

complaint

Mr B complains that Cash On Go Limited, trading as Peachy, lent to him irresponsibly.

Mr B is represented by a third party.

background

I attach my provisional decision dated 6 August 2019, which forms part of this final decision and should be read with it. In it I explained why I intended to uphold Mr B's complaint in part. Both parties had time to provide any further comments they may have by 20 August 2019 before I reached a further decision.

Peachy has responded by agreeing to my provisional findings and has sent to us figures calculated for the settlement for Loans 3, 4 and 4A. Peachy has said that the refund, plus 8% reduces the total outstanding balance Mr B owes it to about £168. Exact figures will be provided by Peachy.

Neither Mr B, nor his representative, have replied to my provisional decision. The deadline date for responses has passed. So I think it is fair and reasonable for me to conclude this complaint with a final decision.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Peachy has accepted my provisional decision and calculated what it owes Mr B. I see no reason to alter the conclusions I reached in my provisional decision on 6 August 2019.

Peachy is able to set off what it owes to Mr B from what he owes it. So that outstanding balance of the principal sum (once the final figure has been determined) needs to be repaid to Peachy. So a mutually agreeable repayment plan needs to be arranged and I remind Peachy of the need to treat Mr B in a positive and sympathetic manner.

putting things right – what I am planning to ask Peachy to do

- refund all interest and charges Mr B paid on Loans 3, 4 and 4A;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement †;
- remove any negative payment information about Loans 3, 4 and 4A from Mr B's credit file.

Peachy is able to offset the money it owes to Mr B against the money Mr B owes it because of the outstanding balances on Loans 4 and 4A.

† HM Revenue & Customs requires Peachy to take off tax from this interest. It must give Mr B a certificate showing how much tax it's taken off if he asks for one. Any set-off Peachy carries out must be done after the tax has been removed from the compensation.

my final decision

For the reasons set out above and in my provisional decision dated 6 August 2019, I uphold Mr B's complaint in part.

CASH ON GO LIMITED, trading as Peachy, should put things right for Mr B in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision on or before 28 September 2019.

Rachael Williams
ombudsman

the main part of the provisional decision dated 6 August 2019**background**

Our adjudicator created a table of the approved loans which I have adopted. I have numbered them to make identification of them easier in the decision.

Loan	Loan Amount	Date approved	Status/date settled
1	£100.00	13/01/2018	06/07/2018
Top-up* 1A	£50.00	14/01/2018	
Top-up* 1B	£50.00	04/02/2018	
2	£240.00	11/07/2018	30/07/2018
3	£150.00	05/08/2018	07/08/2018
4	£100.00	20/08/2018	Outstanding balance
Top-up 4A	£80.00	21/08/2018	

*Loans 1A and 1B were situations where the overall loan term changed to later dates and effectively were refinances of the previous loan. So this has been taken into account when considering what checks should've been carried out. Loan 4A was a top-up in that the original end date of the loan remained unchanged.

Mr B has explained that he spent a significant amount of his earnings gambling and until recently no evidence of that was produced.

Peachy has outlined the types of checks and approach that it took.

Our adjudicator looked at the complaint twice: the first time she thought that Loans 4 and 4A should be upheld. Peachy replied with many submissions to explain why it disagreed. Our adjudicator's second opinion was that the complaint should not be upheld at all. After this second view, Mr B's representative sent to us bank statements for the period late 2017 to August 2018. These have not been sent in before despite being requested on 9 April 2019.

These are what has prompted an additional review of the complaint by me.

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. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Peachy needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr B could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Peachy should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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 *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 even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable. But I do not think that this point was reached in Mr B's case.

I think that it is important for me to start by saying that Peachy was required to establish whether Mr B could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr B's complaint.

I agree with our adjudicator that proportionate checks carried out by Peachy for Loans 1 to 2 appear to have been done and as such I agree that these are not lending decisions that I'd expect Peachy to correct. I do not plan to uphold Mr B's complaint for Loans 1 to 2.

As our adjudicator explained, Loan 3 was effectively the fifth lending decision in fewer than eight months as Mr B had refinanced Loan 1 twice. The application for Loan 2 was for a much higher amount than Loan 1. And the application for Loan 3 was made against that earlier lending background. These factors suggest Mr B was in more need of money not less than when he first approached Peachy. I think these factors warranted further checks.

And the application for Loan 3 was made against the earlier lending background. A proportionate check for Loan 3 at this stage of the lending relationship would have been for a review of the whole of Mr B's financial position, including verification of income, outgoings, regular commitments and other short term lending decisions.

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I do not think that Peachy did this and so now I have information from Mr B to enable us to look to see what Peachy would likely have discovered had it carried out the check I consider to have been proportionate for Loan 3 and onwards. It would most likely have shown that Mr B:

- was taking short term loans from other lenders
- was persistently overdrawn in his bank account
- was gambling significant amounts and often it was about a £100 a day and as an example on 23 July 2018 Mr B's on-line betting costs were over £200.

My view is that it would not be unreasonable to consider that many hundreds of pounds being spent on gambling each month would be a current financial situation to be taken into account. And it's likely that this could be a fairly strong indication of present financial difficulty.

In addition, it is likely to mean that Mr B may have had an issue with repaying in a 'sustainable' fashion within the meaning of CONC. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed to by, gambling, then a properly carried out affordability assessment was likely to lead a responsible lender to conclude that a loan was not affordable for an applicant in that situation.

So overall I think that the approval of Loans 3, 4 and 4A were irresponsible and proportionate checks would have shown that Mr B was not in a position to repay these loans.

end of extract