Financial Ombudsman Service

complaint

Mr R complains about the payday loans and a flex credit account he took out with CashEuroNet UK LLC (trading as QuickQuid) which he says QuickQuid shouldn't have given him because the borrowing wasn't affordable.

background

The background to this complaint was set out in my provisional decision I sent to both parties in February 2018. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to partly uphold the complaint. I invited both parties to let me have any further comments and evidence. Mr R has told us he doesn't have anything further to add. QuickQuid responded and explained that while it agreed with the findings about loans 1 – 7 it didn't agree with the findings for loans 8 – 12. QuickQuid also provided some further comments.

I've carefully considered everything QuickQuid has told us. In summary it says;

- From loan 8, QuickQuid says that its checks were in line with the regulator's (Financial Conduct Authority (FCA)) guidance.
- QuickQuid gathered information from Mr R that fell into six categories including, house, food and other credit commitments. The information provided is then compared to data from the Office of National Statistics (ONS).
- The costs of loans 8 – 12 fell under the cost cap introduced by the FCA.
- There was a gap in lending of five months between loans 9 – 10 and
- loans 8 – 12 didn't show that Mr R was depended on these loans.

QuickQuid went on to say that it agreed with the in the provisional decision in relation to loans 1 – 7.

my findings

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

So having considered the additional information QuickQuid has given us, and everything I saw before making my provisional decision, I still think QuickQuid was wrong to have given Mr R some of the loans. And I've explained why below.

I've taken on board what QuickQuid says about the levels of checks that it carried out from loan 8 – and it would seem, based on what it has told us that it did more checks for the later loans than it had had done for the earlier ones. But, that still didn't mean the checks that it carried out went far enough.

As I mentioned in my provisional decision, there was no set list of checks that QuickQuid needed to carry out. But guidance at the time the later loans were approved can be found inthe Consumer Credit Sourcebook (“CONC”) section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. And it says a firm had to consider *“the potential for the commitments under the regulated credit agreement to adversely impact the customer’s financial situation”* as well as *“the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement.”*

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says *“a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer’s financial situation.”*

And CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *“In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer’s ability to repay the credit.”.*

CONC 5.3.1(2) then says *“The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.”.*

So taking into account the above guidance, by the time loan 8 was approved – Mr R had been either borrowing or making repayments to QuickQuid for at least three years. This could’ve been a sign that he was dependent on this type of lending and that further borrowing would leave Mr R incurring further adverse consequences. And he’d taken this loan out the day after he repaid his flex credit account. So, QuickQuid should’ve had some concerns about the information Mr R was providing. I don’t think it was reasonable to have continued to rely on what Mr R had provided without trying to verify this

So, having considered the additional checks that it carried out – including using the ONS data, I don’t think these checks went far enough. And as I’ve outlined in my provisional decision, had further checks been carried out it would’ve likely shown QuickQuid that a significant part of Mr R’s income went towards repaying other short term lenders. And with Mr R’s living costs, and the payments he was committed to making to QuickQuid he didn’t have enough disposable income to be able to afford the repayments he was committed to making.

I’ve taken on board the gap that QuickQuid has pointed out between loans 9 and 10. But taking into account the number of lending decisions and the length of time Mr R had borrowed from QuickQuid. I don’t think this gap would’ve been sufficient for QuickQuid to have believed that Mr R’s financial position had returned to a more stable footing considering there had been no change to his declared income and outgoings. But overall, I think proportionate checks would’ve shown QuickQuid that Mr R wasn’t in a position to be able to take on these loans.

I’ve also thought about what QuickQuid says about the cost of the credit. While some of the loans – based on what QuickQuid says were below the cost cap introduced by the FCA. That still didn’t make the loans affordable to Mr R or that QuickQuid needed to carry out fewer checks because of the cost of credit. It still was required to carry out proportionate checks before agreeing to lend.

So having considered the additional information QuickQuid has given us, and everything I saw before making my provisional decision, I still think QuickQuid was wrong to lend to Mr R.

what QuickQuid should do to put things right

To put things right for Mr R, QuickQuid should:

- refund all the interest and charges paid by Mr R on all borrowing from and including 27 July 2012 (including the flex credit account),

- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †; and

- remove any adverse information recorded on Mr R’s credit file about these loans.

†HM Revenue & Customs requires QuickQuid to take off tax from this interest. QuickQuid must give Mr R a certificate showing how much tax it’s taken off if he asks for one.

my final decision

For the reasons given above and in my provisional decision, I partly uphold Mr R’s complaint.

CashEuroNet UK LLC should put things right for Mr R as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 23 April 2018.

Robert Walker
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

Mr R complains about the payday loans and a flex credit account he took out with CashEuroNet UK LLC (trading as QuickQuid) which he says QuickQuid shouldn't have given him because the borrowing wasn't affordable.

background

I've put together a table of Mr R's borrowing from the information QuickQuid has given us.

loan number	loan / top-up amount	received date	repayment date
1	£200.00	21/01/2012	03/02/2012
2	£700.00	07/02/2012	05/06/2012
3	£400.00	17/06/2012	04/01/2013
	£350.00	29/06/2012	
	£100.00	04/07/2012	
	£350.00	10/07/2012	
	£700.00	27/07/2012	
4	£300.00	10/01/2013	24/05/2013
	£150.00	12/01/2013	
	£350.00	15/01/2013	
	£500.00	24/01/2013	
5	£1,400.00	24/05/2013	13/09/2013
6	£1,200.00	13/09/2013	06/12/2013
7 - flex credit account	£1,200.00	06/12/2013	22/05/2015
	£200.00	09/12/2013	
	£350.00	31/01/2014	
	£200.00	08/03/2014	
	£200.00	22/03/2014	
	£575.00	30/03/2014	
	£350.00	27/04/2014	
	£140.00	23/05/2014	
	£140.00	20/06/2014	
	£140.00	19/07/2014	
	£100.00	28/08/2014	
	£800.00	19/12/2014	
	£600.00	28/12/2014	
8	£1,400.00	22/05/2015	14/08/2015
9	£350.00	05/09/2015	31/12/2015
	£100.00	08/09/2015	
	£325.00	16/09/2015	
	£150.00	18/09/2015	
10	£50.00	13/05/2016	30/06/2016
	£200.00	15/05/2016	
11	£250.00	07/07/2016	12/08/2016
	£250.00	09/07/2016	
12	£300.00	17/09/2016	24/02/2017
	£200.00	19/09/2016	
	£400.00	23/09/2016	

In our most recent assessment one of our adjudicators reviewed Mr R's complaint and she thought the checks QuickQuid carried out before agreeing to the first loan went far enough – so she didn't think it was wrong to have given Mr R this loan.

However, looking at what Mr R was committed to repaying compared to his declared income the adjudicator didn't think any of the checks carried out by QuickQuid went far enough for the remaining loans. And had proportionate checks been carried out QuickQuid wouldn't have given Mr R the fourth top up on loan 3, the last two top ups on loan 4 and all loans from 5 – 12 including the flex credit account (loan 7).

QuickQuid didn't agree with the adjudicator's assessment, in response, it made a number of points including;

- The affordability checks carried out by QuickQuid were in accordance with the regulations at the time.
- The flex credit account (loan 7) works like a credit card and so shouldn't be compared to a payday loan.
- QuickQuid also provided specific points as to why loans 9 – 12 taking into account the gaps between some of the loans and that based on what Mr R declared about his disposable income, QuickQuid could see the loan these loans were affordable for him.

These points didn't change the adjudicator's mind, so the case has been passed to me for consideration.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having carefully thought about everything I've been given I'm partly upholding Mr R's complaint and I've explained my reasons for doing so below.

QuickQuid was required to lend responsibly. It needed to make checks to see whether Mr R could afford to pay back each loan before it lent to him. I agree with QuickQuid that the guidance in place at the time was not prescriptive about what checks a lender needed to carry out. But it was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The Office of Fair Trading (OFT) Irresponsible Lending Guidance (the guidance in place when Mr R started to borrow from QuickQuid) stated;

"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 went on to say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defined *"undue difficulty"* as being able to repay credit *"while also meeting other debt repayments and normal/reasonable outgoings"* and *"without having to borrow further to meet these repayments".*

The later guidance (2014) QuickQuid gave these loans to Mr R while it was regulated by the Financial Conduct Authority ("FCA"). The relevant regulatory rules in place at the time were set out in the Consumer Credit Sourcebook ("CONC") section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. And it says a firm had to consider *"the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation"* as well as *"the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement."*

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says *"a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation."*

And CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *"In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.".*

CONC 5.3.1(2) then says *"The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.".*

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. Put simply 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 (in Section 5.2.4 of CONC) a lender could take into account before agreeing to lend. The key thing was that the rules required a lender's checks to be proportionate. And any checks had to take into account a number of different 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 QuickQuid did what it needed to before agreeing to Mr R's loans.

But even if the checks QuickQuid carried out weren't proportionate, that alone doesn't mean Mr R's complaint should be upheld. I say this because, it's possible, that had further checks been carried out by QuickQuid they could've shown Mr R was able to afford his loans. So QuickQuid wouldn't have been wrong to lend him the money.

QuickQuid says it carried out credit and affordability checks on each loan. It says its affordability assessment includes a number of variables, including loan repayment history, credit scoring and other third party reports. These checks produce a score which is then used by QuickQuid to determine the size of the loan and it has provided the results from when Mr R borrowed from it in December 2013. QuickQuid has also provided us the results of the most recent credit report inquiry it carried out in November 2016.

So QuickQuid says that based on the information it gathered about Mr R, it was reasonable to lend to him. But I've thought about what QuickQuid says and Mr R's circumstances at the time each loan was approved. And having done so, I don't think the checks QuickQuid carried out were proportionate for some of the borrowing.

loan 1

Before the first loan was given QuickQuid says it asked Mr R about his income and he declared this to be £2,179. QuickQuid also says that it made some enquires with Mr R about his living costs – and he declared these to be £435 per month. And considering the amount Mr R was committed to repaying QuickQuid, I think the checks for the first loan went far enough because it hadn't seen anything to make it doubt the validity of the information Mr R had provided. So it therefore follows, that I don't think QuickQuid was wrong to have given Mr R this loan.

loan 2

Mr R borrowed over three times as much for his second loan as he did for his first. And the total repayment due for this loan took up a significant portion of Mr R's declared income. Based on the information QuickQuid has given us, it seems Mr R declared the same income and outgoings for this loan, as he had done for his first loan. However, given the increased amount borrowed, I think QuickQuid's checks needed to go further.

I think QuickQuid needed to have an up to date picture of Mr R's financial position, so in addition to finding out about his living costs I think it should've made some further enquires with Mr R to find whether he had any outstanding short term credit commitments at the time.

The information Mr R had provided about his income and expenditure seemed plausible so QuickQuid had no reason to doubt the validity of if – so it wasn't unreasonable that QuickQuid relied on this information. And, having reviewed Mr R's bank statements to see, what if any outstanding short term credit commitments he had. I can see that he had some other payday loans.

Whilst, I don't think QuickQuid carried out proportionate checks, I think, had it done so, it would've seen that Mr R would've had enough disposable income to be able to afford the repayment on this loan. So I don't think QuickQuid was wrong to have given this loan to Mr R and I make no award against QuickQuid.

loan 3

Mr R's initial drawdown was for £400 – and with the interest Mr R was committed to repaying QuickQuid £500. And again, I don't think the checks QuickQuid carried out went far enough – considering this was his third loan and Mr R was borrowing again within 2 weeks of repaying his previous loan. So at the point in time, I still think QuickQuid should have had an up to date picture of Mr R's financial position. In addition to asking Mr R about his living costs – which he again declared to be £435. I think QuickQuid should've asked Mr R some questions about whether he had any outstanding short term credit commitments.

I've again, reviewed his bank statement, and at the time the first draw down was approved Mr R didn't have any outstanding short term credit commitments, so I don't think it was wrong of QuickQuid to have given Mr R this loan.

But, by the time Mr R took his first top up at the end of June for £350 he now owed QuickQuid around £937. Mr R then took a further 3 top ups ranging from £100 to £700. Mr R again declared the same outgoings and income but this was now Mr R's largest loan to date, and he had been borrowing or making payments to QuickQuid every month in 2012.

So, by now, I don't think QuickQuid could solely rely on the information Mr R had provided and I think this would've given QuickQuid some concern that Mr R was becoming dependent on this type of borrowing. This should've prompted QuickQuid to carry out further, more in-depth checks including having a thorough understanding of Mr R's financial position which would've included verifying some of the information Mr R had provided.

QuickQuid could've verified the information a number of ways. For example, it could've asked to see evidence of Mr R's income and outgoings. Or, as I've done here, it could've asked to see Mr R's bank statements. The bank statements are the best indication of Mr R's ability to afford the loan at the time it was approved, so I don't think it's unreasonable to rely on them.

Having looked at Mr R's bank statement at the time the top ups were given, I think QuickQuid would've likely seen Mr R could've afforded all the tops up except for the final one approved on 27 July 2012, I don't think Mr R was in a position to take on this loan. The income Mr R declared to QuickQuid was broadly correct. At this time, Mr R's outgoings were around £1,800 (excluding food and travel) and taking into account the amount of principle that Mr R had outstanding (£1,200) Mr R didn't have sufficient funds to repay what he was committed to paying. So had QuickQuid carried out proportionate checks it would've seen that Mr R didn't have any disposable income to be able to afford the repayments he was committed to making and I don't think QuickQuid would've given him the final top up loan.

loan 4

Mr R had some problems repaying loan 3 and this loan was deferred and refinanced on a number of occasions. Considering at the time the final draw down was taken Mr R had 21 days to repay what he borrowed, it ended up taking close to 4 months for Mr R to fully repay his borrowing. And I think this may have shown QuickQuid that Mr R was having some financial difficulties. So like the final top up for loan 3 I still think QuickQuid needed to have a thorough understanding of Mr R's financial position. Which as I've mentioned above, QuickQuid could've gone about verifying the information he had provided a number of ways.

I've again reviewed Mr R's bank statements from around the time this loan was approved, and having done so, I don't think Mr R had the ability to afford the repayment. His income was slightly more than QuickQuid were led to believe - £ 2,740. And in weeks leading up to taking out this loan he had repaid other short term lenders nearly £900.

Had QuickQuid verified the information, it would've also seen that Mr R was incurring a number of returned direct debits each month including the one which appears for his mortgage. He also had a number of loans and other credit commitments that were due to paid – but these again appear to be in arrears. So had QuickQuid carried out proportionate checks it would've likely seen that in the weeks leading up to this loan, that Mr R had no disposable income in which to afford his repayments.

Mr R took further top ups on this loan, but these were all taken before any repayments where made to QuickQuid and considering I don't think Mr R could afford the initial drawdown, it therefore follows that I don't think proportionate checks would've shown QuickQuid that Mr R could afford the remaining drawdowns. So I think proportionate checks would've shown QuickQuid that it shouldn't have given Mr R his fourth loan.

loans 5 - 12

For all remaining loans expect for the flex credit account which I will address separately. I don't think the checks QuickQuid carried out went far enough taking into account the frequency that Mr R borrowed and the amounts he borrowed – which were as high as £1,400.

All of this together should've given QuickQuid cause for concern that Mr R was dependent on this type of borrowing – which after all was designed to cover short term cash flow problems. So I still think QuickQuid needed to verify some of the information it was being provided with for the remaining loans.

As above, Mr R has provided his bank statements and I've reviewed these for the remaining borrowing period. And having done so, Mr R's financial situation doesn't change from his fourth loan and given I didn't think Mr R could afford the repayments for this loan, it therefore follows that I don't think he could afford to take on any of the additional payday loans.

The income Mr R has declared to QuickQuid remains broadly correct, although there are slight fluctuations in this – for example in the months around loan 6, Mr R was earning a few hundred pounds less per month. However, I don't think Mr R could afford to take on any of the remainder pay day loans. I say this because he continued to borrow from other short term lenders and Mr R started to take longer loans with other lenders. He also had a number of creditors each month including loans, and credit card bills that needed to be repaid.

For example in the weeks before loan 9 was approved, he had recently repaid over £1,000 to other creditors and had one outstanding loan of £600 from another lender. When loan 11 was approved, QuickQuid would've likely seen that he had recently repaid other lenders over £600 and had over £1,200 of outstanding credit commitments when the first draw down occurred. This, with his regular living costs and financial commitments meant Mr R didn't have enough disposable income to be able to afford his loan.

I've taken on board the gap that QuickQuid has pointed out between loans 9 and 10. But taking into account the number of lending decisions and the length of time Mr R had borrowed from QuickQuid. I don't think this gap would've been sufficient for QuickQuid to have believed that Mr R's financial position had returned to a more stable footing. But overall, I think proportionate checks would've shown QuickQuid that Mr R wasn't in a position to be able to take on these loans.

Flex credit account (loan 7)

The flex credit loan allowed Mr R to drawdown funds up to a set limit and his repayments would include interest and charges and 10% of either the total principal draw down or 10% of the most recent drawdown. But unlike a payday loan where the repayments are due usually within one or two paydays the balance of the flex credit account is repaid over a longer period of time, for example 10 months. So because the flex credit account worked differently to a payday loan – QuickQuid needed to take reasonable steps to ensure that Mr R could make the repayments when they became due.

Having looked at the credit agreement, I can see QuickQuid gave Mr R a credit limit of £1,400. And had Mr R kept to the repayment schedule outlined in the credit agreement then his largest monthly repayment would've been £758.84.

I've thought about the checks QuickQuid carried out before agreeing to the account, and having done so, I don't think these checks went far enough. Having looked at Mr R's borrowing history, I can see that by now Mr R had been borrowing almost continuously from QuickQuid for nearly a year – which could've been a sign that Mr R was having some difficulties.

So, like the other payday loans, I still think QuickQuid needed to have a thorough understanding of Mr R's financial position – which should've included verifying the information he had provided. And as I've mentioned above, QuickQuid could've verified the information a number of ways. It could've asked for evidence of his income and his outgoings, or as I've done here, it could've asked to see his bank statements.

I've looked at Mr R's bank statements for the period before he was given the flex credit account, and I think that had QuickQuid carried out proportionate checks it wouldn't have agreed to the account and I've explained why below.

At the time the loan was approved, the income Mr R declared to QuickQuid wasn't as high as he had declared – he was earning around £1,792 per month. But QuickQuid should've been aware of this, had it carried out proportionate checks. And I can see at the point that with Mr R's outgoings and his financial commitments came to over £1,600, and he had recently repaid over £200 to other short term lenders. It again, would've seen that a number of payments for other credit commitments had been returned unpaid including the payment which I believe was for a mortgage.

So taking into account his actual income and the amounts Mr R was committed to repaying QuickQuid, he didn't have enough disposable income to afford the repayments he was committed to making – when they became due. So I don't think QuickQuid should've given Mr R the account.