

## Complaint

Mr C has complained that CarCashPoint Limited ("CarCashPoint") provided him with unaffordable logbook loans.

He says accepted him at a desperate time as he had poor credit and County Court Judgements ("CCJ") already.

## Background

CarCashPoint provided Mr C with two logbook loans in July 2018 and May 2019. One of our adjudicators looked at this complaint and thought that CarCashPoint shouldn't have provided either of these loans as it ought to have realised they were unaffordable.

CarCashPoint disagreed and asked for an ombudsman to review the complaint.

## My findings

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 unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr C's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr C's complaint.

These two questions are:

1. Did CarCashPoint complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loans without experiencing difficulty or suffering significant adverse consequences?
  - o If so, did it make a fair lending decision?
  - o If not, would those checks have shown that Mr C would've been able to do so?
2. Did CarCashPoint act unfairly or unreasonably in some other way?

*Did CarCashPoint complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loans without experiencing difficulty or suffering significant adverse consequences?*

CarCashPoint provided these loans while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required CarCashPoint to carry out a reasonable and proportionate assessment of Mr C's ability to make the

repayments under these agreements. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so CarCashPoint had to think about whether repaying the loan would cause significant adverse consequences *for Mr C*. In practice this meant that CarCashPoint had to ensure that making the payments to the loans wouldn’t cause Mr C undue difficulty or adverse consequences. In other words, it wasn’t enough for CarCashPoint to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr C. Checks also had to be “proportionate” to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- 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 also be other factors which could influence how detailed a proportionate check should’ve been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I’ve carefully thought about all of the relevant factors in this case.

*Were CarCashPoint’s checks reasonable and proportionate?*

CarCashPoint says that it carried out an income and expenditure assessment with Mr C prior to providing him with both his loans. CarCashPoint’s says its checks suggested Mr C had more than enough to cover the payments to these loans.

I’ve carefully considered what CarCashPoint has said. But the expenditure it had for Mr C only included £30 a month for payments to existing creditors which were supposedly not in arrears or adverse credit and had a combined outstanding balance of less than £300. It looks like Mr C was asked to self-certify his existing credit commitments because I can’t see that CarCashPoint carried out any sort of credit check.

Of course, there is no absolute requirement for a lender to carry out a credit check on a borrower. But the vast majority do. In any event, given it has referred to them in its final response, CarCashPoint appears to be aware of at least some of Mr C's creditors and given it was aware who they were it also ought to have been aware that they were debt collectors. So CarCashPoint clearly ought to have been aware that Mr C had had previous arrears and adverse credit otherwise he wouldn't have had debts with debt collectors in the first place.

For loan 2, Mr C was looking to borrow more before he'd even paid off what he already owed. So he'd be required to repay loans concurrently and I think that CarCashPoint should have been concerned at why Mr C needed further funds on such disadvantageous terms so quickly and it needed to take account of the total amount Mr C needed to pay.

Bearing in mind these circumstances, I think it's reasonable and proportionate to have expected CarCashPoint to have taken additional steps to verify the information it received. And I think that CarCashPoint needed to take additional steps to verify Mr C's actual monthly expenditure. As I can't see that this CarCashPoint did do this, I don't think that the checks it carried out before providing Mr C with these loans were reasonable and proportionate.

*Would reasonable and proportionate checks have indicated to CarCashPoint that Mr C would have been unable to repay his loans?*

As reasonable and proportionate checks weren't carried out before loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told CarCashPoint that Mr C would have been unable to sustainably repay his loans.

CarCashPoint was required to establish whether Mr C could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided. Having done so, it's clear that Mr C was struggling to manage his finances. He didn't earn as much as CarCashPoint thought – at least without overtime which it wasn't immediately obvious there was an expectation he'd continue to receive for the duration of the terms. Furthermore, most of Mr C's income was being taken up by his existing living costs and repayments to his existing commitments. And he was clearly in a cycle of borrowing to try and make ends meet. So I think that proportionate checks would have shown CarCashPoint that Mr C was unlikely to be able to repay these loans without borrowing further or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr C would not have been able to make the repayments to his loans without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted CarCashPoint to the fact that Mr C was in no sort of position to make the payments on these loans without suffering significant adverse consequences.

*Did CarCashPoint act unfairly or unreasonably towards Mr C in some other way?*

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that CarCashPoint acted unfairly or unreasonably towards Mr C in some other way. So I don't think CarCashPoint acted unfairly or unreasonably towards Mr C in some other way.

*Did Mr C lose out as a result of CarCashPoint unfairly providing him with his loans?*

As Mr C paid a high amount of interest and charges on loans that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what CarCashPoint did wrong.

So I think that CarCashPoint needs to put things right.

### **Fair compensation – what CarCashPoint needs to do to put things right**

Having thought about everything, CarCashPoint should put things right for Mr C by:

- refunding all interest, fees and charges Mr C paid on these loans;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Mr C to the date of settlement†;
- removing any adverse information recorded on Mr C's credit file as a result of these loans;
- if it hasn't been terminated already, CarCashPoint needs to terminate any bill of sale it may have on Mr C's vehicle and arrange for ownership to be transferred back to him.

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

### **My final decision**

For the reasons I've explained, I'm upholding Mr C's complaint. CarCashPoint Limited needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 March 2022.

Jeshen Narayanan  
**Ombudsman**