

The complaint

Mr H complains about five loans that he took out with Novaloans Limited, trading as Cash4uNow, ("NL"), which he said were unaffordable.

What happened

Mr H was given five instalment loans by NL from November 2015 to June 2017. All the loans have been repaid.

A summary of the loans taken out by Mr H is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Number of monthly repayments
1.	6/11/15	29/1/16	£150	3
2.	11/2/16	29/7/16	£200	6
3.	9/8/16	8/9/16	£200	6
4.	17/12/16	17/2/17	£250	6
5.	13/6/17	15/8/17	£100	3

Mr H said that he believed that NL had lent the loans irresponsibly to him. He struggled to keep up with repayments and was forced to take out further loans exacerbating the situation in a vicious circle of debt.

In its final response letter, NL said that it had asked Mr H for his income and expenditure and it had carried out credit checks with a credit reference agency. It noted that Mr H had no county court judgements nor insolvencies and he'd had no defaults in the past 12 months. It also said that Mr H's short term credit report showed that upon application for these loans he had three active short term loans with the highest balance being £1,210. NL noted that Mr H had previously accessed short term loans prior to applying for these loans, which it said signified that he was familiar with this type of credit but was not reliant on it. NL said that its income and expenditure analysis showed Mr H had sufficient disposable income to manage its required repayments and leave headroom to cover any unexpected expenses or any that Mr H may have inadvertently omitted to disclose to it. NL offered Mr H an ex gratia payment of £50.

Mr H didn't accept NL's offer.

Our adjudicator's view

The adjudicator recommended that Loans 1 to 5 should be upheld. He said that the information NL gathered showed Mr H was having problems managing his money. NL had told this Service that the credit report data it had obtained prior to approving Loan 1 showed

that Mr H had three active short term loans. In these circumstances, the adjudicator thought NL ought to have realised it was unlikely Mr H would've been able to sustainably repay this loan – and any subsequent loans.

NL disagreed. It asked for an ombudsman to review this case as the adjudicator had made a decision based on a single piece of data and hadn't considered other elements such as Mr H's disposable income, defaults, delinquencies, active balances and so on.

As this complaint hadn't been resolved informally, it was passed to me, an ombudsman, to investigate.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr H and to NL on 22 January 2021. I summarise my findings:

I noted that when NL lent to Mr H the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

NL needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Mr H 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 thought less thorough checks might be reasonable and proportionate.

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

- 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 had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

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

I thought that it was important to say that NL was required to establish whether Mr H could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it didn't automatically follow this was the case. This was because the CONC defined sustainable as being without undue difficulties and in particular the consumer 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 followed that a lender should realise, or it ought fairly and reasonably to

realise, that a borrower wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Mr H's complaint.

NL had made a number of checks before it lent to Mr H. It asked him for details of his monthly income and expenditure. Mr H had declared his monthly income as £1,500 before all the loans and his expenditure as between £710 and £905.

NL had also said that it had checked Mr H's credit file before agreeing to the loans. I thought that as NL had carried out a credit check, it should have taken into account the information set out in it.

I'd also reviewed Mr H's credit report. I couldn't say there were any entries on that such as defaults or county court judgements which I thought might have caused NL additional concerns.

But I was also aware that when a lender carries out a credit check, the information it sees didn't usually provide the same level of detail that a consumer's credit report would, and it wasn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I was also aware that not all payday and short term lenders reported to the same credit reference agencies. So, this might have explained any differences between the information provided by NL's credit check and Mr H's actual situation.

Although the amounts that Mr H needed to repay each month were smaller than if he'd taken a normal payday loan, he was also committing to making those repayments over a longer period.

Loan 1 was for £150 and was repayable by three monthly repayments. The highest monthly repayment on the loan was £72.93.

I'd thought about whether NL's checks were proportionate for Loan 1. I could see that the information Mr H gave NL about his income and expenses indicated that the loan repayments were affordable. But I'd also noted the results of NL's credit checks. Some of the information on these was coded and difficult to understand and I'd noted that although the adjudicator had asked for more information about this, NL didn't agree to supply it. But other information on the checks was clear and showed that Mr H had 16 active credit accounts with an outstanding loans balance of £27,358 and a total credit cards balance of £4,320. Mr H had opened four accounts in the previous six months. He also had three outstanding short term loans with a total short term loans balance of £1,182. I could see that two of these loans were opened in the previous three months. The checks also showed that Mr H had been in arrears on an account in the previous 12 months.

I thought the results of NL's credit checks ought to have given it concerns that Mr H already had a recent adverse credit record and that his finances might be under pressure. The large amount of active accounts and the number of outstanding short term loans suggested that he might be having difficulty managing his finances. NL's credit checks also showed that Mr H had a mortgage with a balance of £85,564. But Mr H didn't declare any mortgage costs within his expenses.

So, I'd thought that NL should have realised that it couldn't safely rely on the information Mr H was providing about his finances. And I thought it should have taken steps to

independently verify Mr H's true financial position before agreeing the loan. I couldn't see that it did this.

Mr H had provided us with a transaction list from his bank for his main current account. He had also provided us with his bank statements for the current account into which his salary was paid. I thought it was reasonable to rely on these. I'd reviewed these and Mr H's credit report to see what better checks would have shown NL. I wasn't suggesting that NL ought to have done this. But I thought looking at this information gave me the best picture of what the lender was likely to have seen. I could see that Mr H had received a high cost guarantor loan for £5,500 two months earlier and a short term loan for £100 the previous month. He was contributing to a monthly mortgage payment of £615. I could also see that Mr H was making repayments to a debt management plan ("DMP") provider and I asked him for more details about this. He said that he'd entered into the DMP in early 2007 and his debts had totalled £40,000 made up of four unsecured loans, a bank overdraft, and three credit card balances.

In addition, I could see that Mr H was spending a significant percentage of his income on gambling. The level of spend was high and frequent enough that I thought it was more likely than not the gambling would continue in the same pattern. I thought it pointed to a pattern of spending that posed a risk to Mr H being able to repay the loan sustainably.

So, I thought that NL should have realised that despite what Mr H had told it about his finances, he was having serious problems managing his money and it was unlikely he would be able to sustainably repay Loan 1. So, NL as a responsible lender should have declined to lend Loan 1 to Mr H.

It seemed on the face of it that the repayments for Loans 2 to 5 would have looked relatively modest compared to Mr H's declared disposable income. But I again noted the results of NL's credit checks before these loans. And I thought the results of NL's credit checks ought to have again given it concerns that Mr H's finances might still be under pressure especially in view of the large amount of active accounts he had including other short term loans. So, I again thought NL's checks needed to go further and that it shouldn't have relied on the information Mr H had declared to it. I thought it again needed to gain a full and complete picture of Mr H's financial position. I couldn't see that it had done this.

I'd again reviewed Mr H's transaction lists, bank statements and credit report to see what better checks would have shown NL. I could see that proportionate checks would most likely have shown that Mr H was already indebted to a number of high cost credit lenders as well as continuing to gamble heavily whilst making repayments to his DMP. In these circumstances there was again a significant risk that Mr H wouldn't have been able to repay these loans sustainably. I didn't think NL could reasonably have believed that Mr H would be able to make the payments for these loans bearing in mind what proportionate checks would have likely shown. So, I didn't think NL should have given Loans 2 to 5 to Mr H.

Subject to any further representations by Mr H or NL my provisional decision was that I intended to uphold this complaint and say that NL shouldn't have provided Loans 1 to 5 to Mr H. I intended to order NL to put things right as shown below.

In deciding what redress NL should fairly pay in this case I'd thought about what might have happened had it stopped lending to Mr H from Loan 1, as I was satisfied it ought to have.

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

For example, having been declined this lending Mr H might have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he might have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he might 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 he 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 might or might not have been the same was impossible to now accurately reconstruct. From what I'd seen in this case, I certainly didn't think I could fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr H in a compliant way at that time.

Having thought about all of these possibilities, I wasn't persuaded it would be fair or reasonable to conclude that Mr H would more likely than not have taken up any one of these options. So, I'd said it wouldn't be fair to now reduce NL's liability in this case for what I was satisfied it had done wrong and should put right.

putting things right – what NL needs to do

1. Refund the interest and fees Mr H paid for Loans 1 to 5;
2. Pay interest on these refunds at 8% simple* per year from the date of payment to the date of settlement;
3. Remove any adverse information about Loans 1 to 5 from Mr H's credit file.

*HMRC requires NL to take off tax from this interest. If Mr H asks NL for a certificate showing how much tax NL had taken off, it should provide this.

Mr H responded to my provisional decision to say he had nothing further to add.

NL responded to my provisional decision at length. In summary, it said:-

- It agreed that Loans 3 to 5 shouldn't have been funded.
- It said that Mr H's adverse credit record referred to an account with a £178 balance taken out in 2011. This was reported as delinquent since 2012. This account, like Mr H's defaulted accounts, was more than 12 months old.
- It didn't consider 16 active accounts to be excessive.
- NL had spoken to Mr H before Loan 1 and he'd said that he had a mortgage which his wife paid for.
- NL referred to Mr H's three outstanding short term loans. It said that Mr H had one current short term loan with a balance of around £122. The two other 'active' short term loans were older (from 2011 and 2012) and had been defaulted or in query.
- Mr H didn't tell NL that he was in a DMP. Had Mr H said he was in a DMP, it wouldn't have lent to him.
- Given the above, NL didn't think there was a need for it to make additional enquiries when Mr H applied for Loan 1
- When Mr H applied for Loan 2 there had been a considerable reduction in the amount owing to unsecured creditors and no deterioration in his credit profile. Mr H had access to 55% of his credit limit on revolving credit (around £5,000) suggesting he had options and made a choice to apply for a short term loan. There was no requirement at this point to make additional enquiries into his finances

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 short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

I asked the adjudicator to ask NL for a copy of its detailed credit checks before Loan 1. NL provided these and I have reviewed these and noted NL's comments on my provisional decision.

In particular, I note that NL said that Mr H didn't have a recent adverse credit record, that only one of his three short term loans was recent, that 16 accounts wasn't excessive and that it didn't know that Mr H was in a DMP. If it had known, it wouldn't have lent to him. I also noted that NL knew that Mr H had a mortgage which his wife was paying. And, it didn't think it needed to make additional enquiries into his finances.

But I think that if NL had reviewed its credit checks in greater detail, it was likely to have seen the following:-

- A loan of around £142 which appeared to be a short term loan was repaid on 1 October 2015. The next day Mr H took out a short term loan for around £122. This suggested to me that Mr H needed to borrow the latter loan in order to fill a hole in his finances that was made by repaying the earlier loan. This isn't a sustainable form of borrowing.
- On 4 September 2015, Mr H repaid £4,548 for what appears to be a high cost credit loan. On the same day he'd taken out a new high cost credit loan for £5,500 to be repaid over five years. It appears from other information I've seen that the first loan was repaid by the second loan leaving Mr H with an amount of around £1,200. I think this ought to have caused NL concerns. I think it might have been concerned as to why someone with such a large proportion of available income (according to his declared income and expenses) would need to borrow so much expensive credit so recently.
- I've seen on the credit checks four loans and two credit cards taken out at least seven years before Mr H's application for Loan 1 with large balances being repaid by regular monthly amounts ranging from around £11 to £60. I think that the regularity and amount of the repayments on these six accounts suggests that they were all subject to a repayment arrangement which may have been a debt management plan. I think there was enough evidence on the credit checks to have prompted NL to look further into this. And if it had, it was likely to have discovered that Mr H had a DMP. And it has told us that it wouldn't have lent if it had known this.

So, I think the information NL was likely to have seen on its credit checks suggested that Mr H's finances were under pressure and that it should reasonably have taken steps to gain a more thorough understanding of Mr H's financial position in order to satisfy itself that he could sustainably repay the loan. As I've said above, had it made better checks, it would have found that it was unlikely that Mr H would be able to sustainably repay Loan 1. So, NL as a responsible lender should have declined to lend Loan 1 to Mr H.

I can see that Loan 2 was taken out around three months after Loan 1. Whilst I can see that the loans' balance on NL's credit checks had decreased by around £11,600 in that time, Mr H's loans balance was still £15,763, he had 17 active accounts and had opened six new accounts in the previous six months. I haven't seen NL's detailed credit checks, but I'm aware from other information I've seen that Mr H still had his DMP and high cost credit loans. So, it's likely that NL's detailed credit checks would have revealed similar information

to its detailed credit checks before Loan 1 (other than with regard to a more recent short term loan). Again, I think the information NL was likely to have seen on its credit checks would have suggested that Mr H's finances were still strained, and I don't think that NL should have relied on the information Mr H had declared to it. I think it needed to gain a full and complete picture of Mr H's financial position. And as I've set out above, I don't think NL could reasonably have believed that Mr H would have been able to make the payments for Loan 2 bearing in mind what proportionate checks would have likely shown. So, I don't think NL should have given Mr H Loan 2.

As I still think that Mr H's complaint about Loans 1 and 2 should be upheld and NL has agreed that Loans 3 to 5 should be upheld, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint and require NL to pay Mr H some compensation and take the steps set out below.

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint I order Novaloans Limited, trading as Cash4uNow, to:-

1. Refund the interest and fees Mr H paid for Loans 1 to 5;
2. Pay interest on these refunds at 8% simple* per year from the date of payment to the date of settlement;
3. Remove any adverse information about Loans 1 to 5 from Mr H's credit file.

*HMRC requires NL to take off tax from this interest. If Mr H asks NL for a certificate showing how much tax NL had taken off, it should provide this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 April 2021.

Roslyn Rawson

Ombudsman