

complaint

Miss B has complained about instalment loans Casheuronet UK LLC (trading as “Pounds to Pocket”) gave to her. She’s said Pounds to Pocket were negligent in lending money to her without carrying out proper financial checks. Miss B is also unhappy at being chased for payments on an outstanding loan and Pounds to Pocket recording late payments on her credit file after it refused to accept repayments once she complained.

background

I attach my provisional decision of 17 December 2018, which forms part of this final decision and should be read in conjunction with it. In my provisional decision I explained why I was intending to uphold Miss B’s complaint. I invited both parties to provide any further comments they may have had before I reached a final decision.

Miss B responded to confirm that she agreed with my provisional decision and that she had nothing further to add. Pounds to Pocket also responded saying:

- it completed enhanced checks before approving each of Miss B’s loans. So it didn’t agree that any of them were unaffordable and it was therefore reasonable for it to have provided the top up on loan three and loan four;
- it reiterated the arguments it made regarding the emails Miss B was sent chasing payment and the negative information recorded on her credit file. It doesn’t think it has acted unfairly as once an amicable resolution is reached on a complaint any interest or fees added to Miss B’s account will be waived and her credit file will be amended.

my findings

I’ve reconsidered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’ve thought about Pounds to Pocket’s further points regarding why it wasn’t unfair for it to have provided the top up to loan three and loan four to Miss B. But having considered them, I don’t think that Pounds to Pocket has really engaged with the content of my provisional decision at all.

My provisional decision set out in some detail why the checks carried out before the top-up to loan three and loan four were provided weren’t sufficient. And it seems to me that rather than respond to the particular arguments presented, Pounds to Pocket has simply provided a generic document in the hope that it’ll persuade me to alter my conclusions. Equally it hasn’t explained why its document is relevant here given the particular circumstances of Miss B’s case either.

I’d also like to make it clear that I can’t see how Pounds to Pocket doing the same thing over and over again as suggested in the generic document provided, irrespective of the circumstances, can always be proportionate.

In my view, the use of the word proportionate – in the regulations and guidance - means there should always be a direct relationship between the circumstances of a *particular* loan application and the degree of information a lender will need to gather in order to make an

informed decision. After all, an assessment of affordability is a borrower rather than lender focused test.

Equally the point I made in my provisional decision, and which I repeat here, is that, I don't think it was reasonable and proportionate for Pounds to Pocket to have ignored the reality of what Miss B's borrowing history was demonstrating in favour of its standard process. Consequently I remain of the view that it was unfair for Pounds to Pocket to provide the top-up to loan three and loan four without getting a better understanding of Miss B's actual financial position.

I've also thought about what Pounds to Pocket has said about telling our adjudicator to inform Miss B she should ignore the emails she was sent chasing payment and that it'd amend any adverse information on Miss B's credit file after her complaint is resolved. But I think that this somewhat misses the point.

I don't think it's fair and reasonable to expect Miss B to hold on to payments for Pounds to Pocket – until it decides to accept them - simply because it took a unilateral decision to vary the terms of Miss B's contract in order to limit any potential compensation award. And as I said in my provisional decision it's plainly absurd for Pounds to Pocket to record adverse information on Miss B's credit file, in these circumstances, irrespective of its intention of amending this once Miss B's complaint was resolved.

I don't see how it is fair and reasonable for Miss B to have to suffer the consequences of adverse information on her credit file simply because she's made a complaint, which has been upheld, about Pounds to Pocket.

Having thought about all of Pounds to Pocket's further points, I've not been persuaded to change the conclusions reached in my provisional decision of 17 December 2018. So I'm upholding Miss B's complaint. Pounds to Pocket should put things right in the way that I set out in my provisional decision.

my final decision

For the reasons set out above and in my provisional decision of 17 December 2018, I'm upholding Miss B's complaint. Casheuronet UK LLC (trading as "Pounds to Pocket") should put things right in the way set out in my provisional decision of 17 December 2018.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss B to accept or reject my decision before 18 February 2019.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss B has complained about instalment loans Casheuronet UK LLC (trading as “Pounds to Pocket”) gave to her. She’s said Pounds to Pocket were negligent in lending money to her without carrying out proper financial checks. Miss B is also unhappy at being chased for payments on an outstanding loan and Pounds to Pocket recording late payments on her credit file after it refused to accept repayments once she complained.

background

Pounds to Pocket provided Miss B with four instalment loans between May 2017 and March 2018. Her borrowing history is as follows:

- Loan one taken in May 2017 for an initial £800. This was topped up by a further £900 in July 2017
- Loan two taken in August 2017 for £900
- Loan three taken in October 2017 for an initial £1,000. This loan was topped up by a further £800 in January 2018
- Loan four taken in March 2018 for £1,300

One of our adjudicators looked at what Miss B and Pounds to Pocket said in relation to the complaint. She thought that proportionate checks would’ve stopped Pounds to Pocket giving Miss B the top up to loan three and loan four. But she also thought that proportionate checks wouldn’t have shown up anything to stop Pounds to Pocket giving Miss B loans one and two and the initial amount for loan three.

Our adjudicator also thought that Pounds to Pocket unfairly refused to accept payments for loan four once she complained. She recommended that Pounds to Pocket pay Miss B £300 for the trouble and upset its failure to accept payments caused.

Miss B didn’t disagree with our adjudicator’s view. But Pounds to Pocket did. So the case has been passed to an ombudsman. As Miss B hasn’t disagreed with our adjudicator’s view, this final decision is only looking at whether the top up to loan three and loan four should’ve been given to Miss B and whether Pounds to Pocket treated Miss B unfairly in relation to refusing payments for loan four once she complained.

my provisional findings

I’ve considered all the available evidence and arguments to provisionally decide what’s fair and reasonable in the circumstances of this complaint. I’ve also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

the relevant guidance in place at the time of the loans

Pounds to Pocket gave Miss B her loans while it was regulated by the Financial Conduct Authority (“FCA”). The relevant regulatory rules are 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 this means that Pounds to Pocket should’ve carried out proportionate checks to make sure Miss B could repay her loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the Miss O’s income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that a lender should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These would include where:

- a consumer’s income is low or the amount to be repaid takes up a substantial portion of their income
- the amount, or amounts, due to be repaid are higher
- there is a larger number and/or frequency of loans
- the period of time during which a customer has been provided with borrowing is long.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I’ve kept all of this in mind when thinking about whether Pounds to Pocket did what it needed to before agreeing to provide the top up to loan three and loan four.

Pounds to Pocket says it carried out a credit check when Miss B approached it for these loans. It also says that all of Miss B’s loans were provided after it had implemented an affordability review, which involved collecting and validating income and expense details from customers, in line with the FCA Handbook.

It believes all of the loans it issued were affordable. It isn’t clear whether Pounds to Pocket believes this to be the case because of the robustness of its checks, or because it believes the loans were actually affordable irrespective of whether it met its obligations.

why I don’t think Pounds to Pocket’s checks for the top up to loan three and loan four were proportionate

I’ve carefully thought about what Pounds to Pocket has provided and what it has said. But overall given what it learnt about Miss B during the course of her lending history, I think it would’ve been proportionate for Pounds to Pocket to carry out additional checks before giving Miss B the top up to loan three and loan four.

To explain, Miss B asked Pounds to Pocket for the top up to loan three not too long after she was late in making a repayment. In these circumstances, I think that Pounds to Pocket needed to do more than rely on its modelling and the checks it usually carries out for all applications, to verify that Miss B wasn't struggling to meet her existing commitments, before providing a further loan.

Given the circumstances, of Miss B's previous late payment, I think that it would have been reasonable and proportionate for Pounds to Pocket to have taken additional steps to verify the information being provided. It could have done this by asking for information such as bank statements, copies of bills, or even proof of Miss B's income.

By doing this Pounds to Pocket would have been able to get a better understanding of why Miss B was coming back for further funds so soon after making a late payment. As Pounds to Pocket didn't do this, or take any other sort of similar additional steps, I don't think I can reasonably say that Pounds to Pocket checks for the top up to loan three and loan four were proportionate.

Overall having thought about everything provided and taken it together, I think that Pounds to Pocket should've found out more about Miss B before agreeing to give her the top up to loan three and loan four.

what I think proportionate checks for the top up to loan three and loan four would most likely have shown

As I've explained, given Miss B's lending history, I think Pounds to Pocket needed to find out more about her financial circumstances before giving the top up to loan three and loan four to her. And I think that it needed to verify any information provided, by means other than what it had been doing previously, in order to be able to understand that Miss B would've been able to repay additional borrowing despite her recent late payment.

Miss B has provided some information on her financial circumstances. I accept this isn't necessarily what Pounds to Pocket would've seen at the time. But as I haven't been given anything else, I think it's reasonable to rely on it as being indicative of what Pounds to Pocket is most likely to have picked up on if it had carried out proportionate checks.

I've carefully looked through everything Miss B has provided and I've also thought about everything both parties have said.

Having done so, I don't think Miss B had the capacity to take on these loans. A significant proportion of Miss B's monthly income – in excess of half - was going towards gambling. So I think that Pounds to Pocket would've realised that its ability to get its money back was wholly dependent on Miss B's gambling success.

In my view, if Pounds to Pocket had seen all of this – as it would've done if it did the level of checks I think it would've been proportionate to do – it would've realised that it was unlikely to receive the payments Miss B was committing to make without it adversely impacting on her financial position. And it would've realised that Miss B wasn't in a position to be able to take on any borrowing from the top up to loan three onwards.

So Miss B's borrowing history as well as her overall financial circumstances, suggest to me that proportionate checks would've shown Pounds to Pocket it shouldn't have given the top up to loan three and loans four to Miss B. As this is the case, I'm intending to uphold Miss B's complaint about these loans and tell Pounds to Pocket to put things right for her.

Pounds to Pocket's refusal to accept the payments due on loan four after Miss B complained

I've also thought about what Miss B has said about being chased for payments on loan four and Pounds to Pocket recording late payments on her credit file despite it refusing to accept the payments due, after she made this complaint.

Miss B was provided with loan four in March 2018. And she was due to repay this loan in twelve instalments. From what I can see, Miss B made her April, May and June payments. But as I understand it, Pounds to Pocket stopped accepting payments from Miss B once it was notified she'd referred her complaint to us at the end of June 2018.

I can only presume that Pounds to Pocket did this to ensure it didn't collect payments it might have to return – with interest – should Miss B's complaint be upheld. Although it didn't and still doesn't think it did anything wrong when providing Miss B with any of her loans. That said, I'd be interested to hear Pounds to Pocket's reasons for its actions.

In any event, I need to think about the particular impact of Pounds to Pocket's actions on Miss B. And I've carefully done so.

Miss B – through no fault of her own - has been left in a position where she's been unable to make the payments due on her loan since July 2018. I've also seen that Pounds to Pocket chased Miss B for these payments, despite telling her she shouldn't make them. Miss B being chased for payments she was told not to make and which Pounds to Pocket refused to accept, on its own, will have been distressing. But what makes the position on this case plainly absurd is that Miss B's credit file shows Pounds to Pocket has recorded, at least, three missed payments for loan four. This is likely to have had and be having a negative impact on Miss B's ability to access credit – especially from mainstream lenders.

In my view, Pounds to Pocket is treating Miss B unfairly. In this case, its actions, at the very least appear, to have prevented her from making payments simply because she's made a complaint. The additional impact this is having on Miss B's credit file is making what's already been a distressing period – bearing in mind my reasons for upholding her initial complaint in the first place – even more distressing. As this is the case, I'm intending to uphold this aspect of Miss B's complaint and direct Pounds to Pocket to put things right.

putting things right - what I'm intending to tell Pounds to Pocket to do in relation to Miss B's entire complaint

To put things right for Miss B, Pounds to Pocket should:

- refund all the interest and charges for the top up to loan three; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid, if they were, to the date of settlement†;
- remove any interest and charges applied to loan four from the outstanding balance;
- apply the total refund due for the top up to loan three to the outstanding balance on loan four;
- reduce the balance on loan four by the amount of the payments that would have been made had Pounds to Pocket not unfairly refused to accept payments once Miss B complained. This will result in the outstanding balance on loan four being cleared;
- remove any adverse information recorded on Miss B's credit file as a result of the top up to loan three and loan four

I think that Pounds to Pocket clearing the outstanding balance on loan four in the way I've set out above represents a fair and reasonable settlement in all the circumstances of Miss B's particular complaint. As this is the case, at this stage, I'm not intending to direct Pounds to Pocket to make any monetary payment to Miss B.

my provisional decision

For the reasons given above, I'm intending to uphold Miss B's complaint and say Casheuronet UK LLC (trading as "Pounds to Pocket") should settle the complaint in the way set out above.

If Pounds to Pocket or Miss B have anything further to add before I issue my final decision, they should ensure anything they send reaches me by 31 December 2018.

Jeshen Narayanan
ombudsman