

complaint

Mr D has complained that Wage Day Advance Limited (WDA) lent to him irresponsibly.

background

Mr D took out nine short term high interest loans with WDA, over the period of nine months. He has now explained that he wasn't able to afford them.

WDA said it based its affordability assessment on information about his income and expenditure that Mr D provided to it. It says it had no reason to know it was untrue.

Our adjudicator recommended that the complaint should be largely upheld, as she felt the lending was irresponsible, from and including the third loan.

WDA disagreed. In summary, it said:

- all loans were repaid on time until the last one, so this shows they were affordable;
- WDA can't penalise customers who have a good history with it;
- the adjudicator's opinion is based on information Mr D has now provided, rather than what he said at the time; and
- there was no need to carry out credit checks.

The complaint's now been passed to me for my final decision.

my findings

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

Having done so, I agree with the adjudicator.

When making a lending decision, lenders should carry out proportionate affordability checks. Here, I think it was proportionate to accept what Mr D said about his income and expenditure – but only when assessing the affordability of the first two loans. I say this because by the third, I feel it should have become apparent that there was a possibility that the loans weren't appropriate, and that Mr D was becoming reliant on them in an unsustainable manner. Or, in other words, that he was in an unsustainable cycle of debt.

The OFT issued guidance on irresponsible lending, and I think it useful to refer to it here. At paragraph 6.25, it states:

“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.”

I'm satisfied that this applies to a situation where someone is borrowing every month for nine months. Specifically, I think WDA should have reasonably become concerned by the third loan.

I accept that Mr D didn't complete his income and expenditure details correctly. I do not condone this. However, this doesn't remove WDA's responsibility to carry out

proportionate affordability checks. I think that by the third loan, it should have become clear that further checks were warranted. Again, I believe that the OFT's guidance is relevant here. At paragraph 4.29, it describes a specific irresponsible practice:

"Failing 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.

This includes all/any information supplied by the borrower."

So by the third loan, I don't think it was reasonable for WDA to continue lending without doing more extensive checks. Had it carried out further checks, it would have seen that Mr D had extensive other borrowing commitments – such that it would reasonably be inappropriate for him to borrow further.

I note that WDA was under no obligation to keep lending to Mr D, just because he'd made previous repayments. If it was inappropriate to continue lending – as I believe to have been the case here - it shouldn't have happened. Just because Mr D had maintained repayments doesn't mean he could afford them. Indeed, Mr D was only able to make the repayments by entering into other loans with other payday lenders.

On the basis of the above, I agree that all interest and charges should be refunded on the last seven loans. Further, as I don't think they should have been granted, any record of them should be removed from Mr D's credit file(s).

my final decision

For the reasons given above, it's my final decision to uphold this complaint. I require Wage Day Advance Limited to:

- refund all of the interest and charges on all of the loans, except the first two. The refund should first be put towards any outstanding balance. If there is then any remainder, this should be paid directly to Mr D; and
- remove any record of all of the loans – except the first two – from Mr D's credit file(s).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 March 2016.

Elspeth Wood
ombudsman