complaint

Miss B says that CashEuroNet UK LLC, trading as QuickQuid, lent to her irresponsibly.

background

I sent both parties my provisional decision on this complaint on 11 December 2018. A copy of it is attached and it forms part of this final decision. The full background to the complaint is set out in it, so I won't reiterate that here.

I explained why I was planning to uphold the complaint in part and asked QuickQuid and Miss B to let me know if they had anything to add. Miss B agreed with my provisional decision. QuickQuid made some additional comments. It said (in summary):

- it agreed with my proposed resolution for the last loan
- it asked that I take into consideration the 'substantial breaking periods' in between the loans, as well as the fluctuating loan amounts, as these show Miss B wasn't demonstrating a pattern of 'spiralling' debt

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account the law, good industry practice and any relevant regulations at the time.

Having considered the additional points raised by QuickQuid, I'm not changing the outcome I reached in my provisional decision. I'll explain why.

I'd like to confirm I did take into account the gaps between the loans when considering whether QuickQuid had lent responsibly. I noted that the first loan was taken a considerable time before the rest of the loans and that there was also a reasonably large gap between loans 2 and 3. I also thought the gap between loans 3 and 4 was less significant on its own, but taken together with the size of the loans and other factors didn't suggest Miss B was demonstrating any signs of financial difficulty. As a result, I didn't propose to uphold the complaint about these loans.

I went on to explain why I thought the situation changed after loan 4a. If QuickQuid is implying that Miss B's borrowing wasn't ever noticeably frequent, I don't think it is correct. Loan 4 was topped up after just two days. There was just a 19 day gap until loan 5, which was topped up three times with gaps of three, then nine, then four days between top-ups. The gap between loan 5 and 6 was five days and a top-up to loan 6 was approved after four days. So I thought the requests for credit were frequent enough that it was a factor which ought to have led QuickQuid to consider it was proportionate to look more closely at Miss B's financial situation.

And looking at the amounts borrowed too, loans 2 and 3 were for £200 and £250 – both relatively modest sums. But QuickQuid went on to lend much more than this across loans 4, 5 and 7. I said in my provisional decision, in relation to loan 4a:

"… bearing in mind the size of the loan; what QuickQuid knew about Miss B's income and expenditure; the length of the lending relationship (about nine months) and the pattern of borrowing, I think QuickQuid's checks were not proportionate. There's nothing in the

information QuickQuid has provided to suggest it reacted to Miss B's changing situation. Simply put, it carried out the same checks for a £1,150 loan with a £1,674 repayment as it did for a much earlier, smaller £200 loan with a £250 repayment. I can't see how, in Miss B's circumstances, this was proportionate."

Although I accept the amounts borrowed fluctuated to some extent (loan 6 in particular), I still believe this was a reasonable conclusion.

QuickQuid hasn't commented on my findings about what I thought proportionate checks from this point onwards would've shown, so I've no reason to depart from the findings I made on this aspect of the complaint.

The points QuickQuid made aren't directly relevant to loans 7 and 8. I upheld the complaint about these loans for a different reason and not just because I thought QuickQuid hadn't carried out proportionate affordability checks. In any event, QuickQuid appears to have accepted the outcome I proposed on these loans.

my final decision

I uphold this complaint in part, for the reasons given above and in my provisional decision.

CashEuroNet UK LLC must put things right by taking the steps set out in my provisional decision.

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

Matthew Bradford
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss B says that CashEuroNet UK LLC, trading as QuickQuid, lent to her irresponsibly.

background

QuickQuid approved 8 loans for Miss B. I've included some of the information QuickQuid provided about the loans in the table below. Some of these were topped up – meaning Miss B borrowed more during the course of the loan agreement. The top ups are denoted below with a letter after the loan number. Including top-ups, there were 18 lending decisions. The declared income and expenditure columns are the figures Miss B included on her loan application. The total expenditure figure is the sum of regular outgoings including housing costs, utility expenses, transport, food and 'monthly other credit commitments'. This table is included to provide information only and to give a simple overview of the lending history.

Loan no.	Amount	Approved	Repaid	Largest repayment	Declared Income	Declared Expenditure
1	£200	22/04/2012	27/06/2012	£230	£1,500	*n/a*
2	£200	16/12/2016	27/03/2017	£244.80	£2,400	£2,000
3	£250	16/06/2017	21/08/2017	£316	£2,400	£1,425
4 4a	£200 £1,150	03/10/2017 05/10/2017	17/10/2017	£248 £1,674	£2,400	£1,425
5 5a 5b 5c	£350 £300 £200 £50	05/11/2017 08/11/2017 17/11/2017 21/11/2017	22/12/2017	£434 £806 £855.10 £917.10	£2,400	£1,425
6 6a	£250 £50	27/12/2017 31/12/2017	18/01/2018	£306 £367.20	£2,400	£1,425
7 7a 7b 7c	£300 £400 £400 £300	26/05/2018 27/05/2018 29/05/2018 31/05/2018	04/06/2018	£367.20 £856.80 £1,346.40 £1,713.60	£2,400	£900
8 8a 8b	£300 £50 £125	07/06/2018 11/06/2018 12/06/2018	*outstanding balance*	£367.20 £428.40 £581.40	£2,400	£900

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 taken into account the law, good industry practice and any relevant regulations at the time.

When QuickQuid approved loan 1, its regulator was the Office of Fair Trading (OFT). The OFT had published guidance on irresponsible lending (ILG), including an updated version in February 2011. The ILG makes it clear lenders have a duty to lend responsibly – this includes undertaking proportionate affordability checks to ensure customers can repay loans sustainably. The definition of a sustainable repayment includes that payments should be made from income and/or savings, without undue difficulty and while meeting other reasonable commitments. There was no prescriptive list of the sort of checks a lender should carry out, but the guidance says lenders may wish to take into account factors such as the type of credit, a customer's credit history and their existing financial commitments.

The Financial Conduct Authority (FCA) was the regulator when QuickQuid approved loans 2 onwards. Its Consumer Credit sourcebook (CONC) sets out some of the rules and guidance for consumer credit providers such as QuickQuid. Some of these changed on 1 November 2018 and so the CONC rules and guidance I refer to here were those in place at the time QuickQuid lent to Miss B. CONC 5.3.1G (2) said lenders were required 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."*

'Sustainable' was defined (at CONC 5.3.1G (6)) as the consumer being able to make repayments without undue difficulty. This meant Miss B ought to have been able to make any loan repayments on time, while meeting her other reasonable commitments and without having to borrow further to make the repayments.

In short, QuickQuid needed to assess Miss B's ability to repay the credit in a sustainable way. CONC (*e.g.* CONC 5.2.3-4G) gave some guidance about appropriate considerations – these include the type, amount and cost of the credit, as well as the financial position of the consumer. It's important to note that these are examples of appropriate factors to take into account, not explicit or prescriptive rules.

Nonetheless what the rules and guidance do make clear is that QuickQuid needed to be satisfied Miss B could afford to repay the loans in a sustainable way. This means QuickQuid wasn't simply assessing the risk to it of lending (*i.e.* the risk of the loan not being properly repaid). It also needed to take into account the borrower-focused risk of the loan not being sustainable for Miss B.

With this in mind, I've considered whether QuickQuid did enough to check whether the loans were affordable. And if I find it didn't, I'll go on to consider whether proportionate checks would've suggested the loans were not affordable.

did QuickQuid carry out proportionate checks?

Bearing in mind what I've said above, I think proportionate checks would vary in the circumstances of each loan. So I've looked at each loan individually. In looking at each loan, I think it's reasonable to say a responsible lender would require more assurance the greater the risk to the consumer of the loan being unsustainable. 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.

loan 1

Loan 1 was approved in 2012 – several years before the rest of the loans I'm considering. From the information QuickQuid has provided, it looks like it carried out credit checks (although it hasn't shown us the underlying information for these) and asked Miss B to declare her income. It didn't ask Miss B any questions about her expenditure at the time.

The loan was for £200 and repayable in two payments: £30 in May 2012 and then £230 in June. QuickQuid didn't have any experience of Miss B as a customer at this time and so it appears to have lent a relatively modest amount. Although the creditworthiness checks appear to have been limited, I think they were proportionate bearing in mind the loan amount and Miss B's income. I haven't seen that QuickQuid was aware of any adverse information which ought to have caused it to carry out further checks. I'm not planning to uphold the complaint about this loan.

loans 2-6

I am going to deal with loans 2-6 (and top-ups) in this section of my decision and deal with loans 7 and 8 (and top-ups) separately, for reasons which will become clear later in my decision.

Along with its earlier submissions, QuickQuid provided a document setting out, in general terms, how its affordability assessments worked at the time it approved these loans. It has said that (as of 1 March 2015), *"all loan offers now meet the FCA rate cap and affordability rules".*

In response to our adjudicator, it said: *"In response to FOS' assessment which recommends QuickQuid uphold loans which were funded after March 2015, we regret to inform you that we cannot agree to FOS' recommendations*."

In short QuickQuid 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 and its checks were always proportionate.

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. The FCA isn't prescriptive about what checks a lender should carry out. As I've summarised above, it gives examples in CONC about what might be appropriate. But a lender should still bear in mind both the *consumer's circumstances* and the *particulars of the loan* in question. It doesn't follow that being authorised means doing the same checks, each and every time, is proportionate – whatever the circumstances of the potential borrower and the particulars of the loan. In effect, QuickQuid is asking me to pre-judge the complaint on the basis of its current lending model. And I'm not prepared to do that.

This is not least because there are also other considerations which I am required to take into account when making determinations on complaints.

DISP 3.6.1R says *"The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case."*

So, I am required to consider more than the relevant rules and guidance. I must take these into account. But I will do so in considering the broader question of whether QuickQuid treated Miss B fairly and reasonably.

With this in mind, I've considered each loan individually and set out my current findings about the proportionality of the checks below.

loan 2

This was a £200 loan, drawn down on 16 December 2016. The contractual repayments were £67.20 on 27 January 2017, £49.60 on 27 Feb and £244.80 due on 27 March. Miss B reported net monthly income of £2,400 and total monthly expenditure of £2,000. This left approximately £400 in disposable income.

QuickQuid carried out credit checks but I haven't seen the results of these. Despite this, I think QuickQuid's checks were proportionate in the circumstances. The largest payment was around £245 and was to be made in the third month following two much smaller payments. I think QuickQuid acted reasonably when it decided this loan was affordable. I'm not planning to uphold the complaint about this loan.

loan 3

My findings are much the same as for loan 2. This was only the second loan in this chain of borrowing. Miss B's reported income was the same as for the previous loan. I note she reported much lower monthly expenditure of £1,425 - her declared expenditure on food, monthly credit commitments and 'other' expenses reduced significantly.

Without having seen the results of QuickQuid's credit checks, it's difficult to assess how reasonable it was for it to accept Miss B's significantly lower expenditure. But I don't think loan 3 would've looked unaffordable even if Miss B hadn't changed her reported expenditure. So again, I think QuickQuid acted reasonably when it decided this loan was affordable. I'm not planning to uphold the complaint about this loan.

loans 4-4a

There was a gap of 43 days between the repayment of loan 3 and loan 4 being drawn down. I don't think this was a particularly significant gap, bearing in mind the short-term purpose of this sort of lending. But the amount Miss B wanted to borrow was small and the repayment appeared to be affordable, bearing in mind Miss B's reported income and expenditure. I don't think QuickQuid needed to be concerned about how much or how often Miss B was borrowing at this stage. So I'm not planning on upholding the complaint about loan 4.

But I think the situation changed when Miss B applied for the top-up I've labelled 4a. The top-up was for £1,150, not far short of six times the original sum borrowed – and was approved just two days after loan 4. It meant Miss B's largest repayment increased to £1,674 – far greater than a single month of her declared disposable income of about £975.

As a result, the loan was structured as follows:

A payment of £240.80 was due on 27 October, then £334.80 on 27 November and finally £1,674 due on 27 December – a total of £2,230 during a period in which Miss B's disposable income was reportedly about £2,925 (£975 x3). This was nearly 80% of Miss B's declared disposable income.

This also meant Miss B would have to 'save' income from month to month to put towards the last, largest payment. This aspect of the lending decision in particular causes me some concern. That Miss B needed to borrow £1,150, presumably unexpectedly, just two days after (again, I assume unexpectedly) borrowing £200 doesn't to me suggest much of a capacity to save. After all, if Miss B was saving from month-to-month, then why had she borrowed £200-£250 on three previous, relatively recent, occasions, when her monthly disposable income was apparently £975?

So at this point, bearing in mind the size of the loan; what QuickQuid knew about Miss B's income and expenditure; the length of the lending relationship (about nine months) and the pattern of borrowing, I think QuickQuid's checks were not proportionate. There's nothing in the information QuickQuid has provided to suggest it reacted to Miss B's changing situation. Simply put, it carried out the same checks for a £1,150 loan with a £1,674 repayment as it did for a much earlier, smaller £200 loan with a £250 repayment. I can't see how, in Miss B's circumstances, this was proportionate.

what would proportionate checks likely have shown?

loan 4a and onwards

I now need to consider what would have been proportionate. And I think the amount Miss B wanted to borrow was so large, relative to her declared disposable income that QuickQuid ought to have asked her for some evidence of her income and expenditure before deciding if it would approve the loan.

It didn't do this and so I can't be certain about what it would've seen. But Miss B has provided us with her bank statements. And in the absence of anything else, I think it's reasonable to rely on them. I think they will provide a reasonable and factual account of Miss B's income and outgoings at the time. I've paid particular attention to the statements in the three months before loan 4a (July-September 2017).

The bank statements reveal that Miss B was spending very large sums of money on gambling. In July 2017 Miss B was paid around £3,000. But there are over 100 gambling transactions on the bank statement, totalling more than £3,500. Miss B also pays over £1,800 to various short-term lenders and borrows or re-borrows from many of them in the same month. There's also a large monthly payment of over £400 to a debt charity.

It's clear that Miss B's finances were quite unstable – and that she was spending relatively large sums of money on gambling. I think it is likely QuickQuid would've established this with proportionate checks. I think it also would likely have seen a more comprehensive picture of how Miss B was relying on short-term finance and that alone would probably have been enough to put a responsible lender off providing further loans. Particularly the type of loans QuickQuid provided, which (with perhaps one or two exceptions) required Miss B to save from month-to-month. I can't see how QuickQuid could reasonably have expected her to do this given her level of indebtedness.

The situation doesn't change for the rest of the period of lending. So I think the lending from loan 4a (approved on 5 October 2017) and onwards was irresponsible. I'm planning therefore to uphold the complaint about the lending on and after this date. However, I'll deal with loans 7 and 8 separately below, for reasons which will become clear.

did QuickQuid act unfairly in some other way?

I think QuickQuid did act unfairly when it approved loan 7, 8 and the associated top-ups.

QuickQuid received a complaint from Miss B about irresponsible lending on 26 March 2018. It acknowledged receipt of this complaint on 28 March and sent its final response to Miss B on 23 April.

In Miss B's complaint letter she made the following statement (I've added the bold emphasis): ***"I am in a DMP*** [debt management plan] *and was in a DMP before I took out the payday loans, I took one out and it spiralled out of control.* ***I was and still am in financial difficulty****."*

So as of 26 March QuickQuid was aware Miss B had said she a) was in financial difficulty and b) was in a debt management plan. She was also of the opinion that her debts had 'spiralled out of control'. Despite this QuickQuid advanced seven further loans or top-ups. QuickQuid lent Miss B a total of £1,400 in May 2018 and £475 in June 2018.

Given that QuickQuid was aware Miss B had made the above statement, I'd expect to see – in the event it thought it was responsible to consider lending – that it carried out rigorous affordability checks before lending her further sums. Her statement suggests Miss B had only limited, if any, disposable income. But there's no evidence QuickQuid carried out any affordability checks beyond its usual process. So I think it's clear it didn't take account of what Miss B had said and in such circumstances its lending was irresponsible.

This service's approach to redress for irresponsible lending would usually involve asking a lender to write off interest and charges. But in some circumstances, we might tell a lender to write off all the debt. Examples of where we might do this are available on the technical resource section of our website.[1] The examples include where a lender *actually knew* a person was struggling financially when it approved a loan.

As I've set out above, I think it's clear QuickQuid knew Miss B was struggling financially when it approved loans 7, 8 and their associated top-ups. So I think it acted unfairly by approving them without doing enough to check whether Miss B's circumstances would allow for her to repay the loans sustainably.

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[1] https://www.financial-ombudsman.org.uk/publications/technical_notes/payday-lending-case-studies.html#a

I think Miss B has to accept some responsibility too. She also knew she was in difficulty and yet continued to apply for further loans. I've taken this into account when thinking about what QuickQuid should do to put things right in relation to loans 7-8.

As QuickQuid approved these loans knowing Miss B had said was in financial difficulty, in a debt management plan and not able to control her debts, I intend to tell it to write off *all the debt* (capital, interest and charges) for loan 8, which I understand still has an outstanding balance. I plan to tell QuickQuid to refund the interest and charges on loan 7, in line with our usual approach.

But I also plan to say QuickQuid can apply any refund of interest and charges on loans 4a-7c to reduce the outstanding capital debt on loan 8. This may or may not leave an amount of capital for QuickQuid to write off. I think this strikes a fair balance, bearing in mind both Miss B and QuickQuid have some responsibility for the lending continuing after March 2018.

what QuickQuid needs to do to put things right

I plan to tell QuickQuid to:

- refund the interest and charges Miss B paid on loans 4a-7c (inclusive)
- add to the above interest at 8% simple per year, from when Miss B paid them until the date of settlement[†]
- remove any outstanding interest and charges from loans 8-8b and treat any payments made as payments towards the capital
- remove any adverse information about loans 4a-8b from Miss B's credit history

[†]HM Revenue & Customs requires QuickQuid to take off tax from this interest. QuickQuid must give Miss B a certificate showing how much tax it's taken off if she asks for one.

Once it has done the above, QuickQuid may use the net refund for loans 4a-7c to reduce the outstanding capital balance on loans 8-8b. If this still leaves an unpaid balance on loans 8-8b, QuickQuid must write off this debt. If the refund is greater than the outstanding capital balance on loans 8-8b, QuickQuid must pass the difference to Miss B.

my provisional decision

I plan to uphold the complaint in part and to tell CashEuroNet UK LLC to put things right by taking the steps set out above.