

complaint

Mr D complains CURO TRANSATLANTIC LIMITED, trading as Wage Day Advance (WDA), lent to him irresponsibly.

background

The background to this complaint, and my provisional findings on it, can be found in my provisional decision which is attached to and forms a part of this final decision.

Mr D contacted us to say he accepted my provisional findings. WDA said it had nothing further to add.

The case has now been returned to me to reconsider.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account the law along with any relevant regulatory guidance and good industry practice at the time.

As neither party to the complaint has anything further to add, I see no reason to depart from the findings set out in my provisional decision.

putting things right

WDA shouldn't have agreed loans 5 to 16, so it's not right that Mr D should have to pay interest and charges on these, or have them affect his credit file in a negative way. So I direct WDA to do the following:

1. Calculate the total amount in interest and charges Mr D has paid on loans 5 to 16. To each of the sums Mr D paid, WDA must add 8% simple interest per year*, calculated from the date Mr D paid them, to the date the complaint is settled.
2. Remove all interest and charges that haven't yet been paid on loan 16 and apply any repayments Mr D has made towards this loan as though they were repayments towards the capital sum. If there is still a capital balance left owing after this then WDA may apply the sum calculated in "1" above to reduce that capital.**
3. Remove adverse information relating to loans 5 to 16 from Mr D's credit file.

*HM Revenue & Customs requires WDA to take off tax from this interest. It must give Mr D a certificate showing how much tax it's taken off, if Mr D asks for one.

**If WDA has sold the debt owed under loan 16, it should buy this debt back. If it doesn't buy the debt back then it must not use any of the refund it owes Mr D to reduce the debt. It must pay the whole refund calculated in "1" to Mr D.

my final decision

For the reasons given in my attached provisional decision, I uphold Mr D's complaint and direct CURO TRANSATLANTIC LIMITED to take the actions outlined in the "putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 December 2017.

Will Culley
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr D complains CURO TRANSATLANTIC LIMITED (trading as Wage Day Advance) ("WDA") lent to him irresponsibly.

background

Mr D took out 16 loans with WDA between September 2013 and October 2015. I've summarised some of the information we've received about these loans in a table at the end of my decision.

Mr D managed to pay back most of his loans, although he paid some of them late. Mr D defaulted on his last loan and a significant balance remains outstanding.

In 2016 Mr D complained to WDA that the loans had been unaffordable. WDA accepted it could have carried out more checks into Mr D's ability to pay back his loans from loan 9 onwards and made an offer in respect of this. However it disagreed that it had been irresponsible to give Mr D loans 1 to 8.

Mr D then brought this complaint to this service, where it was investigated by an adjudicator. She concluded WDA hadn't been able to show it had carried out any checks before agreeing loans 1 to 8, and that the checks it had carried out for loans 9 to 16 hadn't been proportionate. She said that had WDA carried out proportionate checks it would have discovered none of the loans were affordable for Mr D. She recommended WDA refund all interest and charges on the loans and remove them from Mr D's credit file.

WDA didn't agree with our adjudicator. It maintained that it had carried out adequate checks for the first 8 loans and said that Mr D had to take some responsibility for providing incorrect information about his financial situation. The case has now been passed 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 taken into account the law along with any relevant regulatory guidance and good industry practice at the time.

WDA had to assess Mr D's applications for loans to check if he could afford to pay back the amounts he was borrowing without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. It then needed to assess whether, based on the information it had gathered from its proportionate checks – Mr D could afford to meet his loan repayments sustainably. According to guidance from the relevant industry regulators at the time Mr D made his applications, repayments are sustainable if they're made from available income or savings. So not, for example, if they're made from further borrowing.

did WDA carry out proportionate checks?

WDA's provided some information about the checks it carried out before agreeing each loan, and results of these checks.

WDA has said it didn't check Mr D's credit file at any time, but it did ask him about his income and expenditure. Having read WDA's explanation of how this worked, I understand it would have asked him for his regular income and expenditure before agreeing his first loan, and then asked him to confirm whether these figures were still up to date before agreeing subsequent loans.

Since our adjudicator assessed the complaint WDA has been able to provide some evidence that it *did* ask these questions for loan 1 – as well as loans 9 to 16, which it had previously provided evidence for.

It appears Mr D said his income was £3,050 per month and his expenditure £1,185 per month when he applied for loan 1. The amount Mr D had to repay was £129.50 – a small proportion of the income he'd reported – so I don't think it would have been proportionate for WDA to carry out further checks at this point. And I don't think WDA would've been concerned, based on the information Mr D had provided, that he might not be able to afford this loan.

The second and third loans were larger than the first, and Mr D was expected to repay £323.75 in one payment on each of these loans. I think it would've been proportionate for WDA to continue asking Mr D about his regular income and expenditure at this point. It's said that it did do this but in my view it hasn't provided enough evidence of that. In any case I don't think this matters for reasons I'll explain later in this decision.

I think by the time Mr D applied for loan 4 WDA should've been beginning to have concerns that Mr D had more than just a short-term cash-flow problem. This was Mr D's fourth loan in less than three months, so the pattern of borrowing was becoming suggestive of more persistent financial issues. I think it would've been proportionate at this stage for WDA to make enquiries which were detailed enough to detect any other short-term lending commitments Mr D had which could affect the affordability of his prospective WDA loan.

Mr D's continual borrowing should – in my view – have also led WDA to consider whether the information he had provided about his income and expenditure was correct. I think from loan 5 at the latest proportionate checks would've involved a detailed assessment of Mr D's financial situation to verify the information he was providing, to see if he had any unusual financial circumstances which could be driving his borrowing behaviour, and ultimately to determine whether he could truly afford to repay his loans in a sustainable way.

One way in which WDA could have done this would've been by reviewing Mr D's bank statements. WDA has said looking at a consumer's bank statements was not something it was required to do. It's correct there was nothing in the relevant guidance at the time which said this was something a lender must do and the guidance was expressed in broader terms than this. There may have been other ways to investigate Mr D's financial situation in the level of detail I think would've been proportionate at this point, but I think asking to review his bank statements would've been the most practical way of achieving this.

Mr D's borrowing continued without significant breaks from loan 5 to 16. So I think it would've been proportionate for WDA to continue making robust and detailed checks into Mr D's financial situation throughout this period of lending.

I've gone on to consider what proportionate checks would have revealed to WDA, had it in fact carried these out.

what would proportionate checks have shown for loans 2 to 3?

As I don't think WDA has provided enough evidence that it asked Mr D for updated income and expenditure figures when he applied for these loans, I've thought about what he'd have been most likely to say, had he been asked.

I note that WDA's been able to show that when Mr D applied for loan 9, he gave the same income and expenditure details as he'd given for loan 1. I therefore think it's likely that for loans 2 and 3 Mr D would have given the same figures he'd given for the first loan – that's to say he'd have reported his income as £3,050 per month and his expenditure as £1,185 per month.

Given the relatively high amount of disposable income this left Mr D with, I don't think WDA would've considered loans 2 to 3 to be unaffordable for him. So I don't think it was wrong of WDA to agree these loans even though it didn't carry out proportionate checks.

what would proportionate checks have shown for loan 4?

I think Mr D would've declared the same income and expenditure as he had for previous loans, had he been asked when he applied for loan 4, for the same reasons I've explained above.

Had WDA made enquiries about other short term loans Mr D had at the time, it would've discovered he had a £500 loan with another short term lender. However given the large amount of disposable income Mr D appeared to have, I don't think this would've made loan 4 seem unaffordable to a responsible lender. This is because after meeting his declared regular expenditure and short term credit commitments, Mr D would've appeared to have over £1,300 left over to make his repayments to WDA. I don't think it was wrong of WDA to lend this money to Mr D.

what would proportionate checks have shown for loans 5 to 8?

Had WDA got a more detailed picture of Mr D's financial situation it would've discovered a number of things which would've been relevant to its decision to lend to him.

Mr D's salary fluctuated between about £3,015 in March 2014 to more than £7,350 in February 2014 (this appears to have been due to an annual bonus). His expenditure was high but tended to vary depending on the contributions he received towards bills from people he was living with. In some months bills went unpaid as Mr D didn't have money available to pay them. Mr D also spent significant amounts of his income at gaming and betting websites.

I've considered Mr D's financial situation in the months leading up his application for loan 5. Mr D's income from work came to an average of £3,500 per month. His regular expenditure included insurances which came to about £75 per month, a debt management plan into which he was paying around £315 per month, rent of £1,300 per month, and utilities and telecoms bills which came to about £375 per month. It appears Mr D was receiving around £700 per month on average from individuals, which seems to have been a contribution towards rent and bills.

In addition to this, Mr D was paying about £830 per month towards other loans and £890 towards credit card bills. He had a short term loan of £500 outstanding to another short term lender at the time of his application for loan 5. In the two months before his application he had spent £3,500 on gambling, and made losses of just over £670.

I don't think a responsible lender, having seen this financial situation, would've agreed loan 5. I say this for two reasons. Firstly, the loan should not have appeared affordable as Mr D didn't have enough income available to meet his existing short term credit commitments, even before considering the repayment he'd be expected to make to WDA for loan 5.

Secondly, I think Mr D's gambling transactions (although he'd not made large losses by this point) should have caused a responsible lender to have concerns about sustainability. Mr D was spending around half of his salary per month in this way, and so it would've been apparent that large losses would cause him significant financial problems and an inability to repay his loans without having to borrow further. Ultimately I don't think WDA should have agreed loan 5.

Mr D's financial situation was similar when he took out loan 6. In the month before he applied for the loan he received the unusually large salary I referred to above. He also received some increased contributions towards rent and bills (around £1,620 in February 2014 and £1,595 in March 2014). But Mr D also spent £10,500 on gambling transactions in these two months – more than his entire salary for the same period. And this time he made significant losses of £3,900. He also had £500 outstanding to another short term lender by the time of his application for loan 6. I don't think a responsible lender would have agreed this loan in view of Mr D's deteriorating financial circumstances.

Based on what I've seen of Mr D's bank statements he stopped spending money on gambling for a time from April 2014. He applied for loan 7 at the start of May 2014. I don't think a responsible lender

would have considered Mr D's situation had improved however. In March and April 2014 Mr D missed some of his regular commitments due to his losses in March and previous months. His salary had dropped back down to around £3,065 per month. He also still had outstanding short term debt of £500. I don't think a responsible lender would have given loan 7 to Mr D.

Mr D applied for loan 8 on 3 June 2014. Mr D's salary had decreased to about £2,680 in May. His difficult financial situation was put under more pressure due to this drop in his income. When contributions from other individuals are taken into account, his overall income was around £3,575, but his outgoings on his regular commitments and paying off other credit came to £4,160. Mr D made up this shortfall by borrowing from elsewhere. As this situation would not have appeared sustainable (Mr D had no available income to make repayments to WDA) I don't think a responsible lender would have agreed loan 8 either.

loans 9 to 16

WDA has accepted its checks could have gone further for these loans and has made an offer in respect of this – so I don't propose to go into them in detail. However, based on my review of some of Mr D's bank statements over the relevant period I think it was right of WDA to make an offer.

There was a temporary improvement in Mr D's financial situation between loans 9 and 10, which appears to be the reason for there being a gap of around 6 months between these loans. However Mr D began making high value gambling transactions again between the same loans and this then continued on a regular basis. I don't think a responsible lender would've agreed these loans.

putting things right

Because WDA shouldn't have agreed loans 5 to 16, it's not right that Mr D should have to pay interest and charges on these, or have them affect his credit file in a negative way. So I intend to direct WDA to do the following:

1. Calculate the total amount in interest and charges Mr D has paid on loans 5 to 16. To each of the sums Mr D paid, WDA must add 8% simple interest per year*, calculated from the date Mr D paid them, to the date the complaint is settled.
2. Remove all interest and charges that haven't yet been paid on loan 16 and apply any repayments Mr D has made towards this loan as though they were repayments towards the capital sum. If there is still a capital balance left owing after this then WDA may apply the sum calculated in "1" above to reduce that capital.**
3. Remove adverse information relating to loans 5 to 16 from Mr D's credit file.

*HM Revenue & Customs requires WDA to take off tax from this interest. It must give Mr D a certificate showing how much tax it's taken off, if Mr D asks for one.

**If WDA has sold the debt owed under loan 16, it should buy this debt back. If it doesn't buy the debt back then it must not use any of the refund it owes Mr D to reduce the debt. It must pay the whole refund calculated in "1" to Mr D.

my provisional decision

I intend to uphold Mr D's complaint in part, for the reasons I've explained above. I now invite both parties to the complaint to provide any further arguments or evidence they wish to add. They should do this by 20 November 2017. I will review the case again after that date.

Will Culley
ombudsman