

## **summary of the complaint**

Mrs W's complaint relates to nine short term (often referred to as 'payday') loans given to her by CashEuroNet UK LLC ("CEU") between November 2009 and July 2012.

Mrs W says that she took out the first loan with the hope that she would be able to pay it back at the end of the month; but from there her financial situation began to spiral out of control and she was left with no choice but to take out more loans for progressively higher amounts to pay the loan interest and cover her living expenses.

Mrs W complained that all of these nine loans were unaffordable, and that CEU was acting irresponsibly when it approved them.

## **background to the complaint and this final decision**

After Mrs W brought her complaint to the Financial Ombudsman Service she decided to accept an offer of redress from CEU in full and final settlement of her concerns about loans four to nine. So those loans are no longer in dispute and do not form part of this decision.

CEU didn't offer redress for the first three loans. Instead, it argued that Mrs W's complaint about those loans had been made too late – which meant that this service couldn't consider whether anything had gone wrong when the loans were lent.

After considering all of the evidence and arguments relating to jurisdiction in this case – including the various detailed submissions from CEU referring to, amongst other things, the DISP rules applying to complaints referred to this service and the statutory limitation period set out in the Limitation Act 1980 (including case law relevant to that Act) – I issued my jurisdiction decision on this time limit issue.

In that decision I explained that I was satisfied Mrs W's complaint about her first three loans *had* been made in time, so all three loans could be considered by the Financial Ombudsman Service on their merits.

One of our adjudicators then carried out that merits investigation and, having done so, explained to the parties that he thought CEU had been wrong to give Mrs W each of these loans.

To put things right, he recommended that CEU:

- refund all interest and charges paid by Mrs W on these loans;
- pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement; and
- remove any negative information about these loans from Mrs W's credit file if any record is still recorded.

CEU initially disagreed with this (whilst also pointing out that it still thought these three loans fell outside of our jurisdiction), before later advising that it was prepared to settle the case.

CEU's offer of redress was broadly in line with the adjudicator's recommendation, with the exception of the 8% simple interest. CEU told us that it was only prepared to pay Mrs W interest up until 5 May 2017 – this being the date this complaint was referred to an

ombudsman for a decision on jurisdiction after CEU had not accepted the adjudicator's assessment that we were able to consider Mrs W's complaint about these three loans.

CEU feels that there have been unwarranted delays on the part of this service in deciding our jurisdiction in this case – so it would be unjust to require it to pay 8% simple interest beyond when the case was referred to an ombudsman for a decision on jurisdiction.

Mrs W was prepared to accept what CEU had offered so far as an interim payment, but she wanted us to consider the outstanding interest that had been recommended by our adjudicator.

So our adjudicator explained this to CEU, clarifying – with reference to two redress publications on our website – that our awards for 8% simple interest are to compensate the consumer (Mrs W) for the period when they were out of pocket. So the time it's taken to resolve this complaint doesn't alter the basis for awarding 8% simple interest up to the date of settling Mrs W's complaint.

I'm pleased to say that CEU agreed to pay the interim settlement to Mrs W. It says this was paid to her on 7 January 2019, and I see that she's confirmed receipt. So this money is no longer due.

But CEU has asked that the dispute about it paying 8% interest beyond 5 May 2017 be referred to an ombudsman for a final decision.

### **my findings**

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

As I've explained above, our adjudicator recommended that Mrs W's complaint about these three loans should be upheld. I agree – I uphold this complaint.

The redress our adjudicator proposed – which is in line with the typical award I would recommend in cases where loans should not have been given to a consumer – was *broadly* agreed with by CEU; but it disputes that it should continue to pay 8% simple interest beyond 5 May 2017 when it says it was told the jurisdiction issue it raised had been referred to an ombudsman.

So that's what remains for me to decide here – whether or not CEU should fairly pay 8% simple interest on the interest and fees Mrs W paid on these three loans from 6 May 2017 up until 7 January 2019 when this money was refunded to her.

Before I consider what fair redress is in this case though, I should just briefly add that – for the reasons set out in my jurisdiction decision – I remain satisfied that Mrs W's complaint about these three loans was made in time and so falls within my jurisdiction to consider. I haven't seen any evidence arising since I issued my jurisdiction decision that causes me to reconsider that finding.

### *making an interest award*

In order for me to fairly decide the period over which CEU should pay interest, it's important to first understand when and why awards like these are made to consumers.

Where a complaint is determined in favour of a complainant, an ombudsman has the power – in accordance with DISP 3.7.1R of the Financial Conduct Authority handbook – to make a determination including one or more of the following:

- (1) a money award against the respondent; or
- (2) an interest award against the respondent; or
- (3) a costs award against the respondent; or
- (4) a direction to the respondent.

Interest awards are most typically made to reflect the fact that a consumer has been wrongly deprived by the business of a sum of money. It would *usually* be appropriate in these circumstances to direct the business to add interest from the date the consumer should have had the money until the date the money is actually paid – this compensates the consumer for the period that they've been out of pocket.

This is a long-standing and well documented approach taken by this service when awarding redress. Indeed, I note our adjudicator referred CEU to two publications on the Financial Ombudsman Service website<sup>1</sup> setting this out.

### *how does this affect Mrs W's complaint?*

Taking the above into account, I've considered what represents fair redress in the individual circumstances of this particular complaint.

I agree that Mrs W's complaint should be upheld on its merits. This means I'm satisfied she should not have been given these three loans, which in turn means that the payments she made to CEU in relation to the loans (the interest and charges) should never have happened.

The effect of this is that CEU has wrongly held Mrs W's money (which of course means she hasn't been able to use the money herself) since she paid it to CEU almost ten years ago.

I understand CEU has concerns about the time this complaint has taken to resolve. But regardless of why this complaint has taken this long to resolve, and whose fault that may or may not be (although, to be clear, it certainly isn't Mrs W's fault), it remains the case that CEU has wrongly been in possession of Mrs W's money for all this time.

So it's fair, in my view, that she should now be compensated by CEU paying her interest for the *entire period* when she was without this money – in other words, from when she paid CEU up until 7 January 2019 when the money was recently refunded to her.

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<sup>1</sup> [https://www.financial-ombudsman.org.uk/faq/businesses/answers/redress\\_a4.html](https://www.financial-ombudsman.org.uk/faq/businesses/answers/redress_a4.html)

<https://www.financial-ombudsman.org.uk/publications/ombudsman-news/136/136-awarding-interest.html>

I think it's worth next just clarifying the rate of interest to be paid by CEU and why that's fair.

Our adjudicator recommended that CEU pay 8% simple interest.

Awarding 8% is not intended to represent interest in the same way that a bank account pays interest. Rather, it's a broadly fair yardstick for compensating consumers for a wide range of possible losses and lost opportunities that may have incurred. It's also the rate that the courts often use in similar situations to this. So I think it's a good starting position for compensating consumers – like Mrs W – for being deprived of their money.

There may be some circumstances where a consumer's losses can be more clearly defined. So 8% wouldn't always be the appropriate rate. Bearing in mind that Mrs W had to continue borrowing from CEU even *after* taking these three loans (and at a rate far in excess of 8%) it's certainly arguable whether 8% is the right amount to compensate her for being without this money.

But I'm not persuaded that there's enough in this case to clearly identify what would have happened to Mrs W's money had she not paid CEU. So I'm satisfied that 8% simple is a fair and reasonable rate of interest for CEU to pay in this case.

And for the reasons I've explained above it should pay that rate for the whole period (*i.e.* beyond the date it's already paid interest) up until it refunded Mrs W's money.

*putting things right – what CashEuroNet UK LLC now needs to do*

- pay interest of 8% simple a year on Mrs W's interest and charges on these three loans for the outstanding period from 6 May 2017 up until 7 January 2019 when compensation was previously paid†;
- for the avoidance of doubt, if it hasn't already done so it should also remove any negative information about these loans from Mrs W's credit file if any record is still recorded.

† HM Revenue & Customs requires CashEuroNet UK LLC to take off tax from this interest. CashEuroNet UK LLC must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

Finally, if CEU still has concerns about the service we have provided in this case it should raise these as a separate matter. But for the reasons I've explained above, its concerns don't affect what's fair redress for it to pay Mrs W in this case.

**my final decision**

For the reasons I've explained, my final decision is that I'm upholding Mrs W's complaint. CashEuroNet UK LLC should pay redress as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 14 March 2019.

Kevin Wright  
**ombudsman**