

## **Complaint**

Mr P says Advanced Payment Solutions Limited (trading as CashPlus) irresponsibly lent to him.

## **Background**

I sent my provisional decision on 30 September 2019. A copy of my provisional decision is attached and forms part of this final decision.

My provisional decision sets out the background of this complaint. It explains why I thought the complaint should be partly upheld. I said I'd consider anything else anyone wanted to send me – so long as I received it by 14 October 2019.

Mr P said he was happy with the provisional decision and couldn't provide further evidence due to all the time that had passed. CashPlus didn't respond to the provisional decision.

## **My findings**

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

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusions as before – that CashPlus should not have lent loans 7 and 8, and should not have provided credit from 1 May 2013 onwards.

## **Putting things right – what CashPlus needs to do**

- refund all the interest, charges and fees Mr P paid on loans 7 and 8, and on all the borrowing from the point of loan 9 onwards, i.e. from 1 May 2013 (including the credit card account);
- pay interest of 8% simple a year on any refunded interest, charges and fees from the date they were paid (if they were) to the date of settlement<sup>†</sup>;
- remove any negative information about loans 7 and 8 from Mr P's credit file;
- the amount of borrowing taken from loan 9 onwards means any information recorded about it is adverse. So all entries about loan 9 onwards should be removed from Mr P's credit file, including the credit card history from that point onwards.

<sup>†</sup> HM Revenue & Customs requires businesses to take off tax from this interest. CashPlus must give Mr P a certificate showing how much tax they've taken off if he asks for one.

**My final decision**

For the reasons I've explained above and in my provisional decision, I partially uphold Mr P's complaint about Advanced Payment Solutions Limited (trading as CashPlus).

Advanced Payment Solutions Limited (trading as CashPlus) should put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 November 2019.

Adam Charles  
**ombudsman**

**COPY OF PROVISIONAL DECISION****Complaint**

Mr P says Advanced Payment Solutions Limited (trading as CashPlus) irresponsibly lent to him.

**Background**

This complaint is about 76 high-cost short-term loans that CashPlus provided to Mr P between September 2012 and April 2016. The complaint also includes the provision of a high-cost credit card between February 2013 and February 2018. The start of Mr P's lending history is as follows:

Loan	Date opened	Date closed	Amount borrowed	Highest contractual repayment	Notes
1	25/09/2012	01/10/2012	£42.49	£45.49	
2	27/09/2012	29/09/2012	£5.99	£6.99	
3	21/02/2013	12/02/2018	£250.00	Flexible	Flexible credit card account with £250 initial limit
4	15/03/2013	18/03/2013	£50.00	£52.00	
5	23/03/2013	28/03/2013	£50.00	£54.00	
6	02/04/2013	24/04/2013	£142.00	£154.00	For his DMP direct debit. This loan was not provided due to an error by CashPlus
7	06/04/2013	15/04/2013	£100.00	£118.00	
8	16/04/2013	30/04/2013	£100.00	£128.00	
9	01/05/2013	26/05/2013	£142.00	£154.00	For his DMP direct debit
10	25/05/2013	31/05/2013	£100.00	£112.00	

In June 2013, Mr P then borrowed a further 12 loans totalling £558.91, and in July 2013 he took out another 8 loans, totalling £409.01. Mr P continued to borrow from CashPlus for three more years, with no significantly large gaps between loans and many loans overlapping each other. He took out high-cost credit with them 77 times in total.

Our adjudicator partly upheld Mr P's complaint, saying the loans from July 2013 onwards shouldn't have been given, and that CashPlus shouldn't have let Mr P use the credit card account from February 2015 onwards. CashPlus disagreed, saying they do rigorous checks using credit file data, and that Mr P had never missed payments or told them he was in financial difficulty. So the complaint has 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. 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.

CashPlus needed to take reasonable steps to ensure that they didn't lend irresponsibly. In practice this means that they should have carried out proportionate checks to make sure Mr P 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 CashPlus should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that CashPlus was required to establish whether Mr P 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 Office of Fair Trading guidance on Irresponsible Lending, and later, the Consumer Credit Sourcebook ("CONC") 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 P's complaint.

Based on what I've seen so far, I haven't seen enough to make me think that loans 1 to 5 were lent irresponsibly. For example, these loans and their repayments were generally relatively small, and they were opened early on in the lending relationship. The limited credit file results CashPlus have provided from loan 4 don't show any defaults.

Mr P was in a debt management plan at the time and if CashPlus had looked at his current account they could've seen regular payments to a national debt charity. The outstanding debts I'm aware of are payday loans from two lenders from 2012, but Mr P hasn't provided us with a copy of his credit file or bank statements to show his full situation. So while there may have been some indications that CashPlus shouldn't have lent to Mr P during this time, given how early on this was I've given them the benefit of the doubt. There doesn't appear to have been enough information that CashPlus should have been aware of that should've caused them to decline these loans.

However, when Mr P requested loan 6, the reason he gave was to cover the direct debit to his debt management plan. In other words, Mr P's financial situation had got so bad that he was taking out increasing high-cost debt just to keep up with the payments to his historic arrears on other debts. And CashPlus were aware of this, because he was doing it *through them*. They even discussed the direct debit with him when he complained that loan 6 didn't arrive. And he was paying the debt management plan through his current account with CashPlus.

Due to CashPlus' administrative error, loan 6 didn't go through. But I don't think CashPlus should've lent loans 7 and 8 given that Mr P was having problems managing his existing debt commitments and it was likely that he wouldn't be able to repay further debt in a sustainable manner. On top of the issues that loan 6 brought up, Mr P's repayments for loans 4 and 5 had taken his current account with CashPlus into a negative balance. Then on both occasions, he asked to borrow again just a few days later, for the same amount or higher. Further, I think a proportionate check at this point would've confirmed that Mr P was in a debt management plan and that he had ongoing arrears with other short-term lenders.

I've also looked at the overall pattern of CashPlus's lending history with Mr P, with a view to seeing if there was a point at which CashPlus should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so CashPlus should have realised that they shouldn't have provided any further lending.

Given the particular circumstances of Mr P's case, I think that this point was reached by loan 9. I say this because:

- At this point, CashPlus should have realised Mr P was not managing to repay his loans sustainably. Mr P had taken out high-cost short-term products nine times in just six months. And Mr P was borrowing regularly and consistently from CashPlus, being provided with a new loan usually within days of settling the previous one, or even before the previous one was settled. So CashPlus should have realised it was more likely than not Mr P was having to borrow further to cover the hole repaying his previous loan was leaving in his finances, and that Mr P's indebtedness was continuing unsustainably.
- Loan 9 was the second time that Mr P had requested a high-cost loan to cover his direct debit to the debt management plan, and for the second month in a row. This should have indicated to CashPlus that his debt situation had become unsustainable.
- Mr P's first loan was for £42.49 and loan 9 was for £142.00, six months later. At this point CashPlus should've known Mr P was unlikely to be borrowing to meet a temporary shortfall in his income, but instead to meet an ongoing need. He wasn't making any real inroads into the amount he owed CashPlus. Indeed, by then, Mr P had paid proportionally large amounts of interest and fees to CashPlus to effectively service a debt to them over an extended period.
- By the time Mr P requested loan 9, he had already run his high-cost credit card account over its limit in both the opening two months of use. I've referred to this account as "loan 3" in the table above for convenience. I should note here that this account had a representative APR of 99%, but it used a flat fee structure and that APR was based on a maximum balance. On a lower balance, the effective APR would be far higher. I consider this to be a high-cost product. And the revolving nature of the credit meant Mr P could borrow repeatedly and at larger amounts than his loans were for. So once CashPlus were aware that Mr P's debt situation was unsustainable and that they shouldn't be providing further lending, it follows that I also think they should not have provided him with this credit facility anymore.

I think that Mr P lost out because CashPlus continued to provide credit from 1 May 2013 onwards because:

- the lending had the effect of unfairly prolonging Mr P's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the sheer number of loans and the length of time over which Mr P borrowed was likely to have had negative implications on his ability to access mainstream credit. So it kept him in the market for these high-cost products.

So I'm upholding the complaint about loans 7 and 8, and also all lending from 1 May 2013 onwards, and CashPlus should put things right.

**Putting things right – what I think CashPlus needs to do**

- refund all the interest, charges and fees Mr P paid on loans 7 and 8, and on all the borrowing from the point of loan 9 onwards, i.e. from 1 May 2013 (including the credit card account);
- pay interest of 8% simple a year on any refunded interest, charges and fees from the date they were paid (if they were) to the date of settlement<sup>†</sup>;
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<sup>†</sup> HM Revenue & Customs requires businesses to take off tax from this interest. CashPlus must give Mr P a certificate showing how much tax they've taken off if he asks for one.

**My provisional decision**

For the reasons I've explained, I plan to partially uphold Mr P's complaint, and to direct Advanced Payment Solutions Limited (trading as CashPlus) to put things right in the way I set out above.

Please could CashPlus and Mr P send me any more information or comments to look at by 14 October 2019. After that, I'll reconsider the case.

Adam Charles  
**ombudsman**