

complaint

Mr H complains that Curo Transatlantic Limited trading as Wage Day Advance (“WDA”) gave him loans that he couldn’t afford to repay.

background

Mr H has used a claims management company (CMC) to help him make his complaint.

Mr H was given six loans by WDA between April 2012 and July 2014. Mr H wasn’t able to repay his first loan on the date it was due so deferred his repayment by paying some additional interest. Mr H then repaid his next four loans as agreed. But Mr H wasn’t able to repay his final loan and a balance still remains outstanding. A summary of Mr H’s borrowing from WDA is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	27/04/2012	28/05/2012	£ 140
2	14/03/2014	28/03/2014	£ 290
3	05/04/2014	28/04/2014	£ 400
4	29/04/2014	28/05/2014	£ 400
5	03/06/2014	27/06/2014	£ 400
6	01/07/2014	-	£ 550

Mr H’s complaint has been assessed by one of our adjudicators. He thought that the checks WDA had done on the first two loans were sufficient. But he thought WDA should have done more checks on the rest of Mr H’s loans. And he thought that better checks would have shown WDA that Mr H couldn’t afford to repay loans 4 to 6. So he asked WDA to pay Mr H some compensation.

WDA accepted our adjudicator’s findings and agreed to pay compensation to Mr H. But it said that it would use that compensation to reduce the balance outstanding on Mr H’s final loan. Mr H didn’t accept that offer. He said that he would need to pay some fees to his CMC regardless and this would leave him further in debt. He thought WDA should pay those fees too. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide.

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.

WDA was required to lend responsibly. It needed to make checks to see whether Mr H could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr H was borrowing, and his lending history, but there was no set list of checks WDA had to do.

WDA has told us that it gathered some details from Mr H before it agreed each loan. Each time it asked him for details of his normal income, and expenditure. And then it used this information to calculate the amount of disposable income Mr H had left each month that he could use to repay his loans.

The amount Mr H borrowed on his first loan was relatively modest compared with the income he declared to WDA. And based on the disposable income WDA had calculated the repayment looked to be easily affordable. I think that it was reasonable here for WDA to rely on the information Mr H had provided. So I don't think WDA did anything wrong in agreeing this loan.

Although Mr H hadn't been able to repay his first loan as originally agreed, there was then a gap of almost a year before he asked for another loan. So I think it would have been reasonable for WDA to treat him as a new customer at that point. Although he asked to borrow more than he had on his first loan the amount of income he declared had also gone up. And the higher repayment still appeared easily affordable based on the disposable income that WDA had calculated. So I think it was reasonable for WDA to give him this loan too.

Mr H asked for his next loan just a few days after repaying his second. And the amount he asked to borrow had increased again and was approaching a third of his normal income. I think by this stage WDA should have started to become concerned about whether it knew enough about Mr H's financial situation. I think at this point it would have been useful to ask him some more specific questions, including whether he was borrowing from other short term lenders at the same time.

The day after repaying his third loan, Mr H asked for another. And the amount he asked to borrow remained at the same relatively high level. By now I don't think it was reasonable for WDA to rely on the information that was being provided by Mr H. I think that it should have taken steps to independently verify the true state of Mr H's finances.

Loans 6 and 7 were also requested within a few days of repaying an earlier loan. Loan 6 remained at the same relatively high amount, and loan 7 was even bigger. By that time Mr H needed to repay over half his normal income. So I think it would have been proportionate for WDA to independently review Mr H's finances before these loans too.

But although I don't think the checks WDA did from loan 3 onwards were sufficient, that in itself doesn't mean that Mr H's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown WDA that Mr H couldn't sustainably afford the loans. So I've looked at Mr H's bank statements, and what he's told us about his financial situation, to see what better checks would have shown WDA.

At the time of loan 3 I still think it was reasonable for WDA to take account of the information Mr H provided about his disposable income. But I think it should have supplemented this with details of any other short terms loans Mr H was already committed to repay. But having looked at Mr H's bank statements I can't see he had much in the way of other short term lending outstanding at that time. So I don't think these additional checks would have made any difference to WDA's decision to give the loan to Mr H.

From loan 4 onwards I think WDA should have been independently checking Mr H's financial position. Had it done so I think it would have seen that his normal income was broadly in line with what he'd declared to the lender. But his normal living costs, and regular debt repayments, were much higher than what he'd told WDA. In most months he only had around £200 left over that he could use to repay any short term loans. So he wasn't able to afford to repay WDA without borrowing again.

I don't think the checks WDA did from loan 3 onwards were proportionate. And if WDA had done what I consider to be proportionate checks I think it would have seen that Mr H couldn't sustainably afford to repay loans 4 to 6. And so, as a responsible lender, it wouldn't have agreed to give those loans to Mr H. So it needs to pay him some compensation.

I agree with WDA that it should be entitled to use this compensation to reduce the amount Mr H still owes on his final loan. I have thought about what Mr H has said about the fees his CMC will charge him for helping with this complaint. And I have a great deal of sympathy for the position this will put him in. But it is entirely possible for consumers to bring a complaint to this Service free of charge, and without the help of a CMC. So I don't think it is WDA's responsibility that Mr H chose to engage a CMC. And I don't think the debt Mr H will owe to his CMC is any more important than what he has owed to WDA for a number of years.

putting things right

I don't think WDA should have agreed to lend to Mr H after, and including, the loan that he took on 29 April 2014 (loan 4). So for each of those loans WDA should;

- Refund any interest and charges paid by Mr H on the loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr H's credit file in relation to the loans.

*HM Revenue & Customs requires WDA to take off tax from this interest. WDA must give Mr H a certificate showing how much tax it's taken off if he asks for one.

Mr H still owes WDA some of the principal balance he borrowed on his final loan. WDA use the compensation that is due to him to reduce this balance. But, to be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr H has made on that loan as though they were applied against the principal sum borrowed.

If, as seems likely, Mr H will still owe money on his final loan, WDA should endeavour to agree an affordable repayment arrangement with him, bearing in mind the need to continue to treat him positively and sympathetically.

my final decision

My final decision is that I partly uphold Mr H's complaint and direct Curo Transatlantic Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 April 2018.

Paul Reilly
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