

## **The complaint**

Mr S has complained that CarCashPoint Limited ("CCP") was irresponsible to have agreed credit for him.

## **What happened**

CCP provided Mr S with two loans, one in August 2017 and another in February 2018. The first was for an amount of £1,500 to be repaid in 36 monthly instalments of £132, a total of £4,740. The second was for £500 and the total amount of £2,300 was to be repaid in 36 monthly instalments of £64. The loans ran concurrently and I understand that by April 2020 both had been repaid.

These were 'log book' loans, in other words they were granted on the basis that Mr S provided CCP with a bill of sale for his car. This meant that if Mr S didn't make his loan repayments CCP could potentially recoup its losses through the sale of the vehicle.

Mr S said that CCP was irresponsible to have agreed credit for him because it should have seen that he was struggling with his finances. Mr S says that he had taken out many loans from short term lenders which he'd defaulted on months prior to applying to CCP. Mr S says that he should never have been accepted for his first loan, let alone been allowed to have a second loan within six months when he'd struggled to meet his repayments.

One of our investigators looked into Mr S's complaint and recommended that it be upheld because they concluded CCP had lent irresponsibly. They recommended CCP refund all interest and charges paid on the loans and remove adverse information relating to them from Mr S's credit file.

Mr S accepted the recommendation, but CCP didn't agree with it. The case came to me, as an ombudsman, to review and resolve. I issued a provisional decision on the 5 May 2022 explaining why I thought Mr S's complaint about both of his loans should be upheld. I allowed both parties some time to comment on what I'd said and provide any new information for me to consider.

Mr S agreed with my provisional decision. CCP agreed that it shouldn't have lent to Mr S a second time because his net disposable income wasn't sufficient for the additional payment given he was still making repayments for his first loan. However, CCP didn't agree that it had been irresponsible when it agreed this first loan for him.

## **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.

CCP made a number of points in response to my provisional findings. In summary, it said that Mr S earned more than I'd allowed and that his partner contributed to his expenses so his first loan was affordable for him. I want to reassure CCP that I have carefully

considered everything it's said and reviewed my provisional conclusions in the light of its response. Having considered everything again, I remain of the view that it shouldn't have agreed to lend to Mr S on either occasion. I appreciate this will be very disappointing for CCP and I will set out again my reasons for upholding Mr S's complaint and address CCP's additional points where relevant.

As I'd said in my provisional decision, CCP will be familiar with the regulations in place at the time so I will summarise its main obligations. CCP needed to check that Mr S could afford to meet his repayments sustainably before agreeing each loan. In other words, it needed to check that he could meet his repayments out of his usual means without having to borrow further and without experiencing financial difficulty or other adverse consequences. The necessary checks needed to take into account both the nature of the credit (amount, term etc.) and Mr S's particular circumstances.

The overarching requirement was that CCP needed to pay due regard to Mr S's interests and treat him fairly. The Consumer Credit (CONC) handbook paragraph 2.2.2G gave an example of contravening this requirement as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did CCP complete reasonable and proportionate checks when assessing Mr S's applications to satisfy itself that he would be able to make his repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did CCP make fair lending decisions?

I said the following about Mr S's first loan in my provisional decision:

"CCP provided this Service with the information it relied on in making its lending decisions. This included Mr S's application form, his payslips and screen shots of his bank statements.

When Mr S applied for his first loan, he gave his net monthly income as £1,200 and his expenditure as £953. This included a repayment of £180 for an existing debt of less than £500 with a high street bank. Based on CCP's assessment Mr S would have about £250 left to meet his loan repayment of £132 and any other unexpected costs that might arise. The bank account snapshots provided by CCP cover the period 8 May to 7 August 2017 and I've assumed it saw all of the transactions in these dates.

I think CCP was right to ask Mr S about his income and expenditure and independently verify this information. Mr S would need to meet his repayments for three years and the consequences of not doing so were potentially serious in that he might lose his car. But this doesn't automatically mean I've concluded that CCP made a fair lending decision. I've reviewed the information CCP gathered from Mr S and noted inconsistencies in what he'd said about his finances and what was shown on his bank statements

The snapshots of Mr S's bank account broadly support what he'd said about his income and living expenses and his payslips show his net basic pay was around £1,200 a month.

However, the account transactions also show that Mr S had more debt than he'd declared with payments of £66 to a high street provider, £25 to a doorstep lender and £17 to an online retail account. Mr S was using a high cost running credit account each month – borrowing between £250 and £300 and repaying about £300 to £350. In addition he'd taken out a short term loan for £80 within the previous two weeks which he'd need to repay with interest. I've also noted a payment to a debt management company of £176

within the previous month, which may have been the repayments of £180 Mr S had mentioned to CCP. Irrespective of this, I think CCP should have been concerned that Mr S wouldn't have enough money to meet his monthly repayments of £132 when they were due.

I also think CCP should have been concerned about how Mr S was managing his money, given his recent short term borrowing and his payment to a debt management company. I think it would have been a proportionate response for CCP to have looked into Mr S's finances further before lending to him. However, I don't think CCP would have been reassured had it done so. Mr S says that his financial situation was very bad at the time and he had defaulted on several debts. He's provided correspondence which shows he'd borrowed from at least five short term lenders in March and April 2017 (in other words within the last six months) and wasn't making repayments to them.

Altogether, I currently think CCP was irresponsible when it agreed to lend to Mr S on this occasion."

In response to this, CCP said that although the income and expenditure form for Mr S's application for his first loan stated income of £1,200, it checked Mr S's actual monthly income against his bank statements and payslips for the three months prior to the loan date, and estimated that it was an average of £1,420.

Mr S's wage slips show his gross salary was £16,000, with a monthly net of about £1,200. While he earned more in some months this seems to be because of overtime payments. CCP knew Mr S's income fluctuated. The statements it saw showed a range from less than £1,200 to over £1,600 (May, June and July 2017). The regulations in place at the time ( CONC 5.3.1G 4(c) ref. the Office of Fair Trading's guidance para 4.13) state that an assessment should be based on what is known but lenders should be cautious when they assume that supplementary income will continue, for example when they assume "that the borrower will continue to receive current overtime payments indefinitely and/or of the same amount, when these are not guaranteed." So I think CCP needed to be mindful of this and consider that the guaranteed income Mr S had could be as low as £1,200 a month, which it seems it did.

For completion, Mr S's bank statements show the following wages in 2017:

May	£1,178
June	£1,388
July	£1,697
August	£1,258
September	£1,219
October	£1,219

CCP also said that the short term drawdowns I'd mentioned were for very small amounts, were being serviced and the actual outstanding debt was not increasing during this period. I don't disagree with this however, given that CCP estimated Mr S would have a disposable income of about £115 left over after meeting his loan repayment each month and hadn't taken into account the additional debts I've mentioned above (in the extract from my provisional decision), it seems to me that there was a clear risk here that Mr S wouldn't have been able to meet all of his existing commitments every month especially if he had any unexpected expenses.

In addition, CCP said that it hadn't noted the payment of £176 to a debt management company, but only the small outstanding loan to a high street bank. It also said that Mr S was sharing non-discretionary bills with his partner which wasn't unusual and was

reasonable to accept.

I've checked Mr S's bank statements again and can confirm that he did make a payment to a debt management company of £176 in July 2017. And, while I appreciate that it's not unusual or implausible that Mr S was sharing non-discretionary bills with his partner, there isn't any mention of this in the assessment record CCP provided. It was noted in the assessment for Mr S's second loan that his partner contributed £250 to £300 a month towards the rent, which was recorded as £550, £225 more than his rent when he applied for his first loan five months earlier. There are some transfers between Mr S and his partner in the months before his first loan – I can identify about £120 transferred into his account and about £350 transferred out throughout May, June and July 2017. So I don't think an examination of this point would have shown that Mr S was receiving additional money from his partner to help with expenses prior to his first loan.

I'll repeat here what I said in my provisional decision about Mr S's second loan:

"The statement of account for Mr S's first loan shows he incurred late payments in September, November and December 2017. He made payments in January 2018 to clear his arrears and his account was in credit in February and March. Mr S applied for his second loan during this period.

In his second application, Mr S gave his net monthly income as £1,368 and his expenditure as £739. This comprised rent, council tax, car insurance and mobile phone bills. Mr S said his partner paid between £250 and £300 towards the rent which CCP took into consideration. CCP estimated that Mr S would have about £880 left to meet his repayments for both loans each month, an amount of £196 approximately.

It seems odd to me that Mr S would have more left over each month than he wished to borrow. I think CCP was right to independently verify the information Mr S had given about his circumstances, given its estimated surplus and that Mr S was securing yet further credit with his car. CCP provided copies of Mr S's wage slips and bank statements from 1 November 2017 to 31 January 2018 and I've reviewed these.

Mr S's wage slips confirm that his net basic pay was now around £1,370 a month. However, the snapshots of Mr S's bank account show he was making payments for petrol and food, cash withdrawals and cashback withdrawals which weren't included in his declared expenses. It seems he was left without enough money to meet his bills each month. The statements do show transfers into his account from his partner, once prior to a rent payment but more often when he reached a zero balance or had a direct debit payment returned, which happened several times each month. For example in January 2018 Mr S had returned direct debits on the 8th, 22nd and 29th for mobile phone and car insurance and breakdown cover respectively and his partner deposited money to bring his account back into credit.

It seems to me that Mr S's partner was helping him to manage his money. Having considered everything carefully, I currently think Mr S's finances hadn't improved by the time he applied for his second loan and so I've provisionally found that CCP was irresponsible when it agreed to lend to him again."

In summary, having reviewed everything again, I've found that CCP was irresponsible to agree these two loans for Mr S. He's lost out by paying interest on this money, and potentially had his creditworthiness impacted. I've set out below what CCP needs to do to put things right for him.

## **Putting things right**

I understand that both loans have now been repaid. In order to put things right for Mr S, CCP needs to:

- a) Refund to Mr S all payments made above the capital amounts he borrowed, including any late fees;
- b) Add 8% simple interest\* per annum to these amounts from the date they were paid to the date of refund; and
- c) Remove any adverse information about these loans from Mr S's credit file; and
- d) Revoke the Bill of Sale for Mr S's car if this is still in place and return any relevant documents to him if it hasn't already done so.

\*HM Revenue & Customs requires CCP to deduct tax from this interest. It should give Mr S a certificate showing how much tax it has deducted, if he asks for one.

## **My final decision**

As I've explained above, I am upholding Mr S's complaint about CarCashPoint Limited and it needs to put things right for him as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 July 2022.

Michelle Boundy  
**Ombudsman**