Financial Ombudsman Service

complaint

Mr D has complained about short-term loans granted to him by CashEuroNet UK LLC trading as QuickQuid. Mr D says he couldn't afford these loans and that QuickQuid didn't take appropriate steps to check whether he could afford them when he took them out.

background

I issued a provisional decision on this complaint earlier this month, an extract of which is attached and forms part of this final decision. In my provisional decision I explained why I thought this complaint should be upheld.

I asked everyone to send me any further comments and information before I reached a final decision.

QuickQuid responded to my provisional decision and raised several points, mainly to do with its requirements in assessing a customer's credit worthiness. I've considered these points and have addressed them in my findings below.

So I'm now issuing my final decision.

my findings

I've re-considered all the evidence and arguments already sent to us, in addition to the new points raised by QuickQuid, to decide what's fair and reasonable in the circumstances of this complaint.

In response to my provisional decision, QuickQuid raised additional arguments. The key arguments it made referred to specific sections of CONC (the Consumer Credit sourcebook). And what it felt its obligations were based on those regulations. It specifically focussed on sections 5.2.2R and 5.2.3G which relate to a business's assessment of a customer's 'creditworthiness'.

One of its arguments was regarding loan 1, where it pointed out that the FCA does not prescribe what checks should be made. While this is correct, as highlighted in my provisional decision, although there was no set list of checks that QuickQuid was required to complete before lending, it needed to complete affordability checks that were proportionate to a number of factors – as also stated and outlined in section 5.2.3G. Deciding what checks would be proportionate might include considerations about the amount borrowed, the associated cost and risk to Mr D, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

Having reviewed the evidence provided by both parties, I think that based on the amount Mr D was borrowing, and the amount he needed to repay in relation to his income, proportionate checks would've included making further enquiries into Mr D's regular monthly living costs and credit commitments. So I don't think QuickQuid's checks went far enough.

QuickQuid has also argued that no explanation was given as to why the remaining disposable income was not acceptable on loan 1, nor what Mr D's other commitments that we've allowed for may be. But if QuickQuid refers to my provisional decision, I think it will see that I've addressed both of these points.

I explained in my provisional decision that when assessing the affordability of loan 1, the £775 outgoings were made up of "*£600 for housing, utilities and transport; £100 for food; £50 towards regular credit commitments and £25 for other monthly expenses. And that these were essentially a minimum monthly spend – leaving him with less than £100 for all other expenditure, such as insurances or subscriptions, or other similar costs not included within that list. So the figures that I've used when assessing Mr D's expenditure were essentially a minimum monthly spend."* So I feel that I have addressed these points.

Also, as QuickQuid will be aware, the consumer credit sourcebook, section 5.3.1 sets out:

(1) In making the *creditworthiness assessment* or the assessment required by CONC5.2.2R (1), a *firm* should take into account more than assessing the *customer's* ability to repay the *credit*. [**Note**: paragraph 4.2 of *ILG*].

(2) 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 although I think it's possible Mr D may have had a small sum of money left over after repaying the credit – as I said in my provisional decision – I'm not persuaded that the amounts I've identified were sufficient, for QuickQuid to have reasonably concluded he would've been able to repay it in a sustainable manner.

Finally QuickQuid has said that for loan 3, *"it did conduct appropriate and proportionate affordability assessments, including validation of Mr D's income and expenditure",* and has provided a detailed explanation of the areas it considered. It also pointed out that the charges (£487.20) were only 33% of Mr D's disposable income, which it felt meant the loan was affordable for Mr D. So I'll address both of these points in turn.

Regarding QuickQuid's first point, if it looks back at my provisional decision, while I mentioned that I thought it hadn't done enough for loan 3, I went on to explain that my decision was based on the checks QuickQuid actually did carry out, and what it found out in regards to Mr D's financial circumstances. So in effect the issue was with how QuickQuid responded to the information it obtained from its own checks.

It's told us that its checks showed that Mr D was left with a disposable income of around £500 a month. But it then went on to provide a loan which involved three instalments ranging from £140 to £874. And I think this should've clearly flagged for QuickQuid that this was unaffordable for him. And as such, I think it was irresponsible of it to have lent to Mr D in these circumstances.

Regarding QuickQuid's second point – there are two key issues here.

The first is, that it seems to have calculated the affordability of this loan for Mr D, by totaling the payments due over the term of the loan (which I will refer to further below), and looked at these as a percentage of Mr D's disposable income, which it also spread over the term of the loan.

So while QuickQuid has referred to CONC throughout its submissions, it doesn't seem to have considered CONC 5.2.1 (2) which states that: "*before making a regulated credit agreement*: *(2) A firm carrying out the assessment required in (1) must consider: (b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period."*

So if QuickQuid wanted to average the monthly payments that fell due over the term of the loan, when assessing the affordability of that loan for Mr D, then it should've structured its loan in the same way. But it didn't do this. So I don't think its checks went far enough to ensure that Mr D could sustainably afford to repay the instalments "*as and when they fell due over the life of the credit agreement."*

The second point, is that when QuickQuid has assessed the cost of the loan over the three months (which note, is not how I think it should be assessed), it only appears to have looked at the interest and fees charged, and has made no reference to the capital Mr D owed.

Having looked at the repayment schedule set out by QuickQuid, I'm satisfied that QuickQuid expected Mr D to repay the actual money he borrowed, and not just the interest on those funds. So while I acknowledge QuickQuid's comments here, I don't think it's fair to base an assessment of affordability on repayments which didn't take into account that the capital sum itself had to be repaid. So QuickQuid's points don't alter my decision.

Having reviewed all the information afresh, I've reached the same conclusions I reached in my provisional decision, and for the same reasons.

what QuickQuid should do to put things right

QuickQuid should've done more to check Mr D could sustainably repay all of the loans it agreed for him.

Had it done so, I don't think it would've agreed to any of the loans it arranged for Mr D. So QuickQuid needs to refund all of the interest and charges Mr D paid on these agreements.

Specifically, it should:

- refund the interest and charges for the loans it agreed between November 2013 and June 2016
- pay interest on these refunds at 8% simple from the dates of payment to the date of settlement
- remove any adverse information about these loans from Mr D's credit file

If Mr D still owes QuickQuid any of the principal balance he borrowed on any of his loans, QuickQuid may deduct this from the compensation that is due to him. To be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr D has made on those loans as though they were applied against the principal sum borrowed.

If QuickQuid no longer owns this debt, it should consider buying it back. If it doesn't, then it isn't entitled to make any deductions for it from the amount it needs to pay Mr D. If, after the total compensation has been applied against any principal balance outstanding, there is still a sum outstanding, a mutually agreeable repayment plan should be arranged.

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

my final decision

For the reasons I've explained above and in my provisional decision I uphold Mr D's complaint. CashEuroNet UK LLC trading as QuickQuid should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 August 2018.

Brad Mcilquham
ombudsman

extract of provisional decision

background

QuickQuid agreed three short-term loans for Mr D between November 2013 and June 2016. Each was to be repaid through three instalments.

loan no.	application	principal amount (£)	highest payment due (£)
1	06/11/2013	350	437
2	15/05/2014	600	750
3	20/06/2016	700	874

One of our adjudicators has looked into Mr D's complaint already. The adjudicator recommended that part of the complaint be upheld. He felt the checks QuickQuid carried out on all of the loans were insufficient. And had it carried out proportionate checks, it would've realised that loan 3 was unaffordable.

QuickQuid offered to refund some of the interest and charges on loan 2, but its offer was not in line with our approach, so the adjudicator did not endorse it when he issued his opinion. QuickQuid disagreed with the adjudicator's opinion, so the case has been passed to me for a decision.

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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

QuickQuid was required to lend responsibly. The regulator under which Mr D's credit was issued was first the Office of Fair Trading (OFT). This changed to the Financial Conduct Authority (FCA) on 1 April 2014. There was no set list of checks QuickQuid needed to do under either regulation.

But both regulators were, and are, very clear about the responsibility of the lender to take reasonable steps to ensure that a borrower can *sustainably* repay their loans. In short, this means repaying credit out of income and savings while meeting other reasonable commitments, without having to borrow more.

Both regulators also listed examples of sources of information to assess affordability – these include: a record of previous dealings, evidence of income, evidence of expenditure, a credit score, a report from a credit reference agency and information from the borrower.

Although there was no set list of checks that QuickQuid was required to complete before lending, it needed to complete affordability checks that were proportionate. Deciding what checks would be proportionate might include considerations about the amount borrowed, the associated cost and risk to Mr D, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

In making this decision I've considered whether or not QuickQuid did everything it should've when assessing Mr D's loan applications. And if it didn't, had it done further checks, whether it would've realised that some or all of the loans may have been unaffordable.

Having reviewed the case, I've come to a different outcome to the adjudicator. I currently don't think QuickQuid carried out proportionate checks on any of the loans it agreed. And I currently think that had it carried out proportionate checks, it would've concluded that all of the loans were unaffordable for Mr D, and wouldn't have agreed to them. I'll explain why.

did QuickQuid carry out proportionate checks?

QuickQuid says it carried out proportionate checks for each of Mr D's applications. This included collecting details about his income, and on some occasions, details of his general expenditure, as well as carrying out a credit check. But I can't see that it did this on every occasion, so I've thought about this when deciding this case.

In November 2013 Mr D borrowed £350 from QuickQuid, and was due to repay the loan over three months, with the highest scheduled monthly repayment being £437. It appears this was the first time he'd borrowed from QuickQuid. And QuickQuid recorded Mr D's income as £1,300 at this stage, and told us it ran a credit check.

Having looked at the proportion of Mr D's income that was going towards repaying his first loan, I think QuickQuid's checks should've gone further. In addition to looking into Mr D's income and running a credit check, I think it should've made enquiries into his regular monthly living costs and credit commitments. So I don't think its checks went far enough here.

Mr D took his second loan from QuickQuid in May 2014, this time borrowing £600. And it was due to be repaid over three months, with £750 as his highest scheduled repayment. And QuickQuid told us it carried out the same checks as it did on the first loan.

Given the increase in the amount Mr D was borrowing, and the fact that he'd seemed to have had difficulties in meeting the repayments as they fell due on his first loan, I think at this stage QuickQuid's checks should've gone further than they did.

I think by now, QuickQuid should've not only made enquiries into what Mr D's regular monthly outgoings and regular credit commitments were, but it should've also enquired specifically into any other short-term lending he may have had outstanding. So based on the information I have, I don't think its checks were proportionate at the time.

When Mr D took out his third loan with QuickQuid in June 2016, around 18 months had passed since he'd cleared his previous loan. And while there'd been a significant gap between clearing his last loan and taking out this new loan, I still think QuickQuid's checks should've gone further.

QuickQuid recorded Mr D's income as £1300, and it was looking to lend him £700, which was due to be repaid over three instalments, the largest of which was £874. Given that this figure made up a significant proportion of Mr D's declared income, and given that QuickQuid would've seen Mr D had struggled to meet the repayments due on both of his previous loans, I think by this point, it should've built a full picture of Mr D's financial position, and verified the information it was given. So I don't think its checks were proportionate at this time.

In summary, I don't think the checks QuickQuid carried out on any of the loans I've assessed were proportionate. And it should've done more to check Mr D could afford the repayments before agreeing to these loans.

So I've looked to see what QuickQuid would've discovered, had it carried out proportionate checks.

what would proportionate checks most likely have shown?

Mr D's provided bank statements that cover some of the period over which his applications were made. And I've looked at these, and all other available evidence to work out what I think QuickQuid would've found out, had it done proportionate checks when it set up the loans in question.

loan 1

At the point QuickQuid set up Mr D's first loan, as I've said above, in addition to looking into his income, it should've also looked into what his regular monthly living costs and outstanding credit commitments were.

I can see that around nine months after he took out his first loan, he'd told QuickQuid his monthly outgoings were around £775. While this figure was recorded in the year after he took this loan, it remained at this level for some time. So I think it's likely he would've declared similar figures had QuickQuid made enquiries about his expenditure during this application.

QuickQuid had already recorded Mr D's income as £1,300. So I think had QuickQuid carried out proportionate checks, it would've concluded that after deducting his outgoings of around £775, Mr D would've had a disposable income of approximately £525 when it arranged loan 1 for him.

The £775 outgoings were made up of £600 for housing, utilities and transport; £100 for food; £50 towards regular credit commitments and £25 for other monthly expenses. So these were essentially a minimum monthly spend – leaving him with less than £100 for all other expenditure, such as insurances or subscriptions, or other similar costs not included within that list.

The highest scheduled repayment Mr D was due to repay QuickQuid for the above loan was £437.So although I think it's possible Mr D may have had a small sum of money left over after repaying this credit, I'm not persuaded that the amount identified, was sufficient for him to be able to meet the repayments in a sustainable manner.

So had QuickQuid carried out proportionate checks at this stage, I think it would've concluded that for this loan, Mr D had insufficient disposable income available to sustainably meet the repayments due. And I don't think it would've lent to him knowing this.

loan 2

Mr D took out his second loan in May 2014, the same day as he repaid his first loan. And as I've mentioned above, I think QuickQuid's checks should've gone further at this stage. It was his second loan without a break and for a significantly higher amount than his first loan. Additionally he hadn't repaid the first loan in line with the agreement; he had deferred repayment on four occasions – so although he should've repaid it in January 2014, he actually repaid it in May. Given these circumstances, I think in addition to the questions it asked, QuickQuid should've also asked Mr D specifically about any other short-term lending he may have had outstanding.

I can see that two months after Mr D took out this loan, QuickQuid recorded details of Mr D's expenditure at a figure of £775. So I think it's likely Mr D would've declared a similar figure had QuickQuid asked him about this just two months earlier.

I can't be certain whether or not this figure included details of any short-term lending he may have owed at this time. But even if it included all of Mr D's outgoings, this would've still left him with just £525 disposable income at the point he took his second loan with QuickQuid. And his highest scheduled repayment due was £750. So had QuickQuid carried out proportionate checks, I think it would've concluded this loan was clearly unaffordable for Mr D, and I don't think a responsible lender would've lent to him knowing this.

loan 3

When Mr D took out his third loan with QuickQuid there had been a gap of nearly two years since he'd repaid loan 2. And I can see that on this occasion, QuickQuid not only asked Mr D about his income, which it recorded as £1300, but it also made enquiries into his outgoings, which it has noted as £800. So its checks appear to have gone further than before.

But after carrying out the above checks, QuickQuid then went on to lend Mr D £700, with the highest scheduled repayment due being £874. When, from its own checks, it would've seen that Mr D's monthly disposable income was around just £500 a month.

QuickQuid has raised an argument on both this loan and the earlier loans, which suggests that Mr D should've held back funds from the first two month instalments (which were lower than the final instalment), in order to meet the larger repayment that fell due in the third month.

But the consumer credit sourcebook (CONC), part of which sets out the requirements for lenders when assessing the credit worthiness of a customer, and that were applicable at the time of Mr D's third loan state that: "*before making a regulated credit agreement*: *(2) A firm carrying out the assessment required in (1) must consider: (b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period."* CONC also refers back to a similar test within the Irresponsible lending guidance (ILG) that was in place at the time Mr D took his first two loans.

So if QuickQuid wanted to average the monthly payments that fell due over the term of the loan, when assessing the affordability of that loan for Mr D, then it should've structured its loan in the same way. But it didn't do this. And I think QuickQuid had enough information at the point of sale from the checks it did carry out, for it to have realised clearly, that Mr D would not have been able to sustainably afford to repay the instalments "*as they fell due over the life of the credit agreement."* So I don't think it should've lent to him knowing this.

In summary, I currently don't think QuickQuid should've approved any of the loan applications it agreed for Mr D. And I think Mr D's lost out because of what QuickQuid did wrong.

what QuickQuid should do to put things right

I currently think QuickQuid should've done more to check Mr D could sustainably repay all of the loans it agreed for him.

Had it done so I don't think it would've agreed to any of the loans it arranged for Mr D. So I currently think QuickQuid needs to refund all of the interest and charges Mr D paid on these agreements. Specifically, it should:

- refund the interest and charges for the loans it agreed between November 2013 and June 2016
- pay interest on these refunds at 8% simple from the dates of payment to the date of settlement
- remove any adverse information about these loans from Mr D's credit file

If Mr D still owes QuickQuid any of the principal balance he borrowed on any of his loans, QuickQuid may deduct this from the compensation that is due to him. To be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr D has made on those loans as though they were applied against the principal sum borrowed.

If QuickQuid no longer owns this debt, it needs to buy it back. If it doesn't, then it isn't entitled to make any deductions for it from the amount it needs to pay Mr D. If, after the total compensation has been applied against any principal balance outstanding, there is still a sum outstanding, a mutually agreeable repayment plan should be arranged.

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