

## complaint

Mr W says CashEuroNet UK LLC, trading as QuickQuid, lent to him irresponsibly.

## background

I sent both parties my provisional decision on this complaint on 12 March 2019. 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 and asked QuickQuid and Mr W for their comments. Mr W said he was happy with the outcome. QuickQuid didn't accept it, saying:

- I had said that, *"the number of instances of lending, in and of itself, is evidence that a borrower is reliant on High-Cost Short Term ("HCST") lending and therefore such lending is 'unsustainable.'"*
- I had therefore suggested that *"CONC restricts lending to a specific number of loans to a consumer, which it does not, and after which point any subsequent lending is de facto 'unsustainable.' [My] view effectively constitutes unauthorised rulemaking."*
- *"Consequently, if [I] conclude that QuickQuid breached CONC 5.3.1(6) by providing unsustainable loans to Mr [W], then it is incumbent upon [me] to demonstrate how. The mere number of loans is an insufficient basis to conclude the loans were in fact unsustainable."*

I've considered the points made by QuickQuid and set out my findings below.

## my findings

I've again 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.

I have to say I'm disappointed by QuickQuid's response – which focuses almost exclusively on the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC). QuickQuid wasn't subject to FCA regulation – and by extension CONC – until April 2014, which is some three years after the last loan it approved for Mr W. CONC therefore isn't directly relevant to Mr W's complaint and I did not conclude QuickQuid breached CONC.

I do however acknowledge there is overlap between CONC and the ILG. CONC at times specifically refers back to the ILG. For example, CONC 5.3.1(6), cited by QuickQuid, refers back to paragraphs 4.3 and 4.4 of the ILG and the definition of sustainability is similar.

I'd also add that it is not my role to determine whether there's been a technical breach of any particular rule. I take regulation into account. But 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."* That's what I've done here.

I'd now like to directly address QuickQuid's point that the number of loans isn't in itself a relevant factor. ILG, at paragraph 6.25, says the following is likely to be a deceptive or unfair practice:

*“Repeatedly refinancing (or ‘rolling over’) a borrower’s existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.”*

It then goes on to say:

*“The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower’s indebtedness in an unsustainable manner.*

*...*

*The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.”*

So relevant guidance at the time indicated that allowing a creditor to sequentially enter into a number of loans, one after the other, was potentially unfair. The ILG also stated that payday loans were not generally suitable for long-term borrowing. I therefore think it’s perfectly reasonable to conclude that the number of loans and/or the length of a chain of borrowing are relevant factors to be taken into account. And I don’t think QuickQuid is acting fairly when disregarding these as relevant factors.

But this was not the only factor I took into account in my provisional decision. I also took into account the repayment difficulties Mr W had experienced when repaying loans 1-3 – the loans were extended so many times that these three loans alone ran for about a year.

I also noted that Mr W had actually contacted QuickQuid after loan 3, explaining to it in April 2010 that he was struggling to afford a repayment. QuickQuid hasn’t addressed this point at all.

I would also like to highlight that the approach I’ve taken is consistent with both DISP 3.6.1R and previous decisions from this service<sup>1</sup>, which QuickQuid will be familiar with and ought to take into account.<sup>2</sup>

Overall, I don’t think that QuickQuid really engaged with any of the points made in my provisional decision. And so its response has not changed my provisional findings. My final decision is that I uphold the complaint, for the reasons given above and in my provisional decision.

---

<sup>1</sup> <https://www.financial-ombudsman.org.uk/publications/technical.htm>

<sup>2</sup> see DISP 1.3.2AG (1)-(3) <https://www.handbook.fca.org.uk/handbook/DISP/1/?view=chapter>

### **what QuickQuid needs to do to put things right**

QuickQuid should:

- refund the interest and charges Mr W paid on loans 4-9
- add interest at 8% simple per year to the refund, from when the interest and charges were paid (if they were) until the date of settlement<sup>†</sup>
- remove any adverse information about loans 4-9 from Mr W's credit history

I now understand loan 9 was passed to a third party, which could mean QuickQuid will need to take different steps to those set out above.

QuickQuid will need to ensure that Mr W is in the same financial position he'd be in as if the repayment for loan 9 was capped at the principal amount of £550. And if he's already paid more than this, it will have to refund the overpayments with interest as set out above. If Mr W has paid less than the principal, QuickQuid can only offset what Mr W still owes it from his redress if it buys back the debt.

If QuickQuid can't buy back the debt, it could:

- (a) make a payment to the debt owner which has the effect of removing any interest included on the loan; or
- (b) pay the amount in (a) directly to Mr W. If QuickQuid does this, it will be up to Mr W to pay (a) to the debt owner. He will also have to make any principal payment still due.

Whatever steps QuickQuid takes, it will need to explain this clearly to Mr W. QuickQuid will also have to liaise with the debt owner to arrange for the removal of any adverse information it recorded about loan 9. Although it may well be, given the time that's passed, the information is no longer reported to credit reference agencies anyway.

<sup>†</sup>HM Revenue & Customs requires QuickQuid to take off tax from this interest. QuickQuid must give Mr W a certificate showing how much tax it's taken off if he asks for one.

### **my final decision**

I uphold this complaint. CashEuroNet UK LLC must put things right put taking the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 March 2019.

Matthew Bradford  
**ombudsman**

**COPY OF PROVISIONAL DECISION****complaint**

Mr W says CashEuroNet UK LLC, trading as QuickQuid, lent to him irresponsibly.

**background**

QuickQuid approved nine loans for Mr W. Only loans 4-9 form part of the complaint as Mr W withdrew his complaint about the first three loans. As loans 1-3 still form part of the lending history, I may refer to them at times.

| <b>Loan no.</b> | <b>Date approved</b> | <b>Loan amount (£)</b> | <b>Original end date</b> | <b>Actual end date</b> |
|-----------------|----------------------|------------------------|--------------------------|------------------------|
| 1               | 09/03/2009           | 225                    | 30/04/2009               | 04/08/2009             |
| 2               | 07/08/2009           | 250                    | 30/09/2009               | 24/12/2009             |
| 3               | 31/12/2009           | 450                    | 26/02/2010               | 08/04/2010             |
| 4               | 19/04/2010           | 100                    | 30/04/2010               | 30/04/2010             |
| 5               | 30/04/2010           | 400                    | 28/05/2010               | 28/05/2010             |
| 6               | 01/06/2010           | 550                    | 30/06/2010               | 30/06/2010             |
| 7               | 01/07/2010           | 950                    | 31/08/2010               | 01/12/2010             |
| 8               | 02/12/2010           | 650                    | 31/01/2011               | 03/12/2010             |
| 9               | 03/12/2010           | 550                    | 31/01/2011               | n/a                    |

**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.

Relevant regulation (as of March 2010) included the Office of Fair Trading's (OFT) guidance on irresponsible lending (ILG). The ILG made it clear lenders had a duty to lend responsibly – this included undertaking proportionate affordability checks to ensure customers could repay loans sustainably. The definition of a sustainable repayment included that payments should be made from income and/or savings, without undue difficulty and while meeting other reasonable commitments.

There's 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.

With this in mind, I've considered whether QuickQuid acted fairly when it approved loans 4-9.

QuickQuid has provided some evidence of the checks it undertook before lending. These included carrying out credit checks (although I haven't seen the full results of these) and asking Mr W about his income, employment and residential status. It seems Mr W declared that he was employed, his net income was £2,200 a month and that he rented.

In the circumstances of loans 4-9, I don't think QuickQuid did enough to check whether the loans were sustainably affordable. The loans Mr W was taking out were intended for short term use, but by April 2010 he'd been indebted to QuickQuid without break for about a year. And during that year, he'd demonstrated difficulties paying back his loans on time. Loans 1-3 were all subject to extensions, meaning Mr W would have paid back much more in interest than originally intended. The gaps between the loans up to and including loan 4 were only a matter of days, suggesting Mr W was potentially reliant on this type of credit and/or was struggling to repay the debts whilst also meeting his other commitments.

So I think QuickQuid ought to have realised, from the pattern of borrowing and repeated repayment extensions, that there were signs Mr W was experiencing financial difficulty by the time he asked for loan 4.

At this point I'd usually go on to consider what proportionate checks would've looked like and what they would've likely shown. But I don't think that's necessary in Mr W's case. I'll explain why.

I've already explained that QuickQuid ought to have taken into account that Mr W wasn't able to repay any of his first three loans within the original agreements. I've also noted that Mr W actually contacted QuickQuid about struggling to afford the repayment for loan 3. In an email of 11 April 2010 he said he wanted to complain about a late payment charge and that he had tried to tell QuickQuid in the week before the loan was due that he couldn't afford the repayment. In the email Mr W says he was told QuickQuid wouldn't help him until the due date. So as well as the pattern of borrowing, Mr W had actually been in touch with QuickQuid and had mentioned having difficulties with his repayments – specifically saying that he couldn't afford them.

Mr W then asked for loan 4 only 11 days after repaying loan 3 – a loan he told QuickQuid he'd struggled to repay. I think by this time QuickQuid was on notice that Mr W was in financial difficulty and that further loans were therefore not appropriate. The loans extensions and contact from Mr W, in my view, suggested that loans 1-3 had not been repaid without undue difficulty. The year-long length of the lending relationship up to this point reinforces my view that Mr W was struggling with his finances.

That Mr W was likely to be in financial difficulty is borne out by the way he continued to borrow. There were no, or just minimal, gaps between loans 4-9. And the amounts he was borrowing each month were on an upwards trend. In April 2010 he borrowed £500, then £550 in June, £950 in July and finally £1,200 in December. This sort of pattern reinforces my view that Mr W wasn't sustainably clearing his debts, so was borrowing further funds when left with a shortfall.

Had QuickQuid looked further in to the reasons why, I think (from his bank statements) it's likely it would've seen Mr W was heavily indebted to a number of other lenders. But I don't think QuickQuid actually needed to do this to realise Mr W was in financial difficulty. I think the pattern of lending and the contact from him ought to have been enough on its own for QuickQuid to realise this.

Overall, I don't think QuickQuid acted fairly when it approved loans 4-9. So I'm planning to uphold Mr W's complaint.

### **what QuickQuid needs to do to put things right**

I plan to say QuickQuid should:

- refund the interest and charges Mr W paid on loans 4-9
- add interest at 8% simple per year to the refund, from when the interest and charges were paid (if they were) until the date of settlement
- remove any adverse information about loans 4-9 from Mr W's credit history

I'd be grateful if when responding to this decision QuickQuid could confirm the current status of loan 9. If it has still not been repaid, or has been sold, this will need to be taken into account if my final decision is the same as my provisional decision.

### **my provisional decision**

I plan to uphold this complaint in part and to tell CashEuroNet UK LLC to put things right as set out above.