

## complaint

Mr C complains about four payday loans that he took out with Curo Transatlantic Limited, trading as WageDay Advance, ("WDA"). He said that WDA shouldn't have given him the loans as they were unaffordable.

## background

Mr C took out four payday loans with WDA as follows:

Loan number and date of loan	Loan amount	Amount to be repaid including interest (if paid by due date)	Date repaid and other comments
1. 17/12/2012	£150	£194.25	10/1/2013
2. 14/1/2013	£300	£388.50	8/2/2013
3. 11/2/2013	£225	£291.38	8/3/2013
4. 18/3/2013	£450	£582.75	Unpaid. Debt sold.

Mr C said that the loans were unaffordable and that he had to borrow from others to make repayments. He said that a search of his credit file would have shown that he was taking out payday loan after payday loan.

WDA said that it had performed all necessary checks including its own bespoke credit scoring but it didn't use credit reference agency data, and it wasn't required to do so. So it wouldn't have been aware of the status of Mr C's credit report. It also asked for Mr C's income and expenditure for each loan and relied on the information he'd provided. It said that the total repayments were well within Mr C's declared disposable income.

### *our adjudicator's view*

The adjudicator said that WDA had carried out sufficient checks for Loan 1, but not for Loans 2 to 4. But, she thought that if sufficient checks had been carried out that WDA would have seen that Loans 2 to 4 were unsustainable. This was because for two loans Mr C didn't have sufficient disposable income to make the repayments and for the third, she said that he'd have insufficient income left over for unforeseen circumstances.

The adjudicator recommended that WDA should:-

- Refund all interest and charges that Mr C paid on Loans 2 and 3;
- Pay interest of 8% simple a year on those refunds from the date of payment to the date of settlement\*;
- Arrange for any interest and charges applied to Loan 4 (which was sold on 11 July 2013) to be written off, leaving only the capital amount borrowed less any repayments already made;
- Offset the refund due from Loans 2 and 3 against the outstanding capital balance on Loan 4;
- Work with Mr C to find a suitable repayment arrangement that accommodates his present financial situation regarding this new balance;
- Remove any negative information about Loans 2 and 3, and on Loan 4 to date, from Mr C's credit file.

\*HM Revenue & Customs requires WDA to take off tax from this interest. WDA must give Mr C a certificate showing how much tax it's taken off if he asks for one. If WDA intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

WDA disagreed and responded to say, in summary, that it had conducted adequate affordability checks in accordance with the guidelines and legislation in place at the time of lending. It couldn't reasonably have been aware that Mr C was dependent on any other lenders or that he was in any financial hardship. Although Loan 2 was taken shortly after Loan 1 was repaid, it didn't think this was a reason to perform further checks as it didn't feel that Mr C had displayed a reliance on the finance by this point. It felt that further checks at this stage were disproportionate. Based on the income and expenditure information provided by Mr C, it assessed that he could affordably borrow £525. It said that Loan 3 was affordable as Mr C had disposable income remaining following the repayment of the loan. Given the amounts Mr C was borrowing and the fact that he was managing his account well, it didn't feel it necessary to question the information that he was providing to it further. But it offered to provide redress for Loan 4. It accepted that by Loan 4 that Mr C had borrowed on four occasions and that asking about other commitments may have shown that Mr C wasn't a suitable candidate for finance.

Mr C didn't accept WDA's offer and asked for his complaint to be reviewed by an ombudsman.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr C and to WDA on 7 February 2018. I summarise my findings:

I said that as WDA had agreed to compensate Mr C for Loan 4, I would only review Mr C's other loans.

I explained that WDA was required to lend responsibly. It should have made checks to make sure Mr C could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr C was borrowing, and his lending history. But there was no set list of checks WDA had to do.

I said that the guidance in place at the time of the loans (The Office of Fair Trading's Irresponsible Lending Guidance) set out the lender's responsibility to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. It said that assessing affordability was a borrower-focussed test which involved 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 also said that repaying credit in a sustainable manner meant being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty*." And it defined "*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*".

So, the fact that the amounts borrowed and the interest paid might have been low in comparison with Mr C's income, or that he'd managed to repay three of the loans in full, didn't necessarily mean the loans were affordable for him and that he'd managed to repay

them in a sustainable manner. In other words I couldn't assume that because Mr C managed to repay most of his loans that he was able to do so out of his normal means without having to borrow further.

WDA had told us about the checks it did before lending to Mr C. It had asked him each time about his normal income, and his monthly expenditure. Mr C had said that his income was £1,000 for all the loans. But his outgoings were £300 for Loans 1 and 2, and £400 for Loans 3 and 4. I noted that the amount that Mr C needed to repay on his first loan was almost 20% of his income. As this was a sizeable proportion of Mr C's income, I thought it would have been proportionate for WDA to gather information about Mr C's income and outgoings, which I could see that it did. I didn't think at that stage of its relationship with Mr C that WDA had any reason to doubt the information he'd provided. And there was little to suggest to WDA at this stage that Mr C wasn't using the loan in the way it was intended – as a short term solution to a temporary cash flow problem. So, I thought WDA's checks were proportionate for this loan and I didn't think WDA was wrong to agree to this loan.

Mr C had taken out Loan 2 only four days after Loan 1 was repaid, but the amount to be repaid for Loan 2 was double that for Loan 1, and formed almost 40% of his income. So, I thought that WDA should have started to become concerned about whether it knew enough about Mr C's true financial situation before granting Loan 2. Whilst I thought WDA could rely on the disposable income figure provided by Mr C, I also thought it should have supplemented this by asking Mr C for information about his outstanding short term lending. I couldn't see that it did this.

Loan 3 was taken out just three days after Loan 2 was repaid, and less than a month after Mr C borrowed Loan 2. The loan repayment represented almost 30% of Mr C's declared income, which I thought was still a relatively high percentage of his income. I thought WDA should have been concerned about the frequency of Mr C's loan requests and the amount of his borrowing. I thought they might have indicated to WDA that Mr C was using short term loans as a supplement to his normal income, rather than using them to meet a temporary one-off problem. And I thought WDA should have been on notice that it was unlikely Mr C's financial position was as good as he was declaring. I note that WDA thought that it should be able to rely on the income and expenditure figures it received from Mr C. But whilst these showed a significant amount of disposable income each month, I thought WDA should have been concerned that Mr C needed to borrow very regularly. So again I didn't think that reliance by WDA on Mr C's declared income and outgoings figures was a sufficient check. And again I thought it should have asked Mr C whether he was taking short term loans from other lenders at the same time.

Although I didn't think the checks WDA did on Loans 2 and 3 were sufficient, that in itself doesn't mean that Mr C's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown WDA that Mr C couldn't sustainably afford the loans.

For Loan 2, I thought that it was still reasonable for WDA to rely on the information Mr C had provided about his financial position. He said he had a disposable income of £700. But I also thought it needed to supplement this information by asking him if he had other short term borrowing. To find out what, if any, outstanding short term commitments Mr C had, I'd reviewed his bank statements for the month before Mr C took Loan 2. I thought the statements were the best indication of his short term borrowing at the time. And I could see that Mr C did have a number of short term loans from other short term lenders which were likely to be repayable in the same month that Loan 2 was due to be repaid. It was clear to

me that if WDA had asked Mr C about his other short term lending, it would have realised that Mr C's financial position was far worse than he'd been declaring. It appeared that his short term borrowing totalled around £900 for the month before Loan 2. So, if WDA had done what I considered to be proportionate checks, I thought it would've been clear that the Loan 2 repayment of £388.50 wasn't sustainable as Mr C would have been left with no disposable income to repay it.

With regard to Loan 3, I noted that Mr C had said that his disposable income was £600. And I'd again reviewed Mr C's bank statements for the month before Loan 3 to see what outstanding short term commitments Mr C had. I could see that Mr C had one short term loan for £165 from another short term lender to repay in the same month that Loan 3 was due to be repaid. So, if WDA had done what I considered to be proportionate checks, I thought WDA would have thought the loan repayment of £291.38 for Loan 3 was sustainable for Mr C. So I didn't think WDA was wrong to agree this loan.

In summary I didn't think the checks WDA did for Loans 2 and 3 were proportionate. I thought proportionate checks would have shown WDA the state of Mr C's finances and that he couldn't afford to sustainably repay Loan 2. I thought it needed to pay Mr C some compensation relating to this loan, along with what it had already offered in relation to Loan 4.

To settle the complaint, I thought WDA should:-

1. Refund all the interest and charges applied to Mr C's account for Loan 2 and pay 8% simple interest\* a year on those refunds from the date of payment to the date of settlement;
2. Refund all the interest and charges that Mr C had paid on Loan 4, and pay 8% simple interest\* a year on the refund from the date of payment to the date of settlement. As the balance on Loan 4 has been sold to a third party, WDA should also refund any unpaid interest and charges that are included in the outstanding balance on Loan 4 (since the third party will expect to collect this money from Mr C).
3. As Loan 4 has been sold to a third party, pay the above refunds to Mr C in full and no deductions should be made by WDA. But, if WDA buys Loan 4 back from the third party within 21 days of Mr C's acceptance of my decision, it may apply the refunds referred to above to reduce any capital outstanding on Loan 4, and pay any balance to Mr C; and
4. Remove any adverse information recorded on Mr C's credit file with regard to Loan 2 (and Loan 4 if WDA buys it back). If the Loan 4 debt has to remain with a third party then WDA is to assist Mr C, so far as it is able, to correct his credit file record.

\*HM Revenue & Customs requires WDA to take off tax from this interest. WDA must give Mr C a certificate showing how much tax it has taken off if he asks for one. If WDA intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

So, subject to any further representations by Mr C or WDA my provisional decision was that I intended to uphold this complaint in part. I intended to order WDA to take the actions set out above.

Both Mr C and WDA said that they had no additional information to provide in response to my provisional decision.

### **my findings**

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

Given that both parties have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold the complaint in part and require WDA to take the actions set out below.

### **my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Curo Transatlantic Limited, trading as WageDay Advance, to:

1. Refund all the interest and charges applied to Mr C's account for Loan 2 and pay 8% simple interest\* a year on those refunds from the date of payment to the date of settlement;
2. Refund all the interest and charges that Mr C has paid on Loan 4, and pay 8% simple interest\* a year on the refund from the date of payment to the date of settlement. As the balance on Loan 4 has been sold to a third party, WDA should also refund any unpaid interest and charges that are included in the outstanding balance on Loan 4 (since the third party will expect to collect this money from Mr C).
3. As Loan 4 has been sold to a third party, pay the above refunds to Mr C in full and no deductions should be made by WDA. But, if WDA buys Loan 4 back from the third party within 21 days of Mr C's acceptance of my decision, it may apply the refunds referred to above to reduce any capital outstanding on Loan 4, and pay any balance to Mr C; and
4. Remove any adverse information recorded on Mr C's credit file with regard to Loan 2 (and Loan 4 if WDA buys it back). If the Loan 4 debt has to remain with a third party then WDA is to assist Mr C, so far as it is able, to correct his credit file record.

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 March 2018.

Roslyn Rawson  
**ombudsman**