

complaint

Mrs K's complained about payday loans she took out with CURO TRANSATLANTIC LIMITED (trading as Wage Day Advance ("WDA")). She said her pattern of borrowing should have alerted WDA to the fact that she was in serious financial trouble.

background

Mrs K first borrowed £150 in August 2012 ("loan one"). She repaid this loan before borrowing a further £300 in October 2010 ("loan two"). Mrs K deferred repaying this loan three times before she entered into a repayment plan to pay off the outstanding balance. She eventually repaid the loan in December 2014.

One of our adjudicators has looked into Mrs K's complaint already. He didn't think WDA's checks before giving these loans were proportionate. He also thought that WDA would've seen it shouldn't have given these loans to Mrs K if it had carried out proportionate checks. WDA didn't respond. So the case was referred to an ombudsman for a 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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

the relevant guidance in place at the time of the loans

WDA gave these loans to Mrs K during the period it held a standard licence from the Office of Fair Trading ("OFT"), which allowed it to carry out consumer credit activities. And the OFT guidance in place at the time clearly set out the responsibility of a lender to take reasonable steps to ensure a borrower could *sustainably* repay their loan or loans before agreeing to any borrowing.

The OFT guidance specifically states "*Assessing affordability' 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.*" The guidance goes on say that repaying credit in a sustainable manner means being able to repay credit "*out of income and/or available savings.*"

It then goes onto to say "*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.*" And finally it says that "*The creditor should take a view on what is appropriate in any particular circumstance dependent on, for example, the type and amount of the credit being sought and the potential risks to the borrower.*"

In practice all of this meant that a lender had to take proportionate steps to ensure a consumer would've been able to repay what they were borrowing in a sustainable manner without it adversely impacting on their financial situation. The lender had to gather enough information so that it could make an informed decision on the lending.

Although the guidance and rules themselves didn't set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key thing was that any checks needed to be proportionate and had to take into account a number of different things, including things such as how much was being lent and when what was being borrowed was due to be repaid.

I've kept all of this in mind when thinking about whether WDA did what it needed to before agreeing to Mrs K's loans. Mrs K was given payday loans. So the checks WDA carried out had to provide enough for it to be able to understand whether Mrs K could afford to repay the capital she was borrowing plus the interest when it fell due.

WDA has told us it used its own bespoke credit scoring logic when carrying out its assessment. And its credit scoring logic was based on what Mrs K stated as her job and comparing this with what she declared as her income. It has also appeared to suggest it didn't carry out any credit checks because there was no specific legislation which said doing so was compulsory. It also says Mrs K confirmed her monthly outgoings. And based on all of this information it thought that it was appropriate to give these loans to Mrs K.

why I don't think that WDA's checks were proportionate

I want to start by saying that I agree where the information the lender has shows there's no obvious reason for it to do so and where it would be disproportionate to, I wouldn't expect a lender to question the information a consumer has provided. And where that's the case, I think it's perfectly reasonable for the lender to accept the information provided at face value.

But where it's reasonable for the lender to suspect the information provided is unrealistic or what's happened means it would be reasonable to do so, I think the lender should check and verify what the consumer has provided. And, in this instance, given what WDA should've known about Mrs K as a result of the information it requested, I think it would've been proportionate for WDA to carry out further checks before it agreed to lend.

To explain, it's not enough to simply gather information. A lender needs to look at what it has and react to what it sees. In this case, Mrs K was asked by WDA to provide a copy of a recent bank statement, in order to verify her income, before loan one was agreed.

I've looked at copies of Mrs K's bank statements from the time. And having done so, I can see that she'd taken a substantial amount of short term lending in the period leading up to her application for loan one. Her statements also show that a substantial proportion of her income was going towards gambling too.

So I think that WDA needed to react to what it would've seen on the statements. And I think it would've been proportionate for WDA to have carried out further checks to verify just how Mrs K would be able to make the payments she was committing to, given what her statements showed.

Overall and having thought about everything, I think that WDA failed to carry out proportionate checks before agreeing to give these loans to Mrs K.

what I think proportionate checks would most likely have shown

Even though I don't think that the checks WDA carried out were proportionate and sufficient, this doesn't, on its own, mean that Mrs K's complaint should be upheld.

After all if further checks would've simply shown WDA that Mrs K would most likely have been able to repay her loans when they became due (and so there was no reason why WDA shouldn't have lent to Mrs K), then further checks wouldn't have made a difference. This is because Mrs K won't have lost out as a result of WDA's failure to carry out proportionate checks and there'd be no reason for me to uphold the complaint.

But if further checks would most likely have shown that Mrs K was unlikely to have been able to repay the loans when they became due then WDA would've seen that it shouldn't have lent to her. And this would mean that Mrs K lost out because of WDA's failure to carry out proportionate checks. So there'd be grounds to uphold Mrs K's complaint.

As proportionate checks weren't carried out I can't say for sure what they would've shown. But Mrs K has provided us with evidence of her financial circumstances at the time she applied for the loans. And I've been able to get a picture of what her financial circumstances were like. Of course I accept this isn't perfect as different checks show different things. And just because something shows up in the information Mrs K's provided it doesn't mean it would've shown up in any checks WDA might've carried out. But the information Mrs K's provided is the best indication I have of what her financial circumstances were like at the time. And in the absence of anything else I think it's perfectly reasonable to rely on it.

I've carefully looked through everything Mrs K's provided and I've also thought about everything both parties have said. Having done so, I don't think Mrs K had the capacity to take on any of these loans. In this case, I think proportionate checks would've extended into verifying Mrs K's outgoings and getting some kind of idea how she'd be able to repay these loans bearing in mind what WDA would've seen. And I think any such checks would have shown more than Mrs K's income was going towards existing credit commitments.

Put simply, I think proportionate checks would've shown Mrs K was borrowing from multiple lenders just to be able to repay previous loans. I also think that proportionate checks would've shown WDA the full extent of Mrs K's gambling. And I don't think that WDA would've lent to Mrs K in these circumstances.

In my view, if WDA had seen all of this – as it would've done if it carried out proportionate checks – it would've realised it was unlikely to receive the payments Mrs K was committing to make without it adversely impacting her financial position. So it would've realised that Mrs K wasn't in any sort of position to be able to take on these loans and it simply wouldn't have given them to her. This means that I think not only did WDA fail to carry out proportionate checks before lending to Mrs K, but that Mrs K also lost out as a result.

what WDA should do to put things right

To put things right for Mrs K, WDA should:

- refund all the interest and charges on Mrs K's loans; and
- add interest at 8% per year simple on the interest and charges from the date they were paid, if they were, to the date of settlement†;
- any adverse information recorded on Mrs K's credit file should also be removed.

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

my final decision

For the reasons given above, I'm upholding Mrs K's complaint. CURO TRANSATLANTIC LIMITED (trading as Wage Day Advance) should pay Mrs K compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 26 June 2017.

Jeshen Narayanan
ombudsman