

## The complaint

Miss D says Advanced Payment Solutions Limited trading as Cashplus lent to her irresponsibly. She says that Cashplus didn't check if the loans were affordable for her. If it had done it wouldn't have lent to her.

## What happened

This complaint is about 18 payday (iAdvance) loans, and six CreditBuilder loans, Cashplus provided to Miss D between August 2012 and August 2013. I've outlined some of the information about the payday loans in a table below.

loan number	date started	amount borrowed	term (days)	date repaid
1	23/08/2012	£50	21	14/09/2012
2	14/09/2012	£50	14	29/09/2012
3	01/10/2012	£50	14	16/10/2012
4	16/10/2012	£50	7	24/10/2012
5	29/10/2012	£50	21	20/11/2012
6	21/11/2012	£50	11	03/12/2012
7	22/11/2012	£50	10	03/12/2012
8	03/12/2012	£100	25	29/12/2012
9	11/01/2013	£100	24	05/02/2013
10	05/02/2013	£100	25	03/03/2013
11	05/03/2013	£100	25	31/03/2013
12	10/05/2013	£50	25	05/06/2013
13	10/06/2013	£50	25	06/07/2013
14	08/07/2013	£50	14	23/07/2013
15	23/07/2013	£30	13	06/08/2013
16	25/07/2020	£20	11	06/08/2013
17	08/08/2013	£50	14	23/08/2020
18	08/08/2013	£50	14	23/08/2020

Our adjudicator didn't uphold Miss D's complaint about the Creditbuilder loans (not included in the loan table above). This is because no interest was attached to them.

Our adjudicator partially upheld Miss D's complaint about the iAdvance loans. She thought that it was evident that the consumer was having problems managing the loan repayments from loan 5 onwards. And that the lending pattern itself was harmful after loan 8.

Cashplus disagreed with the adjudicator's opinion. It said that there was no persuasive evidence of reliance on the lending. And there was gap of over a month between some of the loans which was significant here. The loans were all for one off purchases which means they were used correctly.

As no agreement has been reached the complaint has been passed to me.

### **What I've decided – and why**

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

We've set out our general approach to complaints about irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Cashplus needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss D could repay the 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 consumer'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 Cashplus should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

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

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've decided to uphold Miss D's complaint in part and I've explained why below.

Miss D didn't disagree with our adjudicators opinion not to uphold loans 1 to 4 (iAdvances in the loan table above) and the Creditbuilder loans. So, I don't think there is any ongoing disagreement about these arrangements. Because of this I'm not making a decision about this lending. But they were part of the borrowing relationship Miss D had with Cashplus. So, they are something I will take into account when considering the other loans she took.

Loan 5 was Miss D's fifth payday loan in a short period of time. She was taking a loan and repaying it around every two weeks and there were no significant breaks in the lending up to

this point. So Cashplus should've made sure that Miss D could sustainably repay this lending.

Having looked at the information supplied by both sides about Miss D's circumstances, I can see that her income seems to be around £125 a week and it came mainly from benefits. So the loan repayments, given that she taking more than one loan a month, representative a high proportion of this.

And Miss D looks to be using the loans to prevent her going overdrawn at times. So, I'm not persuaded she was just using this lending for one off purchases. I think this shows she was generally struggling to make ends meet rather than occasionally needing extra funds to make a purchase.

And, as Cashplus has noted, Miss D was spending what looks to be a reasonably significant proportion of her income gambling. So, the loan repayments, to some degree, would have been dependent on her gambling returns which isn't sustainable.

So, having looked at all of the circumstances surrounding loans 5 to 7, I think a proportionate check would've likely shown that Miss D was having problems managing her money and she would struggle to repay these loans without further borrowing.

I think that Cashplus shouldn't have given loans 5 to 7 to Miss D and I think she's lost out as a result of this. So I'm upholding her complaint about loans 5 to 7.

And going forward. I've looked at the overall pattern of Cashplus's lending history with Miss D, with a view to seeing if there was a point at which Cashplus should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Cashplus should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Miss D's case, I think that this point was reached by loan 8. I say this because:

- at this point Cashplus ought to have realised Miss D was not managing to repay her loans sustainably. Miss D had taken out eight loans within around four months. So Cashplus ought to have realised it was more likely than not Miss D was having to borrow further to cover the hole repaying her previous loans was leaving in her finances and that Miss D's indebtedness was increasing unsustainably,
- Miss D's first loan was for £50 and loan 8 was for £100, double the amount. At this point Cashplus ought to have known that Miss D was not likely borrowing to meet a temporary shortfall in her income but to meet an ongoing need,
- right from the start Miss D was provided with a new loan as soon as an existing loan was repaid. There were a short breaks between loans 8 to 9, and 11 to 12, but I don't think these breaks were long enough for Cashplus to think that all of this lending wasn't continuous, or part of one chain of borrowing,
- Miss D wasn't making any real inroads to the amount she owed Cashplus. Loan 18 was taken out a year after Miss D's first. Miss D had paid large amounts of interest to, in effect, service a debt to Cashplus over an extended period.

I think that Miss D lost out because Cashplus continued to provide borrowing from loan 8 onwards because:

- these loans had the effect of unfairly prolonging Miss D's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period of time

- the number of loans that Miss D borrowed was likely to have had negative implications on Miss D's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I'm also upholding the complaint about loans 8 to 18 and Cashplus should put things right.

### **Putting things right**

In deciding what redress Cashplus should fairly pay in this case I've thought about what might have happened had it stopped lending to Miss D from loan 5, as I'm satisfied it ought to have.

Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Miss D may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Miss D in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Miss D would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Cashplus's liability in this case for what I'm satisfied it has done wrong and should put right."

Cashplus shouldn't have given Miss D loans 5 to 18.

A) Cashplus should add together the total of the repayments made by Miss D towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything it has already refunded.

B) Cashplus should calculate 8% simple interest\* on the individual payments made by Miss D which were considered as part of "A", calculated from the date Miss D originally made the payments, to the date the complaint is settled.

C) Cashplus should pay Miss D the total of "A" plus "B".

D) Cashplus should remove any adverse information it has recorded on Miss D's credit file in relation to loans 5 to 7. The overall pattern of Miss D's borrowing for loans 8 to 18 means any information recorded about them is adverse, so it should remove these loans entirely from Miss D's credit file. If Cashplus has sold any of the loans Cashplus should ask the debt purchaser to do the same.

\*HM Revenue & Customs requires Cashplus to deduct tax from this interest. Cashplus should give Miss D a certificate showing how much tax Cashplus has deducted, if she asks for one.

**My final decision**

For the reasons I've explained, I partly uphold Miss D's complaint.

Advanced Payment Solutions Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 4 March 2021.

Andy Burlinson  
**Ombudsman**