

## The complaint

Mr A is unhappy that Number One Police Credit Union Limited (trading as No 1 CopperPot Credit Union) provided him with loans that were unaffordable.

## What happened

Mr A took out a number of loans with CopperPot Credit Union (CPCU), on the following basis:

Loan number	Date	Amount borrowed	Term (months)	APR	Monthly repayment	Purpose
1	24/5/16	5000	36	5.9%	£151.40	Consolidation and vehicle repairs
2	27/5/16	5000	36	5.9%	£302.71	Vehicle purchase
3	26/6/16	7500	90	Unclear	£244.04	Consolidation
4	13/7/16	650	5	9.9%	£134	Holiday loan
5	21/11/16	500	10	9.9%	£53	Christmas loan
6	6/1/17	7000	90	6.9%	£331.85	Consolidation

Mr A applied for a number of other loans from CPCU that were declined on the grounds of unaffordability.

Mr A complained to CPCU in April 2021. He said that he thought CPCU had been irresponsible when lending to him and didn't conduct sufficient checks prior to agreeing the lending.

CPCU didn't uphold the complaint. It said, in summary, that before granting each of the loans, it had assessed Mr A's income and expenditure and reviewed credit file information, to check affordability. It said that it had turned down a request for a loan from Mr A in May 2015 due to adverse credit information. It said it agreed the first loan in May 2016 because it could see that Mr A's financial situation had clearly improved.

CPCU said that after granting the final loan in January 2017, it supported Mr A after he experienced further issues that could not have foreseen by CPCU.

Mr A remained unhappy and referred his concerns to this Service. He said that he had a gambling addiction and maintained that he didn't think CPCU had carried out sufficient checks before agreeing to lend.

An investigator upheld the complaint. He said, in summary, that when CPCU agreed to provide Mr A with lending, there were signs he was having trouble managing his money. Given this and bearing in mind the size and length of the loans and other relevant factors, he thought that CPCU ought to have gone further than it did to check that Mr A would be able to repay the loans in a sustainable manner.

Mr A's bank statements showed that he was spending vast sums of money on gambling transactions. The investigator thought that if CPCU had found this out (which it likely

would've done had it carried out reasonable and proportionate checks), it wouldn't have lent to him.

CPCU disagreed. It asked for the matter to be referred to an ombudsman and made reference to an ombudsman's decision on another case involving a different credit union – saying that this set a precedent and acknowledged that the purpose of credit unions is to help those who may have more difficult financial circumstances.

I shared some provisional thoughts with both parties:

*"I acknowledge CPCU's reference to another decision issued by another ombudsman on an affordability case involving another Credit Union. I don't agree that this decision sets a precedent for Credit Unions. Each case is considered on its own merit. The fact that the purpose of Credit Unions (as stated by CPCU) is to help those who may have more difficult financial situations, doesn't automatically mean that all loans that have been granted will have been affordable. I also note that CPCU declined a number of loan applications both before and after granting the first loan in May 2016. However, this also doesn't necessarily mean that all of the loans that were granted, were affordable and responsibly lent.*

*I note that the agreements in question aren't regulated ones that technically come under CONC. However, given the nature of the services provided by CPCU and its wider obligations, I consider that it would've been good industry practice for CPCU to have regard for the CONC rules, when deciding whether or not to grant the lending.*

*From looking at the file, it appears that the checks CPCU carried out ahead of granting each loan, were centred around income and expenditure as declared by Mr A and having regard to some credit file information. The first thing I need to consider is whether CPCU carried out reasonable and proportionate checks ahead of agreeing to lend. If it did, I need to consider whether fair lending decisions were then made, given what those checks showed. If reasonable and proportionate checks weren't carried out, I need to consider what such checks would've involved and what that would likely have shown (and what a reasonable lending decision would've looked like, bearing in mind that information).*

*There are a number of factors that influence what is likely to represent a reasonable and proportionate check for any given lending. But with that said, I think that a reasonable check should generally 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 financing may signal that the borrowing had become, or was becoming, unsustainable).*

### **Loan one**

*Mr A applied to borrow £5,000 over 36 months, at an APR of 5.9%, with a monthly loan repayment of £151.40. According to CPCU's records, the loan was applied for to repay some car finance and pay for some car repairs. The key consideration for this loan in terms of whether the checks carried out were satisfactory, is whether it was reasonable and*

*proportionate for CPCU to rely on the income and expenditure figures provided by Mr A, given all other relevant factors – including the size and length of the loan and his wider circumstances. And I don't think it was.*

*In the context of Mr A's overall circumstances (including his level of income), the loan amount and term were not insignificant. And whilst CPCU's notes indicate that it considered Mr A's credit file was in better shape than when he had first applied for a loan in March 2015, I think there were a number of things from his credit file that ought to have led CPCU to consider that it needed to go further than it did to verify Mr A's income and expenditure. While the defaults showing on the information in March 2015 were, by May 2016, more historic, there were nevertheless signs that Mr A had potentially been experiencing some difficulty managing his finances in the lead up to applying for the loan in May 2016. I say this because the credit file information in May 2016 showed that Mr A had 29 settled accounts – up from 11 showing on the March 2015 information.*

*This of itself indicated that Mr A appeared to be relying on credit – seemingly more so than when he had applied for a loan in March 2015. The March 2016 information also showed that Mr A had taken out a loan in February that year, with a term of 36 months. As well as a number of 'home credit' loan accounts which started in 2015, had gotten into arrears and that were settled in April 2016. Mr A was also showing as being over the limit on a credit card. I think that these things combined ought to have suggested to CPCU that Mr A may still have been struggling at that point. And I think this means it ought to have sought to verify his income and expenditure, to ensure that he would be able to repay the loan on a sustainable basis.*

*CPCU could have carried out more detailed checks in a number of ways – from asking for bank statements to copies of bills etc. Mr A provided the investigator with bank statements. They include the three month period leading up to the granting of this loan. I accept that something I can now see from information Mr A has provided wouldn't necessarily have been disclosed by whatever reasonable and proportionate checks the CPCU might have decided to carry out. However, in the absence of any other contemporaneous evidence of Mr A's financial circumstances from CPCU, and as we're now a number of years on from when he was lent to, it's not only reasonable but necessary to rely on his bank statements.*

*The statements provided by Mr A show a very large turnover compared to his employment income. For example, in February 2016 there was approximately £11,000 going into and leaving his account. All of the statements show substantial gambling transactions. The March and April statements also show evidence of Payday Loan transactions. Had CPCU found out about the extent of Mr A's gambling (as I think it most likely would, if it had carried out reasonable and proportionate checks), I think it would reasonably have considered it irresponsible to provide Mr A with the loan. It would also reasonably have concluded that Mr A would be unlikely to be able to repay the loan on a sustainable basis.*

## **Loan 2**

*Mr A applied to borrow another £5,000 over 36 months, at an APR of 5.9%, bringing the total monthly loan repayment at that point, to £302.71. Given the close proximity to loan 1 (it appears this 'top-up' was granted 3 days later), the same analysis as regards the proportionality of the affordability checks carried out – and affordability (/responsible lending) applies.*

## **Loan 3**

*It appears that Mr A extended his borrowing in June 2016 (around one month later), consolidating loans 1 & 2 and increasing his borrowing by £7,500. The loan term substantially increased to 90 months. Because of the significant increase to the loan term,*

*the monthly repayment amount actually decreased (to £244.04), despite the increased borrowing.*

*Again, given the close proximity to both loans 1 & 2 (and bearing in mind that Mr A was borrowing even more and over a significantly longer term), the same analysis as regards the proportionality of the affordability checks carried out – and affordability (/responsible lending) applies.*

#### **Loan 4**

*This loan appears to have been 'stand-alone', running alongside Loan 3. Mr A applied for this loan in July 2016 (around one month after loan 3 and only two months after loans 1 & 2). This loan was a 'holiday loan' for £650, with a term of 5 months, an APR of 9.9% and a monthly repayment of £134. Although this loan was for a much smaller amount and a relatively short term, it nevertheless represented additional borrowing shortly after Mr A had significantly increased his indebtedness through loans 1 to 3. Bearing all of this in mind, I think the same fundamental analysis for proportionality and affordability applies to this loan as well.*

#### **Loan 5**

*This loan also appears to have been 'stand-alone', running alongside Loans 3 & 4 (albeit loan 4 was shortly to come to an end). Mr A applied for this loan in November 2016 (around four months after loan 4). This loan was a 'Christmas loan' for £500, with a term of 10 months, an APR of 9.9% and a monthly repayment amount of £53. Although again this loan was for a relatively small amount and over a relatively short term, it once again represented additional borrowing shortly after Mr A had significantly increased his indebtedness through loans 1 to 4. Notwithstanding that CPCU wouldn't likely have granted any of the loans after finding out about the extent of Mr A's gambling in the early part of 2016, in addition this pattern of repeat borrowing ought to have led CPCU to consider that providing Mr A with this loan probably wasn't in his best interests. I think there ought to have been considerable doubt that the loan repayments would be sustainable. The evidence suggests that CPCU was aware of this at the time, with notes on file saying as much, but then agreeing to the loan anyway.*

#### **Loan 6**

*This loan appears to have been primarily for some further debt consolidation, running alongside Loans 3 & 5. It looks like this loan was for an additional £7,000 and increased his overall borrowing with CPCU to over £23,000. The term of the new loan was 90 months, an APR of 6.9% and a monthly repayment amount of £331.85. This loan represented a significant increase to what was already a significant amount borrowed, over a significant period of time. Again, notwithstanding that CPCU may well not have granted any of the loans after finding out about the extent of Mr A's gambling in the early part of 2016, I again think that, in any case, this pattern of repeat and increased borrowing ought to have led CPCU to consider that providing more lending probably wasn't in Mr A's best interests. In addition, by this point, Mr A's credit file was indicating that he was really struggling with his finances. He was in substantial arrears on a number of loans. Bearing all of this in mind, I think CPCU ought to have realised that the repayments on this loan were very unlikely to be sustainable.*

#### **Putting things right**

*When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they would be in now if the mistakes it made hadn't happened.*

*In this case, that would mean putting Mr A in the position he would now be in if he hadn't been given the loans in question.*

*However, this isn't straightforward when the complaint is about unaffordable lending. Mr A was given the loans which have since been used and, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr A back in the position he would be in if he hadn't been given the loans in the first place.*

*Bearing this in mind, I think the following gets as close as possible to putting Mr A back into the position he should be in now and represents fair compensation:*

- 1. Refund all the interest and charges Mr A has paid to date on all six loans in question.*
- 2. If the borrowing is still in place, reduce any outstanding capital balance by the amount calculated at step 1.*
- 3. If, after Step 2, any outstanding capital balance remains, ensure that it isn't subject to any historic or future interest and/or charges. And arrange an affordable repayment plan with Mr A. But if Step 2 leads to a positive balance, the amount in question should be given back to Mr A and 8% simple interest should be added to the surplus.*

*Remove any adverse information recorded on Mr A's credit file in relation to all six loans, as a result of the interest and charges."*

I asked CPCU to let me know by 27 July whether it agreed to settle the case on this basis or, if not, to provide any further evidence and arguments for me to consider. I said that if it wasn't willing to settle the case, I would need its comments on the following:

*"The notes on the file you have provided indicate that you didn't immediately agree to provide Mr A with loan number 3. It looks like you told Mr A that in order to further consider the application, he would need to provide further information, including a copy of recent bank statements. Notes on file then indicate that Mr A said he no longer wanted to continue with the application. Bearing this in mind, why was the lending subsequently granted? Did Mr A provide the additional information and, if so, what did he provide and can you provide us with a copy?"*

CPCU didn't provide a response.

When sharing my provisional thoughts with Mr A, I asked him to provide any further evidence or arguments in support of his case. I also asked Mr A to comment on the following:

*"The February 2016 bank statement shows lots of (name of e-wallet company) transactions (out). What were these transactions in relation to? The same statement also shows transfers in of more than £6,000 from what looks like another account in your name. What were these payments in relation to – were they gambling winnings, or something else?"*

*The March 2016 bank statements show £2,500 payment in from "(name of payee)". What was this in relation to?"*

Mr A responded to say that he agreed with my findings. In response to my questions, he said in summary, that the transactions in question were all related to gambling and that the £6,000 in from another account in his name was most likely gambling winnings.

## **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.

Having done so, I uphold this complaint in full, for essentially the same reasoning as set out in my provisional thoughts, which form part of this decision.

When evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

First, an explanation about my role as an ombudsman. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint. And for that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having read all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint, when doing that.

CPCU hasn't provided any further evidence or arguments in response to the provisional thoughts that I shared with both parties. The information Mr A has provided in response reinforces the extent of his gambling before CPCU granted him the first and subsequent loans.

As set out in my provisional findings, the agreements in question aren't regulated ones that technically come under CONC. However, given the nature of the services provided by CPCU and its wider obligations, I still consider that it would've been good industry practice for CPCU to have regard for the CONC rules, when deciding whether or not to grant the lending.

As such, this case turns on whether the checks CPCU carried out before agreeing to provide Mr A with each loan, were reasonable and proportionate – given relevant factors. If they were, I need to consider whether fair lending decisions were made. If the checks weren't reasonable and proportionate, I need to consider what such checks would've involved and what they would likely have shown (and what a reasonable lending decision would've looked like, bearing in mind that information).

For each of the six loans, it appears that the checks CPCU carried out ahead of granting each loan, were centred around income and expenditure as declared by Mr A and having regard to some credit file information.

### Loans 1 to 3

I still find that the checks CPCU carried out weren't reasonable and proportionate. I say this because bearing in mind Mr A's overall circumstances (including his level of income), the loan amounts and terms were not insignificant. And whilst CPCU's notes indicate that it considered Mr A's credit file was in better shape than when he had first applied for a loan in March 2015, I still think there were a number of things from his credit file that ought to have led CPCU to consider that it needed to go further than it did to verify Mr A's income and expenditure (detailed in the provisional findings earlier in this decision, which don't need repeating here).

As set out in my provisional findings, CPCU could have carried out more detailed checks in a number of ways – from asking for bank statements to copies of bills etc. Mr A provided us with bank statements. They include the three-month period leading up to the granting of loans 1 to 3. I accept that something I can now see from information Mr A has provided wouldn't necessarily have been disclosed by whatever reasonable and proportionate checks the CPCU might have decided to carry out. However, in the absence of any other contemporaneous evidence of Mr A's financial circumstances from CPCU, and as we're now a number of years on from when he was lent to, I still find that it's not only reasonable but necessary to rely on his bank statements.

As detailed in my provisional findings, the bank statements show, amongst other things, that Mr A was spending substantial amounts of money on gambling transactions. Had CPCU been aware of his, it couldn't reasonably have considered it responsible to provide him with any of these loans.

#### Loan 4

Although this loan was stand-alone and much smaller (amount and term), the same fundamental analysis for proportionality and affordability applies to this loan as well. By this point, CPCU ought to have also factored in that Mr A had frequently sought to borrow money in a short period of time – indicating an increasing reliance on credit.

#### Loan 5

Notwithstanding that CPCU wouldn't likely have granted any of the loans after finding out about the extent of Mr A's gambling in the early part of 2016, in addition the pattern of repeat borrowing that had emerged by this point ought reasonably to have led CPCU to consider that providing Mr A with this loan probably wasn't in his best interests, based on what it knew. I still think there ought to have been considerable doubt that the loan repayments would be sustainable. The evidence suggests that CPCU was aware of this at the time, with notes on file saying as much, but then agreeing to the loan anyway.

#### Loan 6

Again, notwithstanding that CPCU may well not have granted any of the loans after finding out about the extent of Mr A's gambling in the early part of 2016, I again think that, in any case, this pattern of repeat and increased borrowing ought to have led CPCU to consider that providing more lending probably wasn't in Mr A's best interests. In addition, by this point, Mr A's credit file was indicating that he was really struggling with his finances. He was in substantial arrears on a number of loans. Bearing all of this in mind, I still think CPCU ought to have realised that the repayments on this loan were very unlikely to be sustainable.

Given what Mr A has said about the extent to which he was struggling and has continued to struggle with his finances, I think this means that something went wrong that needs to be put right.

### **Putting things right**

When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they would be in now if the mistakes it made hadn't happened.

In this case, that would mean putting Mr A in the position he would now be in if he hadn't been given the loans in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mr A was given the loans which have since been used and, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr A back in the position he would be in if he hadn't been given the loans in the first place.

Bearing this in mind, I still think the following gets as close as possible to putting Mr A back into the position he should be in now and represents fair compensation:

1. Refund all the interest and charges Mr A has paid to date on all six loans in question.
2. If the borrowing is still in place, reduce any outstanding capital balance by the amount calculated at step 1.
3. If, after Step 2, any outstanding capital balance remains, ensure that it isn't subject to any historic or future interest and/or charges. And arrange an affordable repayment plan with Mr A. But if Step 2 leads to a positive balance, the amount in question should be given back to Mr A and 8% simple interest should be added to the surplus. †

Remove any adverse information recorded on Mr A's credit file in relation to all six loans, as a result of the interest and charges.

† HM Revenue & Customs requires the business to take off tax from this interest. The business must give the consumer a certificate showing how much tax it's taken off if they ask for one.

### **My final decision**

My final decision is that I uphold Mr A's complaint about Number One Police Credit Union Limited (trading as No 1 CopperPot Credit Union) and direct it to do what I've said above under 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 August 2022.

Ben Brewer  
**Ombudsman**