

## complaint

Mr C says Emergency Cash Limited, trading as wizzcash.com ("ECL") irresponsibly lent to him.

## background

This complaint is about three instalment loans ECL provided to Mr C between March 2015 and October 2016. Mr C's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	19/03/2015	29/05/2015	3	£300.00	£130.52
2	19/10/2015	22/08/2016	12	£400.00	£61.15
3	07/10/2016	31/01/2017	3	£500.00	£259.99

Mr C has said he should not have been given the loans due to a gambling addiction. He had large amounts of debt – including other payday loans. Mr C has said ECL did not lend to him responsibly as he is in more debt now. He has said if proper affordability checks had been done, it would have seen his true financial situation.

ECL has said it carried out the relevant credit and affordability assessments - which included purchasing two credit reports to verify Mr C's information. ECL believe the use of two leading real time credit reference agencies provides us with enough information in relation to extent and scope of Mr C's existing debt.

Our adjudicator partially upheld Mr C's complaint and thought loans 2 and 3 should not have been given. ECL disagreed and the complaint was passed to me.

## my 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.

ECL 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 C 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 ECL should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer'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.

I think that it is important for me to start by saying that ECL was required to establish whether Mr C 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 relevant regulations define 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 C's complaint.

Mr C hasn't disputed our adjudicator's findings about loan 1 so I won't be considering this loan any further because it is no longer in dispute.

ECL says the information it received from its credit checks didn't suggest Mr C would have difficulty repaying the loans. But ECL was required to establish whether Mr C could sustainably repay his loans – not just whether the loan repayments were affordable.

I think ECL should have asked for more detailed information about Mr C's financial circumstances and ask for evidence (which could be bank statements) to support what he said. I say this because Mr C applied for loan 2 five months after loan 1 was repaid. Mr C made three loan applications between repaying loan 1 and taking out loan 2 – they were all declined. And Mr C returned for a larger loan to be repaid over a significantly longer period of time.

Mr C has provided his bank statements from March 2015, August 2016 and September 2016. The bank statements show that Mr C was taking out a number of payday loans with other providers, as well as showing Mr C's history of gambling – which he has told the service about. And so I don't think further borrowing was sustainable.

Loan 3 was taken two months after loan 2 was repaid with one loan application being declined in between. Mr C had asked for £1,000 but ECL only approved an amount of £500. Mr C told ECL his monthly income was £1,750. ECL increased Mr C's monthly expenditure to £1,092 based on information from its credit checks.

Whilst loans 2 and 3 weren't taken out immediately after the previous loan was repaid, I don't think the breaks between Mr C's loans were enough for ECL to be reasonably sure there wasn't a possible problem here, such as dependency on short term loans or financial difficulties. I say this because Mr C often made applications shortly after a loan was repaid, he had applications declined and ECL should have known he had taken out other short-term loans from other lenders.

I think ECL was wrong to continue to provide Mr C borrowing for loans 2 and 3. These loans had the effect of unfairly prolonging Mr C's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time. I also think his use of these loans was likely to have had negative implications on his ability to access mainstream credit and so kept him in the market for these high-cost loans.

### **putting things right – what ECL needs to do**

- refund all interest and charges Mr C paid on loans 2 and 3;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†; and
- remove any negative information about loans 2 and 3 from Mr C's credit file.

† HM Revenue & Customs requires ECL to take off tax from this interest. ECL must give Mr C a certificate showing how much tax it's taken off if he asks for one.

### **my final decision**

For the reasons given above, I'm partially upholding Mr C's complaint. Emergency Cash Limited, trading as wizzcash.com, should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 February 2020.

Sonia Hussain  
**ombudsman**