

## **complaint**

Mrs A complains that Capfin Limited (trading as Ecashwindow) gave her loans that she couldn't afford to repay.

## **background**

The background to this complaint was set out in the provisional decision I issued earlier this month. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to uphold some of the complaint. I invited both parties to let me have any further comments and evidence. Capfin has said that it accepts my provisional decision. Mrs A has said that while she preferred the adjudicator's findings she can't see what else she could provide to prove that Ecashwindow shouldn't have given her any of the loans.

## **my findings**

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand why Mrs A is disappointed that my decision isn't as favourable to her as the outcome reached by our adjudicator. As I said in my provisional decision, what I need to consider in her case is what Ecashwindow should have discovered from proportionate checks. And for the first three loans I don't think that proportionate checks would have uncovered the true extent of Mrs A's financial problems. So that means there wouldn't have been any reason for Ecashwindow to not give Mrs A these loans.

I can see that Mrs A has asked if there is anything specific she could provide to prove that she couldn't afford the loans. It is clear why she has asked this, because I think in reality none these loans were affordable for her. She was borrowing heavily from other short term lenders and spending large amounts of money on gambling transactions. But that isn't something I'd have expected Ecashwindow to have been aware of at first – I don't think it would have needed to independently verify Mrs A's financial situation.

So I have reached the same conclusion that I set out in my provisional decision. I think that if Ecashwindow had done what I consider to be proportionate checks it would have seen that Mrs A couldn't afford to repay loans 4 to 6. Capfin needs to pay Mrs A some compensation.

### **putting things right**

I don't think Ecashwindow should have agreed to lend to Mrs A after, and including, the loan that she took on 7 February 2012. So for each of those loans Capfin should:

- Refund any interest and charges applied to the loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement\*.
- Remove any adverse information recorded on Mrs A's credit file in relation to the loans.

\*HM Revenue & Customs requires Capfin to take off tax from this interest. Capfin must give Mrs A a certificate showing how much tax it's taken off if she asks for one.

### **my final decision**

My final decision is that I uphold Mrs A's complaint and direct Capfin Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 23 October 2017.

Paul Reilly  
**ombudsman**

**EXTRACT FROM PROVISIONAL DECISION****complaint**

Mrs A complains that Capfin Limited (trading as Ecashwindow) gave her loans that she couldn't afford to repay.

**background**

Mrs A was given six loans by Ecashwindow between November 2011 and May 2012. All the loans have now been repaid. A summary of Mrs A's borrowing is as follows;

<b>Loan Number</b>	<b>Borrowing Date</b>	<b>Repayment Date</b>	<b>Loan Amount</b>
1	11/11/2011	30/11/2011	£ 280
2	13/12/2011	21/12/2011	£ 280
3	03/01/2012	31/01/2012	£ 360
4	07/02/2012	30/03/2012	£ 400
5	19/04/2012	30/04/2012	£ 360
6	04/05/2012	30/04/2013	£ 400

Mrs A's complaint has been assessed by one of our adjudicators. She couldn't determine whether the checks Ecashwindow had done on any of Mrs A's loans were sufficient. And she thought proportionate checks should have shown the lender that Mrs A couldn't afford to sustainably repay any of the loans. So she asked Ecashwindow to pay some compensation to Mrs A.

Ecashwindow didn't agree with that assessment. So, as the complaint hasn't been resolved informally it has been passed to me, an ombudsman, 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 regulatory rules and good industry practice at the time the loans were offered.

Ecashwindow was required to lend responsibly. It needed to make checks to see whether Mrs A could afford to pay back each loan before it lent to her. Those checks needed to be proportionate to things such as the amount Mrs A was borrowing, and her lending history.

The guidance in place at the time was not prescriptive about what specific checks a lender needed to carry out. But it was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The Office of Fair Trading (OFT) Irresponsible Lending Guidance states "*Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties.*"

The guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty.*" And it defines "*undue difficulty*" as being able to repay credit "*while also meeting other debt repayments and normal/reasonable outgoings*" and "*without having to borrow further to meet these repayments*".

Even though Mrs A managed to repay her loans in full it doesn't automatically mean the loans were affordable for her or that she managed to repay them in a sustainable manner. In other words I can't assume that because Mrs A managed to repay her loans it means that she was able to do so out of her normal income without having to borrow further.

Ecashwindow has told us about the checks it did before lending to Mrs A. It says that it checked Mrs A's credit file, and verified the income information she'd given to it. And it says that it spoke with Mrs A on the phone before each loan to check why she wanted to borrow, and to verify the income and expenditure information that was on Mrs A's bank statements.

But apart from the information it recorded about Mrs A's income, and her employer, Ecashwindow hasn't given me the results of any of the other checks it performed. So, for example, I don't know what Mrs A told the lender about her expenditure, or how much detail was available to Ecashwindow from her bank statements.

The amounts that Mrs A borrowed weren't small – the lowest repayment she had to make was £350. So I think at the very least Ecashwindow should have gathered information about Mrs A's income and basic expenditure. From the fourth loan onwards I think it should have been asking some very detailed questions about where she was spending her money, including whether she was taking loans from other short term lenders.

So, with the information I have available, I'm not able to conclude that any of the checks Ecashwindow did were proportionate. Whilst I accept what the lender says about the conversations it had with Mrs A, I can't conclude these were sufficiently robust without evidence of the information Mrs A provided.

But although I can't say that the checks Ecashwindow did on any of the loans were sufficient, that in itself doesn't mean that Mrs A's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Ecashwindow that Mrs A couldn't sustainably afford the loans. So I've looked at Mrs A's bank statements, and what she's told us about her financial situation, to see what better checks would have shown Ecashwindow.

Throughout the time Mrs A was borrowing from Ecashwindow, she was in a very poor financial position. She was spending heavily on what appear to be gambling transactions. And she was supporting her income by taking a large number of short term loans. So this meant she had no capacity to take on any additional borrowing – or repay it in a sustainable manner.

But what I need to consider in this decision is what Ecashwindow should have discovered from what I consider to be proportionate checks. And for the first three loans – when I think Ecashwindow should have been asking Mrs A about her income and normal day to day household spending – I don't think the extent of Mrs A's expenditure would have been seen. From looking at what Mrs A was spending on day to day living costs I think it would have appeared to Ecashwindow that the first three loans were affordable for her. So I don't currently think Ecashwindow was wrong to give these loans to Mrs A.

But, as I said earlier, by the time Mrs A asked for her fourth loan I think the checks Ecashwindow should have been doing had increased. This was now the fourth loan Mrs A had taken within less than three months. And the amount she was asking to borrow had gone up. So I currently think that, by the time of the fourth loan, what I consider to be proportionate checks would have shown Ecashwindow the extent of Mrs A's financial difficulties.

I think that if Ecashwindow had done what I consider to be proportionate checks it would have seen that Mrs A couldn't afford to repay loans 4 to 6. And so, as a responsible lender, it wouldn't have agreed to give these loans to her. Ecashwindow needs to pay Mrs A some compensation.