

The complaint

Mr G complains that Car Cash Point Limited, trading as CarCashPoint, ("CCP"), lent to him in an irresponsible manner.

What happened

Mr G was given three loans by CCP from June 2016 to November 2017. All the loans have been repaid following Mr G's car being repossessed by CCP and sold through auction. A summary of Mr G's borrowing history is as follows:-

Loan number	Date of loan	Loan amount	Repayment date	Number of weekly repayments and amounts	Highest monthly equivalent repayment amounts
1.	13/6/2016	£1,060	6/6/2018	156 x £25.15	£108.98
2.	6/7/2016	£530	6/6/2018	78 x £16.58	A total of £180.82 for Loans 1 and 2
3.	7/11/2017	£1,060	6/6/2018	78 x £38.06	A total of £345.74 for Loans 1, 2 and 3

The loans were 'log book' loans. They were granted on the basis that Mr G provided CCP with a bill of sale for his car. This meant that if Mr G didn't make his loan repayments, CCP could potentially recoup its losses through the sale of the car.

Mr G said that he believed that proper affordability checks hadn't been completed on the loans. He was a compulsive gambler. If CCP had done a proper affordability check it would have seen that he had many defaults, poor credit and could not afford to pay these loans back without it having a negative effect on his health and on his credit file. He had provided bank statements to CCP and these clearly showed the level of his problems, but he was still lent the money. Mr G was also unhappy that CCP had sold his car. He had sent the lender multiple emails begging for more time and explaining his situation.

In its final response letter, CCP said that it didn't do formal credit checks. It asked Mr G for the name of his employer and employment length. It said that Mr G's response provided strong comfort with regards to his salary and employment stability. Mr G said his average net monthly income was £2,250 and he received a private pension of £121 per month. He paid £585 towards rent with a further £150 per month towards utilities, mobile phone and insurance. CCP saw Mr G's pay slips and bank statements. It noted there was no evidence of any financial hardship or other debt on the statements. CCP did note some gaming activity on the bank statements, which it said did not interfere with Mr G's ongoing financial commitments, and it did not appear in any way systemic or problematic. But to be prudent, it included in its assessment a further £500 a month which it added to Mr G's disclosed discretionary expenditure to cover this expense. This resulted in a disposable income of over £600 per month which it said was more than sufficient to cover his weekly contractual instalments for the three loans of £25.15, £16.58 and £38.06 respectively.

our adjudicator's view

The adjudicator recommended that the complaint should be upheld. He noted that CCP obtained information about Mr G's income and expenditure, and that it also reviewed Mr G's bank statements before providing the loans. The adjudicator thought that these checks were proportionate. But he didn't think CCP made a fair lending decision based on the results of these checks. These showed that Mr G was spending a high proportion of his income on gambling. So, he couldn't see how it was responsible for CCP to provide the loans.

CCP hasn't provided a response to the adjudicator's view.

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

My initial provisional decision

After considering all the evidence, I issued my first provisional decision on this complaint to Mr G and to CCP on 20 May 2021. I summarise my findings:

I firstly said that I was sorry that Mr G had suffered ill health as a result of his loans.

I noted that when CCP lent to Mr G 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.

The relevant rules said that a lender must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments.

The rules didn't set out any specific checks which must be completed to assess creditworthiness. However, the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts and any indications of vulnerability or financial difficulty. Whilst it was down to the lender to decide what specific checks it wished to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit.

So, CCP's assessment needed to be flexible – what was reasonable for one borrower might not be so for another, or what might be reasonable for a borrower for one loan application might not be so for the same borrower for a different loan.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the *lower* a consumer'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 *longer* the period of time a consumer would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the consumer was required to make repayments for an extended period) and

- the *greater* the number and frequency of loans, and the longer the period of time during which a consumer had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

Bearing all of this in mind, in coming to a decision on Mr G's case, I'd considered the following questions:

- Did CCP complete reasonable and proportionate checks when assessing Mr G's loan applications to satisfy itself that he would be able to repay the loans in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did CCP make fair lending decisions?

Did CCP complete reasonable and proportionate checks when assessing Mr G's loan applications to satisfy itself that he would be able to repay the loans in a sustainable way?

I could see that CCP's loan application process included gathering information from Mr G about his income and expenditure and it had asked for bank statements and payslips.

Loan 1

CCP provided Mr G with a loan of £1,060 on 13 June 2016. CCP charged £60 for a home visit fee which it deducted from the loan amount. The interest rate was 90%, (227.03% APR). The loan was to be repaid by 156 weekly repayments of £25.15, a monthly equivalent of £108.98. If Mr G made each payment when it was due, he'd pay £3,923.40 in total.

It appeared that CCP had visited Mr G's home and obtained details of Mr G's income and expenses which it recorded in an affordability assessment form. Mr G's income was shown as £2,250 plus a pension of £121. His expenses included rent, council tax, utilities, insurance, phone, internet, and food. These totalled £1,235. In addition, Mr G's expenses for entertainment, clothes and travel totalled £350. CCP calculated a disposable income of £786 which was shown on the form. It also noted that Mr G had repaid another loan in May 2016 and that Mr G's partner wasn't earning.

I'd noted that CCP also said that it saw Mr G's payslips and bank statements. It seemed on the face of it that CCP had carried out reasonable checks by requesting Mr G's bank statements and payslips. However, I thought the information it gathered should have raised concerns and prompted further checks.

I'd seen Mr G's payslip for May 2016. This showed a net pay of around £2,465. But I could see that the payslip included "extra duty" of around £805. I could see from Mr G's other payslips that his "extra duty" varied. So, I thought CCP ought to have been concerned in the case of a three year loan that the "extra duty" might vary from month to month and that Mr G's income might be substantially lower in other months. So, I didn't think CCP could necessarily rely on Mr G's declared net monthly income of £2,250 going forward.

CCP hadn't been able to provide this Service with the bank statements it said it saw at the time of the application for Loan 1. But Mr G had provided this Service with his bank statements from around that time. I thought looking at these gave me the best picture of what the lender was likely to have seen on the bank statements it received at the time of the application. I'd reviewed the statements and could see that Mr G's expenditure was substantially higher than the amount he'd declared to CCP. I'd looked at Mr G's transactions

in the month prior to the loan application. Whilst Mr G told CCP he had no other debt, it's clear from his bank statements that he was paying around £96 a month on a short term loan. He was also paying £290 on utilities, phone and internet and not £120 as he'd declared.

I'd noted that CONC 5.3.7R said that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

I thought CCP should have had concerns about Mr G's financial situation because there was a discrepancy between what Mr G said about his monthly income and expenses and what I thought CCP would have been able to see through its bank statement checks.

CCP would also have likely seen from Mr G's bank statements that he was £115 overdrawn on the day before he applied for Loan 1.

I also couldn't see that CCP had used the bank statements to verify Mr G's expenses. It seemed that it relied on the amounts declared by Mr G.

But more worryingly, I thought CCP would have likely seen on the bank statements that Mr G had spent around £1,375 on online gambling in the month prior to his loan application. I could also see in the previous month that Mr G had spent around a third of his income on online gambling. I could see that Mr G's spending on gambling was frequent enough that it was more likely than not that it would continue in the same pattern and posed a risk to Mr G being able to repay the loan sustainably. In these circumstances, I didn't think it would have been reasonable for CCP to conclude that Mr G could simply reduce his gambling expenditure to allow him to afford the loan repayments.

Overall, it didn't appear CCP had properly scrutinised the information it said it did see to ensure that Mr G did have enough money to be able to make the monthly repayments. I thought it ought to have seen that Mr G appeared to be having significant problems managing his money which should have caused CCP concerns.

Overall, I thought CCP was irresponsible to have agreed to lend to Mr G based on the information it said it had, and I thought that it had made an unfair lending decision when it agreed to lend Loan 1 to him.

Loan 2

Around three weeks after Mr G took out Loan 1, CCP provided Mr G with Loan 2 for £530. CCP charged £30 for a home visit fee which it deducted from the loan amount. The interest rate was 96%, (310.25% APR). The loan was to be repaid by 78 weekly repayments of £16.58. But as Loan 1 was still outstanding, it would mean that Mr G would need to pay for both loans a monthly equivalent of £180.82. If Mr G made each payment on Loan 2 when it was due, he'd pay £1,293.24 in total.

It appeared that CCP visited Mr G's home but didn't record updated details. On CCP's customer information sheet, it said "All details as held on file". I couldn't see that we'd received a separate Affordability Assessment form for Loan 2 or payslips or bank statements from around the time of Loan 2.

But I'd noted that CCP said that it saw Mr G's payslips and bank statements. So, it seemed on the face of it that CCP would have carried out reasonable checks by requesting Mr G's

bank statements and payslips. But again, I thought the information it said it gathered should have raised concerns and prompted further checks.

I'd again reviewed Mr G's bank statements from around the time of Loan 2 as these gave me the best picture of what the lender was likely to have seen on the bank statements it said it had received at the time of the application. The statements showed that Mr G's income was around £2,400. But I thought CCP would also have likely seen on the bank statements that in the month before his application for Loan 2, Mr G's online gambling had significantly increased. He'd spent around £2,100 on online gambling in that month. Again, I could see that Mr G's spending on gambling was frequent enough that it was more likely than not that it would continue in the same pattern and posed a risk to Mr G being able to repay the loan sustainably.

I also thought CCP ought reasonably to have questioned why Mr G, for whom it had assessed a disposable income of £786 for Loan 1, would need to take out an expensive loan for £530. This seemed unlikely if his monthly disposable income was £786. Taking things in the round, I thought CCP ought reasonably to have realised that this was a consumer who was having severe difficulties managing his money.

So, again I thought CCP was irresponsible to have agreed to lend to Mr G based on the information it said it had, and I thought that it made an unfair lending decision when it agreed to lend Loan 2 to him.

Loan 3

Around 16 months after Mr G took out Loan 2, CCP provided Mr G with a further loan of £1,060. CCP charged £60 for a home visit fee which it deducted from the loan amount. The interest rate was 120%, (442.85% APR). The loan was to be repaid by 78 weekly repayments of £38.06. If Mr G made each payment when it was due, he'd pay £2,968.68 in total. As Loans 1 and 2 were still outstanding, it would mean that Mr G would need to pay a monthly equivalent of £345.74 for all three loans.

It appeared that CCP visited Mr G's home and obtained details of Mr G's income and expenses which it recorded in an affordability assessment form. Mr G's income was shown as £2,200. His expenses included rent, council tax, utilities, insurance, phone, internet, and a credit card. These totalled £908. His partner paid for food and housekeeping. In addition, Mr G's expenses for entertainment, clothes, travel and family expenses totalled £350. He was also paying £180 a month on CCP's first two loans. CCP calculated that Mr G had a disposable income of £762. It also noted that Mr G's partner was working.

I'd noted that CCP had also said that it saw Mr G's payslips and bank statements for three months. Again, it seemed on the face of it that CCP had carried out reasonable checks by requesting Mr G's bank statements and payslips. However, I'd thought the information it had gathered should again have raised concerns and prompted further checks.

I'd seen Mr G's payslips for August and October 2017. There was another payslip with CCP's documentation which wasn't dated. Mr G's October 2017 payslip showed a net pay of around £2,730. But I could see that the payslip included "extra duty" of around £1,040. So, I thought CCP ought to have been concerned in the case of an 18 month loan that the "extra duty" might vary from month to month and that Mr G's income might be substantially lower in other months. So, I didn't think CCP could necessarily rely on a net monthly income of £2,730 going forward.

CCP had also provided this Service with the bank statements it saw at the time of the application for Loan 3. The statements we'd received weren't complete. There were extracts

missing. I couldn't say if this was because they had been incorrectly copied or if Mr G had only provided some of the statements for the period. In any case, I thought it would have been reasonable in Mr G's circumstances for CCP to have gathered a complete copy of the statements given the expensive cost of the credit, that Loans 1 and 2 were still outstanding and that he'd be repaying all three loans for some time, and that he needed to be able to make the repayments on Loan 3 for 18 months.

Mr G had provided this Service with a complete copy of his bank statements from around the time of his loan application. I'd reviewed his statements and could see that Mr G's expenditure was substantially higher than the amount he'd declared to CCP. I'd looked at Mr G's transactions in the month prior to the loan application. Whilst Mr G told CCP he had £13 debt, it was clear from his bank statements that he was paying around £270 to a credit card. He was also paying £642 on utilities, phone, insurance and internet and not £310 as he'd declared.

The rules that applied to CCP at the time expressly said it mustn't accept an application for credit if it knew or had reasonable cause to suspect that a borrower hadn't been truthful in completing the application in relation to information relevant to the creditworthiness assessment.

I thought CCP should have had concerns about Mr G's financial situation because there was a discrepancy between what Mr G had said about his monthly expenses and what I thought CCP would have been able to see through complete bank statement checks.

CCP would also have been able to see from Mr G's bank statements that there were no transactions from 5 October 2017 to 27 October 2017 as there was only 89 pence in the account for this period. During this time there was a returned payment. I'd also noted that Mr G had just three pence left in his account when he applied for Loan 3. As Mr G was unable to make transactions on his account for over three weeks in October 2017, I'd thought this showed that he was having significant problems managing his money.

I also couldn't see that CCP had used the bank statements to verify Mr G's expenses. It seemed that it had relied on the amounts declared by Mr G. It had made a note on the statements of the amounts of Mr G's gaming, rent and that his salary had been received. The note showed that £200 was spent on gaming in October 2017. But the complete set of statements received from Mr G showed that £710 was in fact spent on gaming in that month.

I could see that Mr G had spent around £885 on online gambling in the month prior to his loan application. I could also see in the previous month that Mr G had spent around £1,200 on online gambling. Mr G's spending on gambling was still frequent enough that it was more likely than not that it would continue in the same pattern and posed a risk to Mr G being able to repay the loan sustainably.

Altogether, it didn't appear CCP had properly scrutinised the information it saw to ensure that it was complete, and that Mr G did have enough money to be able to make the monthly repayments. And the lender didn't seem to have used the bank statements it had to properly verify the monthly disposable income Mr G had declared.

So, I thought CCP was irresponsible to have agreed to lend to Mr G based on the information it had, and I thought that it made an unfair lending decision when it agreed to lend Loan 3 to Mr G.

So, I didn't think CCP had acted fairly when it provided Loans 1 to 3 to Mr G. And subject to any further representations by Mr G or CCP, my provisional decision was that I intended to say that it needed to pay Mr G some compensation.

I needed to decide what was fair and reasonable for CCP to do in order to put things right. The amount of compensation I thought was fair was complicated by the fact that CCP repossessed and sold Mr G's car on which the loans were secured. I hadn't seen anything to make me think CCP had acted unreasonably in repossessing the car when Mr G failed to make the payments he had agreed. But as I intended to say that Loans 1 to 3 had been unfairly provided, it followed that I didn't think it was fair for Mr G to be deprived of his car. The repossession only came about as a result of the unfair lending decisions that CCP made in providing Loans 1 to 3 to Mr G.

CCP had provided us with the amount of the net sale proceeds from the sale of Mr G's car at auction in May 2018 (£4,510), and the amount it paid to Mr G from the net proceeds of sale (£687.45). I'd noted that the car was around 42 months old at the time of the auction and the mileage was 13,133 miles.

Using some industry standard data, I'd said that it was possible to determine what value might reasonably be placed on Mr G's car at the time of the auction, given its age and mileage at that time. I didn't know the condition of the car. I had asked the adjudicator to ask CCP about the condition of the car at the time of sale, but it was unable to provide this due to a change in its computer system since the auction. On the basis of age and mileage, I thought a fair market value for Mr G's car appeared to be £6,950 which was significantly more than the auction proceeds of £4,510 that CCP received. So, I thought that the higher value was what CCP should use when assessing the fair compensation that I thought should be paid to Mr G. So, I intended to say that CCP should take the steps set out below.

Putting things right

In order to put Mr G back into the position he would have been had Loans 1 to 3 not been agreed for him, CCP needs to firstly ensure that Mr G only repays the principal borrowed on these loans. In other words, Mr G shouldn't repay more than the combined capital amount of £2,650 he borrowed on these loans. Secondly, Mr G needs to be compensated for the repossession and sale of his car as a result of the loans which were unfairly provided. So, CCP needs to:

- Add up any payments that Mr G had made towards Loans 1 to 3, together with the fair value of £6,950 for Mr G's car that was repossessed.
- Deduct from that amount the total of the principal amounts (of £2,650) that Mr G was lent.
- Repay the difference ("the repayment amount") to Mr G.
 - Pay interest of 8% simple a year from the dates any payments over the total amount of £2,650 ("the overpaid amounts") were made by Mr G to the date of settlement.*
 - Pay interest of 8% simple a year on (the repayment amount less the overpaid amounts), from the date the car was repossessed to the date of settlement*.
- Remove any adverse information recorded on Mr G's credit file in relation to Loans 1 to 3.

*HM Revenue & Customs requires CCP to take off tax from this interest. CCP must give Mr G a certificate showing how much tax it has taken off if he asks for one.

CCP can also take account of the refund of £687.45 when calculating what is due to Mr G.

CCP responded to my first provisional decision to query the 'fair value' figure of £6,950. It said that the vehicle was sold at an independent arms-length price for £4,600 (which was close to the CAP HPI price at the time of sale). It said that there were a few scratches on the car's body work.

Mr G responded to my first provisional decision to say that his loans had been repaid. He also didn't understand why I'd said that the refund of £687.45 could be taken into consideration as this was what was owed to him after the car was auctioned and after all the costs of the loan and recovery were paid to CCP. Mr G was also unhappy that CCP had withheld paying him £687.45 for nearly two months after the auction. He had to keep begging them to try and pay this back to him earlier due to his circumstances at the time. But Mr G said that CCP wasn't very compassionate or forthcoming.

My second provisional decision

After considering all the evidence, I issued a second provisional decision on this complaint to Mr G and to CCP on 22 July 2021. I summarise my findings:

I'd noted that Mr G had said that he didn't understand why I'd said in my award that the refund could be taken into consideration. I said that my proposed compensation award was based on the market value of the car plus the amount of any repayments Mr G had paid less the total amount of the loans. As Mr G had already received £687.45 of the value of the car from CCP, I didn't think it would be fair to double count this amount. So, I said that my proposed award would say this amount should be deducted from the compensation amount CCP should pay Mr G.

I'd also noted that Mr G had said that CCP didn't pay him the amount of £687.45 for nearly two months after the auction. I didn't know the reason for the delay but in view of the delay in payment, I thought it was fair that Mr G received compensation by way of additional interest on this amount. So, I'd included a direction in my proposed redress that CCP should pay Mr G 8% simple interest on the amount of £687.45 from the date the car was sold until the date CCP paid him this amount.

I'd also noted CCP's comments about the valuation of the car and asked the adjudicator to provide CCP with information as to how this valuation had been calculated. This included the name of the valuer, the month of valuation and the car's mileage. It was also based on the clean valuation.

I'd also asked the adjudicator to ask CCP for photos to evidence the scratches on the car. CCP provided this Service with photos of the scratches on the car. I could see evidence of the scratches on the photos. So, I thought it was fairer to use an average value for the car rather than the clean value I had previously used.

With regard to the car's value, CCP said that industry practice was to use HPI average, which appeared to be the reason for the difference. But whilst CCP might use HPI references, I needed to look at whether CCP had acted fairly in the round. I understood that not all businesses used HPI references. And just because some businesses used HPI, it didn't automatically follow that this would result in a fair outcome for Mr G. In any event, Mr G was being compensated for the loss of his car and not just the auction value. Were it not for the loans, he'd still have his vehicle.

Overall, I thought it was fair to look at further valuations for the vehicle from a variety of sources. The following values were obtained:-

- HPI - £4,600 (CCP said that the sale price of the car was close to HPI value, so the sale price had been used here)
- Valuer 2 Average Value - £6,425 (I had used the clean value of £6,950 from Valuer 2 in my first provisional decision)
- Valuer 3 - £4,957

- Valuer 4 retail value - £6,940

I thought that the retail value should be used because that was in effect what it would cost Mr G to go out and buy a similar car again. So, I'd said it wouldn't be appropriate to use a trade value for this reason.

In view of the wide range of the four different valuations, I thought it would be fair to use the average of the above four valuations. This amounted to £5,730.

So, subject to any further representations by Mr G or CCP, my second provisional decision was that I intended to uphold this complaint and that CCP needed to pay Mr G some compensation. I then used the revised value of £5,730 to calculate the compensation as set out below.

Putting things right – what CCP needs to do

In order to put Mr G back into the position he would have been had Loans 1 to 3 not been agreed for him, CCP needs to firstly ensure that Mr G only repays the principal borrowed on these loans. In other words, Mr G shouldn't repay more than the combined capital amount of £2,650 he borrowed on these loans. Secondly, Mr G needs to be compensated for the repossession and sale of his car as a result of the loans which were unfairly provided. So, CCP needs to:

- a) Add up any payments that Mr G had made towards Loans 1 to 3, together with the fair value of £5,730 for Mr G's car that was repossessed;
- b) Deduct from that amount the total of the principal amounts (of £2,650) that Mr G was lent;
- c) Repay the difference ("the Repayment Amount") to Mr G;
- d) Pay interest* of 8% simple a year on any payments made over the total amount of £2,650 ("the overpaid amounts") from the dates the overpaid amounts were made to the date of settlement;
- e) Pay interest* of 8% simple a year on (the Repayment Amount less the overpaid amounts), from the date the car was repossessed to the date of settlement;
- f) Pay interest* of 8% simple a year on £687.45 from the date the car was sold at auction to the date CCP paid Mr G the amount of £687.45; and
- g) Remove any adverse information recorded on Mr G's credit file in relation to Loans 1 to 3.

*HM Revenue & Customs requires CCP to take off tax from this interest. CCP must give Mr G a certificate showing how much tax it has taken off if he asks for one.

CCP can also take account of the refund of £687.45 when calculating what is due to Mr G (by deducting it from the final total compensation amount to be paid to him). For the avoidance of doubt, the final total compensation amount is the Repayment Amount plus the total interest calculated in d), e) and f) above.

CCP responded to say that it accepted my second provisional decision. It also said that Mr G would receive as compensation the amount of £5,698.08 plus statutory interest.

Mr G responded to say that he accepted my second provisional decision, but he didn't understand the calculations and how the payments worked against the fair value.

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.

I noted that CCP had accepted my second provisional decision but that Mr G needed clarification of the calculations. So, I asked the adjudicator to ask CCP for loan statements to show the amounts paid by Mr G and the amount received from the repossession of the car.

CCP provided the loan statements which were sent to Mr G. In response, Mr G said he expected to receive a compensation amount which was around the amount stated by CCP in response to my second provisional decision (before the addition of interest).

So, I see no reason to depart from the conclusions I reached in my second provisional decision. And I'm satisfied that the proposed resolution in my second provisional decision is fair in all the circumstances and that CCP should put things right as set out under the above heading "Putting things right – what CCP needs to do".

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Car Cash Point Limited, trading as CarCashPoint, to pay the compensation and take the steps set out under the above heading "Putting things right – what CCP needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 October 2021.

Roslyn Rawson

Ombudsman