

complaint

Miss W has complained about short-term loans granted to her by CashEuroNet UK LLC trading as Quick Quid ("Quick Quid" or "the lender").

Miss W says that Quick Quid's loans were unaffordable for her and the lender should not have agreed to them. She says that it should have realised from the number of times she rolled over loans or borrowed again that her debt problems were actually getting worse.

background

I attached my provisional decision of 15 November 2018, which forms part of this final decision and should be read in conjunction with it. In my provisional decision I invited both parties to provide any further comments they may have had by the 15 December 2018 and before I reached a final decision.

Miss W agreed with my provisional decision. Quick Quid didn't respond to any of the points raised therein and didn't provide any further information, saying it would await the final decision on this complaint.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has provided any further comments for consideration, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I partially uphold Miss W's complaint.

what Quick Quid should do to put things right

I've concluded that Quick Quid was irresponsible to agree loans 3 and 4 taken out in October 2011 and April 2012, loans 9, 10, and 11 taken out in August and October 2013, and loans 17 and 18 taken out in May and July of 2014.

In order to put Miss W back in the position she would have been in, had it not agreed these, Quick Quid should:

- refund all interest and charges Miss W paid for loans 3 and 4, 9, 10 and 11, and loans 17 and 18;
- honour its offer to refund the interest and charges Miss W paid for loans 5 to 8 and 12 to 16 inclusive;
- pay interest on these refunds at 8% simple* per year from the dates of payment by Miss W to the dates of settlement;
- remove any adverse information about loans 3 and 4 and loans 5 to 8 from Miss W's credit file;
- and remove all information about loan 9 and **all loans thereafter** from Miss W's credit file**.

*HM Revenue & Customs requires Quick Quid to take off tax from this interest. Quick Quid must give Miss W a certificate showing how much tax it's taken off if she asks for one.

**Putting Miss W back into the position she would have been in had she not been impacted by repeat lending requires the record of these loans to be completely removed from her credit file.

my final decision

For the reasons set out above and in my provisional decision, I am partially upholding Miss W's complaint. CashEuroNet UK LLC trading as Quick Quid should put things right as I've explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 20 January 2019.

Michelle Boundy
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss W has complained about short-term loans granted to her by CashEuroNet UK LLC trading as Quick Quid ("Quick Quid" or "the lender").

background

Quick Quid agreed 18 loans for Miss W from March 2011 to July 2014, a period of almost three and a half years. It also agreed 26 additional advances or 'top-ups' on these loans so it made 44 lending decisions in total. There was never more than a few weeks' gap between Miss W repaying a loan and applying for her next, and it was usually a matter of days. The credit amounts agreed ranged from £25 to £1,000.

Most of Miss W's 44 credit advances were to be repaid in one instalment, with only 12 of them to be repaid in two. The instalments were not of equal size, typically the first instalment was equivalent to a month's interest with another month's interest plus capital to be repaid in the second. Miss W extended several of her loans – most notably early on in the lending relationship. I have included a table in an appendix to this decision ([Appendix 1](#)) which sets out some of the loan information Quick Quid has provided.

Quick Quid didn't consent to this Service looking into the first two loans it agreed for Miss W as it says she complained too late about these. Miss W has since withdrawn her complaint about these loans.

Miss W says that Quick Quid's loans were unaffordable for her and the lender should not have agreed to them. She says that it should have realised from the number of times she rolled over loans or borrowed again that her debt problems were actually getting worse.

Quick Quid disagrees that its loans were unaffordable for Miss W. It says that her income was always more than enough to cover the amount she had to repay for each loan. However, it offered to refund the interest and charges she paid for nine of her loans (highlighted in the table in [Appendix 1](#)). Quick Quid said that although it felt these loans were affordable, it *"could see that a pattern of dependency emerged with loan [5] and such pattern continued after the period [Miss W] took out the referenced loan."* And it offered to refund the fees and charges she paid for loans 5 to 8 inclusive and also loans 12 to 16 inclusive.

Miss W declined this offer and brought her complaint to this Service.

Our adjudicator partially upheld Miss W's complaint and asked Quick Quid to refund the interest and charges she paid on more of her loans – namely on the additional advances on loan 3 and on all credit advances for loans 4,10,11 and 18. Quick Quid didn't agree with this recommendation and so the case has come to me as an ombudsman for a final decision.

For clarity – I am not looking into Miss W's first two loans as she has withdrawn her complaint about these. I am also not looking in detail at the nine loans for which Quick Quid has offered to refund interest and charges. I understand this offer is still available for Miss W. My decision focuses on loans 3 and 4, loans 9 to 11 inclusive and loans 17 and 18.

I am sending out a provisional decision to explain why I agree with our adjudicator's recommendation but why I think it needed to go further. This will also allow both parties to comment further on this matter before I make my final decision.

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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Quick Quid agreed 16 of Miss W's loans in the period before the 31st of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities. Miss W's last two loans (17 and 18) were granted in May and August 2014 respectively, by which point the Financial Conduct Authority (FCA) had taken over the regulation of consumer credit.

As I've said above, I have thought about everything to come to a view about what is fair and reasonable in this case. I have set out some of the relevant legal and regulatory framework in [Appendix 2](#) at the end of this decision. This includes some of the provisions of the Consumer Credit Act, guidance taken from the OFT's Irresponsible Lending Guidance (ILG) and the FCA's Consumer Credit Handbook (CONC) and comment on relevant industry codes of best practice.

Under this framework, in order to hold a consumer credit licence Quick Quid was obliged to lend responsibly. As clarified by the OFT and the FCA, this meant that Quick Quid needed to make a reasonable assessment as to whether or not a borrower could afford to meet their loan repayments in a sustainable manner. Neither the law nor the regulators specified how the assessment was to be carried out but, whatever the method, it needed to be enough to assess the sustainability of the arrangement for the consumer.

It's important to note that this means the assessment needed to be consumer-focussed. It was not an assessment of the risk to the lender, but of the risk to the consumer. And it needed to be proportionate to both the particulars of the lending and the circumstances of the consumer. Therefore, a lender's assessment of creditworthiness would need to be flexible – what was sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one circumstance might not be so for the same consumer in other circumstances.

In section 3.13 of its *Irresponsible Lending Guidance*, the OFT said that short-term loan products are "*unsuitable for supporting sustained borrowing over longer periods, and would be expensive as a means of longer term borrowing*". It also points to repeated refinancing of such loans as an example of irresponsible lending. This suggests that a lender needed to consider the risk to the consumer of such lending behaviour. And it seems logical to me that the more instances of repeated lending of short-term loans (and the longer the consumer's indebtedness continues – including by the provision of a number of consecutive loans), the greater the potential risk to the consumer of the credit being unsustainable.

The FCA's rules, set out in its Consumer Credit Source Book (CONC), echo and refer back to sections of the OFT's Irresponsible Lending Guidance. The rules at the time said that in assessing affordability a lender needs to consider what's appropriate in the circumstances for example "*the type and amount of credit being sought and the potential risks to the consumer*." It also clearly stated that lenders should not refinance short-term loans where it would be unsustainable for the consumer or otherwise harmful for them.

what should have happened and did Quick Quid get this right?

Bearing the above in mind, I would expect an assessment of creditworthiness to vary with circumstance. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the higher the loan amount,
- the lower the consumer's income; or

- the longer the lending relationship.

In making this decision, I have considered the following questions:

- did Quick Quid complete proportionate checks when assessing each of Miss W's loan applications to find out whether or not she could repay her loans sustainably?
 - if it didn't, what would such checks have shown and how might this have impacted on Quick Quid's decisions to lend?
- did the overall pattern of lending (i.e. the number or frequency of loans) increase Miss W's indebtedness in an unsustainable or harmful way?
- did Quick Quid act unfairly or unreasonably in some other way?

Having done so, I've concluded that Quick Quid was irresponsible to lend to Miss W in all instances under consideration. I plan to uphold her complaint and ask Quick Quid to refund the interest and charges she paid for loans 3 and 4, loans 9 to 11 inclusive and loans 17 and 18. I appreciate that this will be disappointing for Quick Quid and I'll explain in detail why I've reached this conclusion.

did Quick Quid complete proportionate checks when assessing each of Miss W's loan applications to find out whether or not she could repay her loans sustainably?

Quick Quid says that it carried out credit and affordability checks each time Miss W applied for a loan. It recorded her monthly income as £1,200 for most of 2011 and 2012. This changed to £1,500 in November 2012 and increased again to £1,580 in February 2014 and to £1,600 for her last loan that July.

Quick Quid didn't record any expenses for Miss W, except when she applied for her last loan in July 2014. It says *"each time Miss [W] applied for a new loan or a top up, she was required to update or change her income and/or expenditure details. At the time of lending, retaining these details was not a requirement of the regulator. By not amending anything on the application, Miss [W] confirmed her income and expenditure as not being different from what was previously verified."* However, Quick Quid hasn't been able to show this Service what Miss W would have seen when she made her applications and so I can't say with any certainty that it would have asked her for information about her expenses before the date of its first record.

From the customer records I can see that in October 2012 (when Miss W asked for her 5th loan) Quick Quid obtained a report through a third-party credit reference agency (CRA), which I understand provided data about national income and expenditure figures held by the Office of National Statistics (ONS). Quick Quid obtained this report several times throughout 2013 and 2014. However, as mentioned, I can't see that it ever asked Miss W about her monthly expenditure until what became her final loan in July 2014. So it doesn't seem to me that Quick Quid sought some understanding of Miss W's actual disposable income until then.

I can see that Quick Quid also checked Miss W's credit file through the CRA numerous times during the period she borrowed from it but it hasn't provided this Service with the results of these checks. Miss W provided a recent copy of her credit file and it doesn't show any adverse information which I think might have concerned Quick Quid over the years. I appreciate that Miss W's current credit report may not show everything which might have appeared at an earlier point, but I can't make any further deductions about what the lender might or might not have seen in these reports with the information I have to hand.

The first loan I am looking into was taken out on the 19th of October 2011. Our adjudicator said:

"Miss [W] requested her third loan on the same day she repaid loan two and was for a higher amount. Loan two had also been rolled over on four occasions before repayment."

I think this was indicating that Miss [W] was struggling with her repayments and becoming more reliant on this form of credit. This is also supported by the emails you've provided showing Miss [W]'s request for the loan to be extended and your response.

In light of this, before approving any further loans, I think you should've made full review of Miss [W]'s financial circumstances to ensure she could repay the loans without any undue difficulties. This includes not only asking questions about her income but also her normal living costs, regular as well as short-term commitments, and requesting evidence to verify this information, such as bank statements and payslips. I can't see you did this, so I'm unable to say your checks for this loan were proportionate."

In response, Quick Quid said:

"Miss [W] had the liberty to choose from up to 3 periods to repay her short-term contracts and had the ability to rollover or extend as needed without penalty, based upon approval only. We'd like for you to consider for our mutual understanding, that rollovers/extensions afford an opportunity for the consumer to successfully repay their agreement(s) and are not a disadvantage, nor does it confirm that she was struggling to repay her agreements."

The below table sets out Quick Quid's record of Miss W's second loan, with my interpretation of the transactions:

Date	Description	Payable	Paid	Interpretation
22/04/2011	Principal	£300.00	£0.00	
22/04/2011	Interest Charges	£88.50	£0.00	
19/05/2011	Interest Charges	£88.50	£0.00	
19/05/2011	Interest Payment Received	£0.00	£88.50	Instalment 1
15/06/2011	Interest Charges	£88.50	£0.00	
17/06/2011	Interest Payment Received	£0.00	£88.50	Rollover
18/07/2011	Interest Charges	£88.50	£0.00	
18/07/2011	Interest Discount	-£8.85	£0.00	
18/07/2011	Interest Credit	-£8.85	£0.00	
19/07/2011	Interest Payment Received	£0.00	£79.65	Rollover
17/08/2011	Interest Charges	£88.50	£0.00	
19/08/2011	Interest Payment Received	£0.00	£79.65	Rollover
15/09/2011	Interest Charges	£73.75	£0.00	
15/09/2011	Interest Discount	-£7.38	£0.00	
19/09/2011	Interest Payment Received	£0.00	£88.50	Rollover
19/09/2011	Principal Payment Received	£0.00	£50.00	
19/10/2011	Interest Payment Received	£0.00	£66.37	
19/10/2011	Principal Payment Received	£0.00	£250.00	Final repayment

This loan was due to be paid off in two instalments - £88.50 on the 19th of May and £388.50 on the 17th of June. It seems Miss W paid the first instalment in May and extended or 'rolled over' the second instalment to July. She then emailed Quick Quid on the 18th of July to say *"My payment is due tomorrow. I urgently need the loan extending."* It seems she then extended her loan in August and September. Her email on the 13th of October says *"I don't appear to have the option to request an extension. I would like to request one but also pay some more money off."*

Quick Quid declined to extend Miss W's loan again and said *"We have received your loan extension request; however, we are unable to extend your current loan, as you have reached the maximum number of extensions allowed. Once your current loan is repaid in full, you will be eligible to apply for another payday loan from QuickQuid."* And when Miss W repaid her second loan in full, it seems she took her third loan out on the same day.

As I've mentioned, I am not looking into whether or not Quick Quid was right to agree Miss W's second loan for her. But in looking at the account transactions and the communications I have available, it seems to me that Miss W was finding it difficult to manage her repayments for this loan. And given the speed at which she applied for credit again, I think our adjudicator was correct here in finding that Quick Quid ought to have done more to check that Miss W would not have difficulty repaying loan 3.

Loan 3 was for £500 and was due to be repaid in two instalments – the first of £147.50, the second of £647.50. This was an increase on Miss W's previous loan value, and the second instalment was over 50% of her stated income. Even if she were in a position to spread her payments equally, which I think the management of her previous loan shows is doubtful, this would still mean spending over a third of her income each month to meet these repayments.

As this Service has explained to Quick Quid, it needed to do more here to assess Miss W's ability to meet these repayments sustainably, beyond asking about her regular expenses. It needed to check that there wasn't anything else she needed to pay when she was due to make her repayments for loan 3 such as other short-term loans, for example. And it ought to have asked her for some independent verification of her income and expenses to satisfy itself that meeting these loan repayments wasn't going to cause her difficulty. Given how she'd managed her credit so far, I don't think it was fair of Quick Quid to continue to accept the information Miss W was providing without looking into it further.

From the customer records, it seems Miss W topped up loan 3 twice and extended the loan repayments four times. The day after she repaid this loan fully she asked for yet a higher amount of credit - £600. This fourth loan was to be repaid in two instalments of £177 and £777. Miss W topped up loan 4 twice, and requested three loan extensions, leading her to the point of having to repay almost £1,000 in one instalment – over 80% of her stated income. Clearly, Quick Quid ought to have continued to do more to check the affordability of this ever increasing credit for Miss W.

This pattern of repeat lending continued for almost two more years. Even though some of the later loan amounts were lower, given the frequency of Miss W's credit requests and the length of time involved, Quick Quid ought to have carried out a similarly high level of check when she requested her later loans.

In summary, I don't think the checks Quick Quid carried out were proportionate to the circumstances of the lending in all instances under consideration. So I've gone on to consider the consequences of this for Miss W.

what would proportionate checks have shown and how might this have impacted on Quick Quid's decisions to lend?

Loans 3 and 4

Our adjudicator found that the top-ups on loan 3 weren't sustainably affordable for Miss W and I agree. Furthermore, although the earliest bank statements that Miss W provided to this Service were for February 2012, I haven't seen anything which suggests that Miss W's financial situation was any different when she initially took out loan 3 a few months earlier. So I think her initial advance on this loan was also likely to be unaffordable.

As shown in [Appendix 1](#), the maximum repayments for loan 3 and associated top-ups ranged from £648 to £712. Our adjudicator explained that having looked at Miss W's bank statements from around

that time she would have approximately £740 left each month when taking into account her rent, utilities and bills, food and transport, clothing and toiletries. She then concluded it was *“fair to say that [this level] wouldn’t have been sufficient to sustainably afford the repayments on this loan.”*

Quick Quid said in response to our adjudication that *“we are able to see that Miss [W] would hold over £700 in disposable income each month after meeting all essentials. FOS indicates that this would prove insufficient in repaying this loan, however, we are unable to agree”*.

To explain further, this Service’s estimate is not one of *essential* spend, but of *likely* spend. It is based on what Miss W told us about her regular expenses at the time combined with what we can cross-reference on her bank statements. It is a minimum estimate and is limited by what we can reasonably interpret of Miss W’s regular expenditure. It doesn’t take into account, for example, seasonal costs nor does it include all of Miss W’s cash withdrawals.

What is under consideration here is not, ultimately, the detail of Miss W’s finances in pounds and pence. The question is would Quick Quid have seen enough to satisfy itself that Miss W would have been able to sustainably meet her repayments, had it carried out a proportionate check? Or would it have found out that there was a risk that Miss W wouldn’t be able to meet her loan repayments out of her normal income *“without having to borrow further”* and *“while also meeting other debt repayments and other normal/reasonable outgoings”*¹

As I’ve explained, in my view there is a risk here that Miss W wouldn’t be able to afford this loan in a sustainable way. And Quick Quid ought to have taken steps to uncover this. And, had it done so, as a responsible lender, it wouldn’t have agreed to a third loan for her.

My conclusions are similar for loan 4, where the maximum repayments for the initial loan and top-ups ranged from £777 to £971.

In response to our adjudication on loan 18, Quick Quid said

“Considering that Miss [W] held over £600.00 in disposable funds during loan [18], we would assess that repayment of the loan would be sustainable. As the loan repayment was £750.45. Knowing that a payment were scheduled to come, Miss [W] had time to prepare for such, by cumulative putting together of funds that remained from the previous month’s repayment. This would not be considered unreasonable for a contractual repayment. With this in mind, the business would not be able to agree with FOS’s assessment and recommendation.”

This is a little confusing in the context of this particular loan as I understand it had a term of 31 days and was due to be repaid in one instalment of £750. But what Quick Quid appears to be saying is that, given Miss W’s level of disposable income, she could perhaps save from one month to the next in order to be able to meet her contractual repayments. I have considered this argument in the context of loans 3 and 4 where the initial advances had to be repaid in two instalments.

If Miss W managed her finances to spread her loan repayments equally for the initial agreements for loans 3 and 4 it would mean spending over half of her disposable income to meet her obligations for loan 3 and two thirds of her disposable income for loan 4.

But before considering whether or not this might be sustainably affordable for Miss W, I don’t think it was reasonable in these instances for Quick Quid to make the assumption that she was in a position to be able to save money over time to meet her loan repayments. This is because of her management of her second loan, where she needed to put off making her second, large repayment four times. And she also asked for top-ups and extensions during her third loan. And so my view that Quick Quid should not have agreed these loans for Miss W remains unchanged.

¹ Section 4.4 of the OFT’s Irresponsible Lending Guidance.

I could continue to look into the affordability for Miss W of loans 9 to 11 and loans 17 and 18 but, as I will go on to explain, I think Quick Quid should have stopped lending to Miss W before she came to apply for her ninth loan.

taking into account the short term purpose of the loans provided, did the overall pattern of lending increase Miss W's indebtedness in a way that was unsustainable or otherwise harmful?

In considering this question, I first looked at the offer that Quick Quid made to Miss W. It offered to refund the interest and charges she paid for loans 5 to 8 inclusive and then later loan 12 to 16 inclusive because it said it could see that a pattern of dependency emerged with loan 5 and continued afterwards. Quick Quid hasn't explained why it feels that Miss W wasn't dependent on its loans for a few months in between these periods when she took out loans 9, 10 and 11. Or why it feels she wasn't still dependent on its loans when she took out loans 17 and 18.

As mentioned earlier, the guidance from the regulators at the time states that the purpose of payday loans is to act as a short-term solution. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are more likely to be suitable.

By the time Miss W came to ask for her ninth loan in August 2013 she'd been borrowing from Quick Quid for over a year and a half. She'd started by asking for £100 in March 2011 and was still in need of this amount in August 2013. I think it should have been obvious at this point that a pattern of dependence had emerged and Miss W wasn't likely to be using these loans for short-term money problems and was probably in need of a longer term more suitable solution.

Quick Quid's own website states that:

"Short-term loans are designed to help you bridge the gap between paydays so that you can take care of any unexpected expenses. If you need a quick cash advance to cover unexpected expenses, a Quick Quid short-term loan may be an option for you. However, you should not take out a short-term loan if you don't think you can pay it back on time, or if you are in need of a long-term financial solution."

And;

"Short-term loans should be used for short-term financial needs only, and not as [a] long-term financial solution. As a responsible lender, we do not encourage the frequent use of our service."

So I agree with Quick Quid that it ought to refund Miss W's interest and charges for loans 5 to 8 and loans 12 to 16. But, by the same logic, I think it ought to refund her the money she paid for the loans in between these periods (loans 9, 10 and 11) and after (loans 17 and 18).

Miss W paid over £7,000 to have access to on average £300 a month from March 2011 to July 2014, a period of almost three and a half years. I think agreeing this number of advances over this length of time had the effect of unfairly increasing Miss W's indebtedness to Quick Quid by allowing her to take expensive credit – which the rules and guidance and Quick Quid's own website make clear was only intended for short-term use – over an extended period of time.

In addition, I think the number and frequency of these loans may have had and will, potentially, continue to have implications for Miss W's ability to access mainstream credit because the presence of these short-term loans on her credit file is likely to be viewed negatively by other lenders.

did Quick Quid act unfairly or unreasonably in some other way?

From the information I have available, it seems Miss W didn't borrow from Quick Quid after July 2014. I haven't seen any indications that she has any outstanding debt with Quick Quid and so I've concluded that the lending relationship ended there. And Miss W hasn't raised any other issues with Quick Quid, other than the unaffordability of its loans and their negative impact on her.

in summary

To sum up, I don't think Quick Quid gathered enough information to reasonably assess Miss W's ability to make her loan repayments for loans 3 and 4 in a sustainable way and so it didn't discover that she was unable to do so. Furthermore, it went on to offer her high cost loans over almost three and a half years without considering the adverse impact of this repeat lending for her – she paid over £7,000 in interest and charges for this credit, was continuously in a position where she had outstanding debt with Quick Quid and over the period acquired information on her credit file which potentially reduced her creditworthiness.

what Quick Quid should do to put things right

As I've concluded, Quick Quid was irresponsible to agree loans 3 and 4 taken out in October 2011 and April 2012, loans 9, 10, and 11 taken out in August and October 2013, and loans 17 and 18 taken out in May and July of 2014. In order to put Miss W back in the position she would have been in, had it not agreed these, Quick Quid should:

- refund all interest and charges Miss W paid for loans 3 and 4, 9, 10 and 11, and loans 17 and 18;
- honour its offer to refund the interest and charges Miss W paid for loans 5 to 8 and 12 to 16 inclusive;
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement;
- remove any adverse information about loans 3 and 4 and loans 5 to 8 from Miss W's credit file;
- and remove all information about loan 9 and **all loans thereafter** from Miss W's credit file**.

*HM Revenue & Customs requires Quick Quid to take off tax from this interest. Quick Quid must give Miss W a certificate showing how much tax it's taken off if she asks for one.

**Putting Miss W back into the position she would have been in had she not been impacted by repeat lending requires the record of these loans to be completely removed from her credit file.

my provisional decision

I intend to uphold Miss W's complaint for the reasons given above and require CashEuroNet UK LLC Limited (trading as Quick Quid) to put things right as I've set out.

I'll wait a month to see if either party has anything further to add – before considering my decision on this complaint once more.

Michelle Boundy
ombudsman

Appendix 1 Miss W's lending history (offers highlighted)

Appendix 2 Some information on the legal and regulatory background to the lending

the Consumer Credit Act 1974

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to have regard to when deciding whether or not to grant a consumer credit licence to a lender. It said:

- (1) *In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
- (a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
 - (b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
 - (c) practices and procedures that the applicant proposes to implement in connection with any such business;*
 - (d) evidence of the kind mentioned in subsection (2A)*
- (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
- (a) committed any offence involving fraud or other dishonesty or violence;*
 - (b) contravened any provision made by or under—*
 - (i) this Act;*
 - (ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
 - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
 - (c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
 - (d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*
 - (e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)*

Section 25(2B) set out an example of the type of practice referred to in Section 25(2A(e)) and said:

For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending.

section 140 of the Consumer Credit Act 1974

All of Miss W's loans were given to her after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

- (1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following—*
 - (a) any of the terms of the agreement or of any related agreement;*
 - (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
 - (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*
- (2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*
- (3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*
- (4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*
- (5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

- (2) An order under this section in connection with a credit agreement may do one or more of the following—*
 - (a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*
 - (b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*
 - (c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*

- (d) direct the return to a surety of any property provided by him for the purposes of a security;*
- (e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*
- (f) alter the terms of the agreement or of any related agreement;*
- (g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. This included an additional requirement on a lender to carry out an "Assessment of creditworthiness" which was set out in section 55B of the Consumer Credit Act.

Section 55B said:

Assessment of creditworthiness

- 55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*
- (2) Before significantly increasing—*
- (a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or*
 - (b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.*
- (3) A creditworthiness assessment must be based on sufficient information obtained from—*
- (a) the debtor, where appropriate, and*
 - (b) a credit reference agency, where necessary.*
- (4) For the purposes of this section an agreement is an excluded agreement if it is—*
- (a) an agreement secured on land, or*
 - (b) an agreement under which a person takes an article in pawn."*

regulation by the Office of Fair Trading

In March 2010, the OFT issued its guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. The foreword to its 'Irresponsible Lending Guidance' (ILG) set out its purpose saying:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer

Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*
- *treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, 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 and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
- *the borrower's financial situation at the time the credit is sought;*
- *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
- *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*

- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower, whether or an application form or separately*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of “specific irresponsible lending practices” relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action...when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a “deceptive and/or unfair practice” where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.

regulation by the Financial Conduct Authority (from 1 April 2014)

Miss W's last two loans were agreed when the FCA was the regulator for consumer credit. The FCA's Principles for Business (“PRIN”) set out the high level standards which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities. The purpose of CONC is to set out the detailed obligations that are specific to credit-related regulated activities and activities connected to those activities carried on by firms. These build on and add to the high-level obligations, for example, in PRIN and the requirements in or under the Consumer Credit Act.

This handbook sets out the rules which apply to providers of consumer credit like Quick Quid. CONC Section 5 sets out a firm's obligations in relation to responsible lending. And CONC Section 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

There is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions. The below regulations were in place at the time Miss W's last two loans were agreed.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

- (a) *the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

[Note: paragraph 4.1 of ILG]

- (b) *the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

- (b) *it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

[Note: paragraph 4.31 of ILG]

CONC 6.7 sets out a firm's obligations in relation to its post contract business practices. CONC 6.7.21R to 6.7.23R contains specific obligations for high-cost short-term credit providers like Quick Quid.

CONC 6.7.21G says:

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

[Note: paragraph 6.25 of ILG]

CONC 6.7.22G says:

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

[Note: paragraph 6.25 (box) of ILG]

CONC 6.7.23R says:

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

CONC 6.7.17R defines refinancing and says:

- (1) In CONC 6.7.18 R to CONC 6.7.23 R “refinance” means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:
 - (a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;*
 - (b) exercising a contractual power contained in an existing regulated credit agreement; or*
 - (c) other means, for example, granting an indulgence or waiver to the customer.**
- (2) “Exercise forbearance” means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:
 - (a) there is no charge in connection with the refinancing; or*
 - (b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.**
- (3) The term “refinance” within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.*

other relevant publications and good industry practice

The ILG (and following that the FCA’s Consumer Credit Handbook (“CONC”)) set out the regulatory framework that regulated/authorised consumer credit providers have to adhere to. But in making my decision, I am also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice at the time of the events in dispute.

the OFT's Payday Lending Compliance Review Final Report

The OFT published its "Payday Lending Compliance Review Final Report" in March 2013, by which time Quick Quid had already agreed 11 separate advances for Miss W.

The purpose of the review was "...to establish the extent to which payday lenders [were] complying with the Consumer Credit Act, other legislation and [were] meeting the standards set out in the ILG."

The review sought to highlight examples of what the OFT considered poor practice and evidence of non-compliance with the relevant law and failure to meet the minimum standards expected. The analysis was also put together to help the FCA's work on payday lending ahead of it assuming responsibility for regulating the sector from April 2014.

The report began with an overview section setting out the OFT's concerns. Page two of the report says that the OFT:

...is particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can't repay are encouraged to extend them, exacerbating their financial difficulties This is causing real misery and hardship for a significant number of payday users

Page three of the report says:

Our evidence paints a concerning picture of the payday lending market. It appears that irresponsible lending is not a problem confined to a few rogue traders, but it has its roots in the way competition works in this market. The evidence suggests that many consumers are in a weak bargaining position, and that firms compete on speed of approval rather than price

It then goes on to say:

Additionally, firms describe and market their product to consumers as one-off short term loans (costing on average £25 per £100 borrowed for 30 days), but in practice around half the revenue comes from loans which last longer and cost a lot more because they are rolled over or refinanced. Lenders do not need to compete hard for this source of revenue because by this time they have a captive market. This, and the misuse of continuous payment authorities to reclaim monies owed, may distort incentives for lenders, encouraging them to make loans to people who cannot afford to repay them first time.

the Consumer Finance Association Lending Code for Small Cash Advances

The principal trade association representing the interests of short-term lending businesses operating in the United Kingdom is the Consumer Finance Association ("CFA"). The CFA published a good practice charter entitled 'Lending Code for Small Cash Advances' in July 2012. Quick Quid said that this charter "*provides best practice for payday and short-term lenders to follow*"². I understand Quick Quid was a founding member of the CFA³.

Section 1 of the code sets out its purpose. Section 1b says:

Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online

² <https://www.quickquid.co.uk/mediaroom/quickquid-flexcredit-a-more-flexible-loan/>

³ <https://www.quickquid.co.uk/mediaroom/the-consumer-finance-association-in-collaboration-with-the-money-charity-produces-short-term-lending-guide/>

Section 1c says:

This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months). The loan is not designed for longer term borrowing, but to improve short term personal cash flow

And Section 1d says:

The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in the Code, and accordingly protects and benefit consumers

Section 3 sets out the general obligations expected of lenders. Amongst other things Section 3 says members shall:

b) trade honestly, responsibly and treat customers with respect.

l) ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.

Section 4 of the code sets out a lender's specific lending obligations. Part (a) of this section is concerned with advertising and marketing and amongst other things, it says:

iii) members shall ensure all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.

Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining....:

- *that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.*

-END-