have considered the circumstances surrounding each loan application and I am satisfied that the loans were not actually affordable and should not have been agreed.

I have reconsidered what redress I think to be appropriate and for essentially the same reasons as explained in my provisional decision, I still think it would be fair and reasonable for Wonga to reimburse the interest payments that Mrs J made. I am satisfied that Mrs J has had some benefit from the capital sums she borrowed and do not think it would be fair to instruct Wonga to refund these amounts. Had Mrs J not taken out the loans she would not have incurred the additional cost of the interest payments on each loan and this is why I think Wonga should now reimburse the costs of the interest charged. Interest should also be applied to the interest being refunded.

Mrs J feels that she should also receive an additional payment of £250 in recognition of the distress and inconvenience that she has been caused. This is something that I had considered before issuing my provisional decision and I have also reconsidered again now. However, while I do not doubt this has been distressing for Mrs J I am satisfied that instructing Wonga to refund the cost of the interest, with additional interest, is a fair and reasonable award in this case.

Finally, Mrs J also feels it would be fair to instruct Wonga to remove the information recorded on her credit file as she says it is causing problems for her husband who is applying for credit. A credit file is intended to reflect the historic borrowing of a consumer and as the information about the Wonga loans is correct I do not think it should be removed. Mrs J also

believes that it is the information about the Wonga loans on her credit file that is affecting her 'credit score'. I am not persuaded however that it is the information about the Wonga loans that is the sole reason for her having the rating or score that she has. There are other entries on the credit file, that I do not need to refer to specifically here, that will have considerable impact on her credit rating and these do not relate to Wonga.

While I appreciate Wonga, and possibly Mrs J, may not be entirely happy with my decision, having carefully considered the submissions from all parties I am satisfied that this complaint should be upheld. I am also satisfied that the redress is fair and appropriate.

### **my final decision**

My final decision is that I uphold Mrs J's complaint and I instruct WDFC UK Limited (Wonga) to:

- refund the payments Mrs J had made to each of the loans, along with interest at 8% simple per year from the date of each payment until the date of settlement;
- less the money that Mrs J actually received from each of the loans.

If Wonga believes that tax should be deducted from the interest element of my award, it should provide Mrs J with the appropriate tax deduction certificate so that she is able to claim a refund if appropriate.

Mark Hollands  
**ombudsman**