Financial Ombudsman Service

complaint

Mr H has complained about a short-term loan granted to him by CashEuroNet UK LLC trading as Quick Quid ("Quick Quid" or "the lender").

background

The background to the complaint was set out in my provisional decision dated 10 December 2018, a copy of which is attached and forms part of this final decision.

In my provisional decision I set out why I was minded to uphold this complaint. I asked both parties to let me have their final submissions within a month. Mr H says he agrees with my decision. Quick Quid didn't indicate whether or not it agreed with my provisional decision but said it had nothing further to add on the matter.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold Mr H's complaint.

what Quick Quid should do to put things right

As I've concluded, Quick Quid was irresponsible to agree Mr H's loan in October 2017. In order to put Mr H back in the position he would have been in, had it not agreed to this, Quick Quid should:

- refund all interest and all charges Mr H paid for this loan (including late fees and default interest charges);
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement;
- remove any adverse information about the loan from Mr H's credit file;

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

my final decision

I am upholding Mr H's complaint for the reasons given in my provisional decision and require CashEuroNet UK LLC Limited (trading as Quick Quid) to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 February 2019.

Michelle Boundy
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr H has complained about a short-term loan granted to him by CashEuroNet UK LLC trading as Quick Quid ("Quick Quid" or "the lender").

background

Quick Quid agreed one loan for Mr H on the 26 October 2017. The loan was for £400 to be repaid over the following three months in amounts of £93[1], £90 and £512.

Mr H made his November and December 2017 repayments on time, then entered into a repayment plan in December 2017 to spread his January 2018 repayment of £512 over four monthly payments of £128 beginning in February.

Mr H made this February payment on time but didn't meet his March repayment and set up a second repayment plan of five monthly repayments beginning in April – four for £75 and a final payment of £50. Mr H made his April and May repayments but didn't meet his June repayment. Quick Quid began to charge him default interest from this point. Mr H made one other payment of £75 in July.

My understanding is that as of the beginning of October 2018, Mr H has repaid an amount of £585 for this loan. Quick Quid says this leaves an amount outstanding of £125 principal and £46 in default interest charges.

Mr H says that he is struggling to repay this loan and that Quick Quid didn't check that he could afford to meet his repayments before lending to him. Mr H also says that Quick Quid registered a default on his credit file, which has made it difficult for him to get credit elsewhere and has caused him considerable stress.

Quick Quid didn't agree that it was irresponsible to lend to Mr H and it says it carried out proportionate affordability checks before agreeing to lend to him.

Our adjudicator upheld Mr H's complaint and asked Quick Quid to refund the interest and charges he paid for his loan. Quick Quid didn't agree with this recommendation and so the case has come to me, as an ombudsman, for a final 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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

The Financial Conduct Authority (FCA) was the regulator when Quick Quid lent to Mr H. The FCA's Principles for Business ("PRIN") set out the high level standards which all authorised firms are required to comply with. PRIN 2.1.1 R (6) says "*A firm must pay due regard to the interests of its customers and treat them fairly.*"

The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities. It sets out the rules and guidance specific to consumer credit providers, such as Quick Quid. At the time, October 2017, these required lenders to take "*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.*" - CONC 5.3.1G(2).

[1] I have rounded figures to the nearest pound.

CONC 5.3.1G(6) defined '*sustainable'* as being able to make repayments without undue difficulty. It went on to explain that this means *"the customer should be able to make repayments on time, while meeting other reasonable commitments; and without having to borrow to meet the repayments".*

So – treating customers fairly in the context of providing credit meant assessing their ability to repay the credit in a sustainable way. And how should lenders have gone about making these assessments?

CONC 5.2.3 G said that

"The extent and scope of the creditworthiness assessment or the assessment required … in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

(1) the type of credit;

(2) the amount of the credit;

(3) the cost of the credit;

(4) the financial position of the customer at the time of seeking the credit;

(5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;

(6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;

(7) any future financial commitments of the customer;

(8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;

(9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation."

CONC 5.2.4G(2) said that

"*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 5.2.4G(3) said that

"A firm should consider the types and sources of information to use in its … assessment … which may, depending on the circumstances, include some or all of the following:

(a) its record of previous dealings;

(b) evidence of income;

(c) evidence of expenditure;

(d) a credit score;

(e) a credit reference agency report; and

(f) information provided by the customer."

It is important to note here that the FCA didn't, and doesn't, specify exactly how the assessment is to be carried out but the *"extent and scope"* and the *"types and sources of information to use"* needed to be enough to be able to reasonably assess the sustainability of the arrangement **for the consumer.** In other words the assessment needs to be consumer-focussed. It is not an assessment of the risk to the lender of not recovering the credit to its satisfaction, but of the risk to the consumer of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.

As set out in CONC, the risk to the consumer directly relates to the particulars of the lending and the circumstances of the consumer. Therefore, a lender’s assessment of creditworthiness would likely need to be flexible – what is sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one circumstance might not be so for the same consumer in other circumstances.

what should have happened when Mr H applied for credit and did Quick Quid get this right?

Bearing the above in mind, I would expect an assessment of creditworthiness to vary with circumstance. In general, I’d expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I’d expect a lender to seek more assurance by carrying carry out more detailed checks

- the higher the loan amount,
- the lower the consumer’s income; or
- the longer the lending relationship.

In coming to a decision on Mr H’s case, where Quick Quid agreed one loan, I have considered the following questions:

- did Quick Quid complete reasonable and proportionate checks when assessing Mr H’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way? (And if not, would those checks have shown that he would have been able to do so?)

- did Quick Quid act unfairly or unreasonably in some other way?

Having done so, I’ve concluded that Quick Quid was irresponsible to lend to Mr H because although I find that it carried out proportionate checks, the information it gathered should have led it to decline his loan application. So I plan to uphold Mr H’s complaint and ask Quick Quid to refund the interest and charges he paid for this loan. I appreciate that this will be disappointing for Quick Quid and I’ll explain why I’ve reached this conclusion.

did Quick Quid carry out proportionate checks when assessing Mr H’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

Quick Quid has explained in some detail how it carried out its assessment of Mr H's loan application. It started by saying that the assessment was conducted properly and that by the 1 March 2015 it had *"implemented* [an] *affordability review that is consistent with the FCA Handbook."*

Quick Quid says that it *"began implementing changes to its affordability and rate cap rules in June 2014, and as such many loans funded between June 2014 and February 2015 were funded under the new rules and guidance. However, in our discussions with the FOS, we have chosen to use March 1, 2015 as the date of demarcation for "Post-2015 loan," as the FCA-mandated pre-authorisation redress period ended as of February 28, 2015 and all changes were fully implemented by that point."* And that *"all loan offers now meet the FCA rate cap and affordability rules".*

And it said in response to our adjudication *"In response to FOS' assessment which recommends Quick Quid uphold loans which were funded after March 2015, we regret to inform you that we cannot agree to FOS' recommendations*."

Quick Quid seems to be saying that because it reviewed its processes and incorporated regulatory changes as it was required to, all loans for all customers granted from 1 March 2015 onwards were granted responsibly.

I don't agree with this argument. It doesn't follow that a firm cannot have treated any consumer unfairly simply because it has been authorised and is regulated by the FCA. This assumes that an authorised firm's regulated activities are always implemented in a way that results in fair outcomes for all consumers. This is not the case, as the experience of this Service bears out.[2]

Quick Quid says that the checks it conducts at the time of lending are proportionate in every circumstance. And it considers these checks to have been enhanced through its review. But, as I've explained above, the FCA is not prescriptive about how the relevant rules and guidance set out in CONC should be implemented, specifically CONC does not set out *how* a lender ought to go about its affordability assessments. The CONC guidance does say that the assessment that should be carried out is dependent on what is appropriate for both the consumer's circumstances and the particulars of the loan in question. So it doesn't follow that a standard way of assessing loan applications, whatever the *"extent and scope"* of it or whatever the *"type and source of information"* it uses is automatically the right thing to do for *all* consumers in *all* circumstances. And so I cannot pre-judge Mr H's complaint about irresponsible lending on the basis that the affordability check Quick Quid carried out was the right thing to do in his case. And I am not planning to automatically reject his complaint on this basis.

Further to this point, as I've mentioned, there are also other considerations which this Service is required to take into account when making determinations on complaints. As the FCA Handbook sets out in the rules and guidance relevant to dispute handing *"The Ombudsman* will determine a complaint by *reference to what is, in his opinion, fair and reasonable in all the circumstances of the case." (*DISP 3.6.1R)

And DISP 3.6.4R goes on to explain that

"In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time."

[2] http://www.ombudsman-complaints-data.org.uk

So, I am required to consider more than the rules and guidance set out by the regulators in making my determination on a complaint. And so I would not be acting in accordance with my statutory role if I *only* considered the extent to which Quick Quid complied with rules and guidance set out by the FCA in my determination.

Moving on to the specifics of this complaint, Quick Quid says that it asked Mr H for his income and expenses when he applied for his loan. In addition, the lender says it used a third-party credit reference agency (CRA) to *"validate the figures provided by the customer using the customer's credit report; of note, we examine the customer's other credit commitments, and utilise the Income Confidence Factor (ICF), which gauges the accuracy of the customer's reported income".*

Quick Quid explained that Mr H said his monthly income was £1,875 and his total monthly expenses were £1,193. These were broken down into the following monthly expense categories:

Housing	£435
Utility	£35
Transport	£100
Food	£100
Other credit commitments	£398
Other expenses	£125
Total expenses	£1,193

Quick Quid goes on to say that its *"assessment for affordability especially focuses on validating* [the] *Monthly Credit Commitments expense category to ensure that any short term credit and payments are included in the category. To this effect, we validate the reasonableness of the customer's self-reported expense amount* [against] *the CRA data to ensure the customer is being truthful and providing an accurate picture of his or her financial situation, including any of the customer's other high cost short term loans. Given this external validation process which has been in place since 01 March 2015, we firmly believe our checks went far enough with respect to verify customer expenses."*

Quick Quid hasn't provided this Service with the results of the third-party information gathered through the CRA but it did point out that the figure Mr H gave for his '*other credit commitments*' was £398 whereas the *"CRA validated*" figure for this was £775. And that it used the higher figure in its assessment.

I can see from a recent credit report (April 2018) that Mr H shared with this Service that in autumn 2017 he held several credit cards and was repaying a long-term loan. I can also see that he had a history of borrowing from short-term lenders and that he had some outstanding short-term commitments around the time Quick Quid agreed to his loan. It doesn't seem from this report that Mr H's existing credit obligations, as recorded on his file, came to more than the figure Quick Quid used.

Quick Quid says that it generates a credit score for each loan applicant based on its internal credit model, and that Mr H's credit score didn't raise any concerns for it. This credit score in isolation doesn't tell me anything about Mr H's financial situation. And without seeing the results of any third-party checks I can't draw any more definitive conclusions about what Quick Quid may or may not have seen of Mr H's financial situation outside of the information he provided to it. But Mr H's credit report doesn't show any adverse information such as county court judgements, bankruptcies or recent defaults that I think might have prompted the lender to look further into his financial affairs.

Quick Quid says that it firmly believes its checks went far enough in verifying customer expenses. I can say that in Mr H's case, given the amount of credit borrowed and the size of the contractual repayments, I think the checks Quick Quid carried out here were proportionate to the lending in question. It asked Mr H for information about his income and expenditure and incorporated information about his expenses sourced from a CRA. So I think the checks were also proportionate to what Quick Quid knew, and ought to have known, about Mr H's circumstances.

However, it doesn't automatically follow that the information Quick Quid gathered enabled it to satisfy itself that that Mr H would be able to repay the loan in a sustainable way. Looking at the information the assessment yielded leads me to the conclusion that Quick Quid ought to have realised that its loan *wouldn't* be affordable for Mr H.

Quick Quid said it uses CRA validated values for customer expenses where these are higher than the value the customer stated. It says it always uses the higher value of the two. Substituting the higher value of £775 for the stated value of £398 for 'other credit commitments' yields a new total monthly expenses figure of £1,570 for Mr H.

Housing	£435
Utility	£35
Transport	£100
Food	£100
Other credit commitments	£775
Other expenses	£125
Total expenses	£1,570

Confusingly, Quick Quid says that it *"validated* [Mr H's] *reported expenses against credit report data and ONS estimates, which resulted in an EDI*[3] *of £375.95".* With the information I have available to me, I estimate Mr H's monthly disposable income to be £305, based on an income of £1,875 and expenses of £1,570.

As mentioned, Mr H's loan was for £400 to be repaid over three months in amounts of £93, £90 and £512. Quick Quid says that its affordability rules include that *"the total repayment during the loan chain cannot exceed 80% of the customer's total estimated disposable income for the duration of the loan term."* And that *"the total cost*[4] *of this loan (£294.40) was 25% of the EDI during this period of 92 days".* In other words the total amount of interest
Mr H had to pay was within the lender's internal threshold for affordability. I would expect Quick Quid's affordability assessments to be in line with its own internal rules. This of itself doesn't enable me to find that Quick Quid lent responsibly as I need to consider the impact of its credit decision on Mr H, bearing in mind his specific financial circumstances and the particulars of the loan.

Our adjudicator found the loan to be unaffordable because the final repayment amount of £512 exceeded Mr H's usual monthly disposable income. Quick Quid says that *"where the final balloon payment of the loan exceeds the validated estimated disposable income for that last month, the customer must read and check a box that advises them of the fact that they may need to save income from the previous months in order to have sufficient funds to pay the final payment."*

The declaration states:

"By checking this box you acknowledge you can afford to make a repayment of [£X] *on* [date] *and* [£Y] *on* [date]. *You acknowledge that you understand your final repayment is greater than you*[r] *normal disposable income and you may need to save money over the life of the loan in order to make the final repayment out of disposable income."*

I don't know the context within which this statement appeared, or how prominent it was. But irrespective of this, advising Mr H that he may need to take some action in order to be able to make a repayment that is more than the money he would usually have available to him does not take away Quick Quid's own responsibility to assess whether or not the loan was going to be sustainably affordable for Mr H.

CONC 5.2.1(2)(b)R stated that a creditworthiness assessment needed to *consider "the ability of the customer to make repayments as they fall due over the life of the credit agreement…"*

[3] EDI is estimated disposable income.
[4] Contractual interest and charges.

If Quick Quid felt that in Mr H's case he'd need to take some action to meet his loan repayments as they fell due, this suggests that it understood that there *was* a risk that he would not be able repay his loan the way it was structured unless preventative action was taken. It then left this to Mr H to address. It didn't, for example, offer to structure the loan repayments to reflect its expectations of Mr H's money management.

As mentioned, I estimate that Mr H had an amount of £305 normal disposable income each month. He needed to pay almost a third of this in each of the first two months to meet his loan repayments (of £93 and £90). And his final repayment of £512 exceeded his estimated disposable income by almost 70%. Under Quick Quid's planned loan structure, meeting this final repayment would mean Mr H would spend nearly £1,300 in that final month on debt repayments alone (£775 plus his balloon payment of £512).

I can accept that in some circumstances it might be reasonable to proceed on the basis that the additional cost of the balloon payment could be met without difficulty by some level of surplus or saving from previous months.

But in this case, I think the extent of the shortfall relative to Mr H's disposable income meant that foreseeably Mr H was not likely to be able to repay this loan in a sustainable way, in other words without experiencing financial difficulty. Quick Quid ought to have recognised this and, as a responsible lender, shouldn't have agreed to the loan.

did Quick Quid act unfairly or unreasonably in some other way?

Mr H says that he has suffered a non-financial loss because Quick Quid shouldn't have agreed to lend to him. He explained that during 2018 he was diagnosed with and treated for physical and mental health issues by his GP. He also told this Service that he has been dealing with what he understands to have been irresponsible lending from several short-term lenders and at the same time has had to deal with a serious work-related issue. Mr H says that his family situation is such that he doesn't have immediate family he can turn to for support.

Firstly, I am very sorry to hear of Mr H's situation. It has clearly been a difficult and stressful time for him and continues to be so. I want to reassure him that I have considered all of the information available to me in deciding whether or not Quick Quid got something wrong which contributed to the difficulties he has told us about.

As I've concluded above, Quick Quid was irresponsible to lend to Mr H. In order to put this right I am directing the lender to refund him all of the interest and charges that he has paid for his credit and to remove any adverse information about this loan from his credit file. (Exactly how it needs to do this is set out in the next section.) This award reflects the fact that Quick Quid agreed credit for Mr H when it ought to have known that this wouldn't likely be sustainably affordable for him and puts him back into the position he would have been in financially if this loan hadn't been agreed for him.

I accept that managing such a financial loss has an impact. So I am also directing Quick Quid to pay Mr H 8% simple interest on his refund to reflect the fact that he was without these funds when he should not have been deprived of them in the first instance.

To grant an award beyond this in Mr H's case I would need to be satisfied that Quick Quid got something else wrong over the time of their relationship, which is still ongoing. Or I would need to see that Quick Quid knew about Mr H's underlying difficulties and should have done something more to respond to this either before agreeing to lend to him or in the time afterwards.

Mr H hasn't said that he's unhappy with how Quick Quid has acted towards him since agreeing his loan. I understand from the lender's customer contact records that Mr H was unhappy when Quick Quid told him that it didn't accept loan payments via credit card and this led to him setting up his first repayment plan in December of last year. And I can see from his account history that he's set up a second repayment plan and that there is a balance still outstanding. But, Mr H hasn't told us that he disclosed his physical and mental health issues to Quick Quid at any point.

So, I am not planning to make any further award to Mr H. I appreciate his strength of feeling on this point and I want to reassure him that I am not considering his situation lightly. But, in this instance I don't feel a further award is appropriate.

what Quick Quid should do to put things right

As I've concluded, Quick Quid was irresponsible to agree Mr H's loan in October 2017. In order to put Mr H back in the position he would have been in, had it not agreed to this, Quick Quid should:

- refund all interest and all charges Mr H paid for this loan (including late fees and default interest charges);
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement;
- remove any adverse information about the loan from Mr H's credit file;

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

my provisional decision

I intend to uphold Mr H's complaint for the reasons given above and require CashEuroNet UK LLC Limited (trading as Quick Quid) to put things right as I've set out.

I'll wait a month to see if either party has anything further to add – before considering my decision on this complaint once more.

Michelle Boundy
ombudsman