complaint

Mrs P says Capfin Limited, trading as ecashwindow, ("Capfin") gave her loans she couldn't afford to repay.

background

I issued my provisional decision on this complaint on 27 April 2018. A copy is attached and it forms part of this final decision. The full background to the complaint is set out in the provisional decision and as such I won't repeat it here.

I explained in my provisional decision why I thought this complaint shouldn't be upheld. Capfin accepted my provisional findings but Mrs P didn't. Mrs P said (in summary):

- her credit card was up to or over its limit and in a payment plan from 2011 until April 2015
- similarly, her mortgage was in arrears and in a payment plan until January 2014
- both her regular and short-term outgoings were in reduced agreements and it wouldn't be fair to work out disposable income based on the reduced amounts
- some other payments due (but not paid) wouldn't appear on bank statements but still need to be taken into account
- there were other loans outstanding too, owed to businesses who are no longer trading
- it's not fair to assume she would've stated the reduced payments amounts as her outgoings
- I should consider the lender's responsibility, as well as affordability because if Capfin had made appropriate checks it would've seen that Mrs P was inappropriately using short-term loans to fund a gambling addiction – which is a recognised mental health problem

Although I've only summarised Mrs P's response in this decision, I'd like to reassure her I've read and considered her response in its entirety.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulations and good industry practice at the time.

Having done so, I have not been persuaded to depart from my provisional findings. I realise this is likely to be very disappointing to Mrs P but I hope my explanation below helps her to understand why I've reached this decision.

I don't think there's any real dispute over how difficult Mrs P's financial and personal circumstances were at the time. I have no trouble in accepting what Mrs P has told me about her mental and physical health and how this impacted upon her finances.

I think the difficulty here is determining what Capfin would've found out about Mrs P's circumstances had it carried out proportionate checks for the second, third and particularly the fourth loan.

This isn't an easy issue to resolve – because Capfin didn't carry out proportionate checks before lending, I have to look back at Mrs P's circumstances at the time and decide what it is I think proportionate checks would *most likely* have shown. This isn't a precise exercise – different checks can show different things and it's unlikely a business could know *everything* about a borrower's circumstances, no matter how closely it looked.

So I've thought again about what it is I think proportionate checks would've shown. For loans two and three, my findings are the same as set out in my provisional decision – for the same reasons. I still think it would've been proportionate for Capfin to only ask Mrs P for details of her regular financial commitments and I don't think details of these would've given Capfin reason to think the loans were unaffordable.

I said that Capfin should've sought to verify Mrs P's income and outgoings when she applied for loan four. I still think this is fair and reasonable and a proportionate check for Capfin to have undertaken, given the difficulties Mrs P had repaying loan three on time and the broader circumstances.

I think many of the points Mrs P raised are most pertinent when considered in the context of the fourth loan. So I'd like to explain in more detail why these points haven't changed my mind.

I don't think that a credit card being close to its limit is something which would be of concern – so long as regular payments were being made. From Mrs P's credit file, I can't see that her credit cards were over their limits around the time of the fourth loan. I also can't see that there were any arrears markers for credit cards at this time. So I don't think Capfin should've been unduly concerned about Mrs P's credit card usage.

I can see that Mrs P's mortgage was marked as "AR" for most months from August 2011 until it was settled in March 2015. I understand "AR" is the code for *arrangement to pay* and means the mortgage lender will have agreed to accept payments which are different to what was contractually due.

I think it would've been reasonable for Capfin to take into account that Mrs P's mortgage (which is a priority debt) was not being maintained as it perhaps should've been. But equally, if Mrs P was making the agreed payments I don't think it would present a reason not to lend – so long as the amount lent was affordable.

On the matter of Mrs P's other outstanding short-term loans, I've already taken into account all the loans I've seen evidence of. I appreciate that it's possible other loans existed – particularly given the time that has elapsed. But without evidence of the loans (if any), when they were due for repayment and the amounts owed, there's little more I can say on this point.

In my provisional decision, I said I was only able to find evidence of one other outstanding short-term loan at the time Mrs P applied for loan four (with Lender 3). I didn't know what the contractual payment due to Lender 3 was – but said that as Mrs P paid it £100, then this is the figure it's likely Mrs P would've given Capfin.

I still think it's reasonable to make this assumption. I have accepted that Mrs P was honest with Capfin about her financial difficulties (during loan 3) and so I understand why she says she would've told Capfin the contractual repayment. But if asked for her expected monthly short-term outgoings, I think it's more likely Mrs P would've explained what she actually expected to pay. And there's not enough evidence to show Capfin would've been aware this amount wasn't what was contractually due. In any event, I don't have enough information about what the contractual repayment was and think it's reasonable to take into account the amount actually paid for this reason too.

Finally, I agree with Mrs P that all lenders should consider whether lending is responsible, as well as affordable. I again accept that Mrs P was suffering from health problems at the time and equally I accept that gambling addiction is recognised as a mental health condition.

The difficulty here is deciding how much Capfin would've know about Mrs P's problems had it carried out proportionate checks. Mrs P has accepted that, although she may have discussed financial problems with Capfin, it's unlikely she would've explicitly mentioned her health problems. So the question is whether proportionate checks – such as checking bank statements – would've alerted Capfin to inappropriate/excessive spending on gambling.

This isn't an easy point to decide in Mrs P's case. I've decided that Capfin should've only carried out such detailed checks for loan four. So the most I think Capfin would've seen would be a snapshot of Mrs P's circumstances at the time of this application. It's possible Capfin may have only relied on evidence of income and expenditure from the month before the loan – and as I noted in my provisional decision, Mrs P's gambling expenditure in this month (May 2011) is not obviously excessive.

It's also possible Capfin could've looked back at several months' worth of income and expenditure evidence – and this may have resulted in a different picture. As I said in my provisional decision, *"There are months where Mrs P spent over £1,300 on gambling – and if that was the ongoing trend, it could have caused Capfin some concern."*

But I went on to say:

"…from what I've seen, Mrs P's gambling spend fluctuated. So it's difficult to say exactly what Capfin would've concluded, had it checked. I don't think it would have been unreasonable for Capfin to conclude Mrs P's gambling expenditure wouldn't cause her to spend more than her disposable income in June – as it hadn't in May."

I still think this is the case. It's quite possible that had Mrs P applied for further loans and Capfin carried out further detailed affordability checks, it would've built up a better picture of her circumstances and realised that the amount she was spending on gambling wasn't sustainable. But this didn't happen. And I can't say with enough confidence that Capfin should've realised the extent of Mrs P's problems at the time she applied for loan four.

I know this will not be what Mrs P wants to hear – and I hope that she doesn't think I'm underestimating how difficult things were for her. But I don't think it's likely proportionate checks would've shown Capfin it would've been irresponsible to lend to her – or that these loans were not affordable. I am therefore unable to uphold her complaint.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 16 June 2018.

Matthew Bradford
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mrs P says Capfin Limited, trading as ecashwindow, ("Capfin") gave her loans she couldn't afford to repay.

background

Mrs P had four loans with Capfin, as summarised below:

Loan no.	Date borrowed	Amount	Original repayment	Date repaid	Extensions
1	14/01/2011	£200	£250	14/02/2011	1
2	21/02/2011	£200	£250	28/02/2011	-
3	03/03/2011	£320	£400	31/05/2011	2
4	03/06/2011	£280	£350	30/11/2011	2

In her complaint Mrs P said the loans trapped her in a spiral of debt and left her having to borrow again to cover her expenses. She said Capfin hadn't done enough to check that the loans were affordable.

In its response, Capfin said it was a responsible lender and had carried out affordability and credit checks. It also said it verified her employment details.

An adjudicator looked at the complaint. He thought the checks Capfin had carried out were sufficient in respect of loan one. But he didn't think Capfin's checks for loans two to four were proportionate. However, the adjudicator didn't think it was likely proportionate checks would've shown the loans to be unaffordable. So the adjudicator didn't recommend the complaint be upheld.

Mrs P didn't agree with the adjudicator and so the complaint has come to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulations and good industry practice at the time.

loan one

From what I've seen, it looks like Capfin obtained information about Mrs P's income and employment. It recorded Mrs P's income as £2,400 a month. Capfin hasn't provided any information about what the credit and affordability checks it carried out showed. Mrs P has provided a copy of a credit report, but I can't say if the information in it is similar to what Capfin would've seen – and in any event the information in it only goes back as far as August 2011, so doesn't cover the period of lending. This means I can't safely say whether Capfin was aware or was likely to be aware of any negative credit history, or whether that should've influenced the type of affordability checks Capfin undertook.

At the time the first loan was granted, relevant regulations included the Office of Fair Trading's ("OFT") guidance on irresponsible lending – published in March 2010. Among other things, this said businesses should carry out proportionate affordability checks before deciding to lend or not.

Based on what I've seen, I don't think it was wrong for Capfin to give Mrs P the first loan, taking into account the information it had about her income. The repayment for the loan was only around 10% of her declared income, so it wouldn't be unreasonable for Capfin to conclude it was likely to be affordable.

loans two and three

I don't think Capfin's checks were proportionate for the second, third and fourth loans.

Mrs P delayed repaying the first loan and then, after just seven days, returned for a second loan. When Mrs P applied for the third loan, it was only three days after the second loan was repaid and was for a larger amount.

Taking these factors into account, I think Capfin should've asked Mrs P for a more complete picture of her finances. To make sure the repayments would fit in to her monthly budget, I think the business should have asked Mrs P for more information about her regular monthly costs – like living expenses and regular financial commitments.

If Capfin had carried out these proportionate checks, I think it's likely it would've still found the loans to be affordable. From what I've seen, I think Capfin would've thought Mrs P's usual living costs were £800-£900 a month and her regular credit commitments in the region of £700. As Capfin recorded a monthly income of £2,400 I think loans two and three would've looked affordable to Capfin.

loan four

Mrs P applied for the fourth loan just three days after the preceding loan closed. And the third loan had been extended twice. Mrs P also said she spoke to Capfin during the course of loan three, in March 2011, and told it she was having some financial difficulty and needed to extend the repayments.

Capfin doesn't have records of any call from Mrs P. If such a record ever existed, it seems unlikely that it would exist now given that Capfin has very limited records from 2011.

But Mrs P has given us a reasonable amount of detail about what she thinks she would and wouldn't have discussed with Capfin. I can also see, from records, she contacted at least one other lender at this time to tell it she'd have difficulty making repayments on time.

Mrs P's loan was extended after the time she says she contacted Capfin. So whilst I can't know what exactly was discussed, I accept, from Mrs P's plausible testimony, that she contacted Capfin when she says she did and that she would have said *something* about having difficulties repaying. I think it's therefore likely Capfin was aware of Mrs P's financial difficulties.

But even though I think it is likely Mrs P mentioned her financial difficulties to Capfin, I can't know exactly what was said. I can't know, for example, if Mrs P gave Capfin enough information about her situation that it should've understood from that information alone that it would be irresponsible to lend to her again in the future (*i.e.* that her problems were not temporary or short-term).

So I don't think I can safely say Capfin should've turned down loan four solely on the basis of what Mrs P told it. But to check whether Mrs P could afford further lending, I think it would've been proportionate for Capfin to get a full picture of Mrs P's financial circumstances. I think proportionate checks should've included verifying Mrs P's income and expenditure – for example by checking things like bank statements and payslips.

I've looked at Mrs P's bank statement for May 2011, to get an idea of what proportionate checks are likely to have shown Capfin. I can see that in this month Mrs P was paid around £2,300. I've also looked at Mrs P outgoings, she paid around: £350 towards her mortgage, £770 on other normal household expenditure and £380 to regular creditors. Mrs P also spent around £500 on gambling. There were no incoming payments from other lenders in May.

So if Capfin had checked Mrs P's bank statements when she applied for loan four, I think it would've seen her regular expenditure (excluding short-term credit) was in the region of £1,500 a month. So

Capfin could've assumed Mrs P's disposable income after her regular living and financial expenses was around £800.

Capfin should've also still asked Mrs P if she had any outstanding short-term loans when she applied for loan four.

It isn't entirely clear to me what Mrs P would've told Capfin if it had asked about her other short-term loans. But from the evidence I have, I think Mrs P had only one other short-term loan (with Lender 3) outstanding on 3 June 2011. I don't know what the contractual payment to Lender 3 was scheduled to be. But it looks like she paid it around £100 – so I think this is the figure Mrs P would've stated if asked.

I have seen on Mrs P's bank statements that she repaid a loan to another short-term lender, Lender 1, on 31 May 2011. And then she borrowed from Lender 1 again on 6 June 2011. But at the time she applied for her fourth loan with Capfin, it seems she didn't have a loan with Lender 1 – so couldn't have declared a loan with it as expected expenditure. Mrs P also repaid a different business, Lender 2, on 30 May 2011. Mrs P didn't borrow from Lender 2 again until August 2011. So again, this couldn't be included in any new loan application with Capfin, as there was no outstanding debt.

So if Capfin had assumed Mrs P's disposable income (before short-term loans) was still around £800 and Mrs P had told it she owed Lender 3 £100, Mrs P would still have around £700 left over to repay Capfin. The original repayment for loan four was £350. I think the loan would therefore have looked affordable.

I've also thought about whether the gambling transactions should've concerned Capfin. If Mrs P had spent the same on gambling in June 2011 as she did in May, her disposable income would be around £300 – not enough to repay the loan.

Looking at the gambling transactions in May, they total about 20% of Mrs P income. I don't think that would've appeared to be an excessive amount to Capfin, as I think this would've been the first time it saw this information. I've also noted that Mrs P's total expenditure in May 2011 is the same as her income – so it may not have appeared to Capfin that Mrs P was spending more than she could afford to.

It's possible that if Capfin had sought to verify Mrs P's regular gambling expenditure it would've seen she spent a lot in some months. There are months where Mrs P spent over £1,300 on gambling – and if that was the ongoing trend, it could have caused Capfin some concern. But from what I've seen, Mrs P's gambling spend fluctuated. So it's difficult to say exactly what Capfin would've concluded, had it checked. I don't think it would have been unreasonable for Capfin to conclude Mrs P's gambling expenditure wouldn't cause her to spend more than her disposable income in June – as it hadn't in May. And looking at the June statement, Mrs P spent less than £300 on gambling – so the impact of gambling was less significant than it had been historically.

I've weighed this against my earlier finding that I think Mrs P told Capfin about her financial difficulties before she took out loan four. I've also taken into account that Mrs P extended loan three twice.

But in the circumstances, I don't think the sort of checks I think Capfin should've carried out would have revealed the extent of Mrs P's financial difficulties. I've only been able to get an idea of Mrs P's true circumstances by looking back over several months of bank statements for 2011 – but I think it would be disproportionate to say Capfin should've done this when Mrs P asked for loan four.

Whilst I recognise this will be disappointing to Mrs P, given how difficult her situation actually seems to have been, I don't think the sort of checks Capfin should've undertaken at the time would've made it aware of her true situation. I'm therefore not planning to uphold her complaint.

my provisional decision

For the reasons given above, I am not minded to uphold the complaint.
[signed]
Matthew Bradford
ombudsman