

complaint

Mr W complains that CFO Lending Limited gave him loans he couldn't afford to pay back.

background

Mr W took out nine loans with CFO lending. Some of the loans were deferred and Mr W hasn't yet repaid the last loan.

date taken	amount	Deferrals/top ups	Date repaid
10 November 2010	£100		30 November 2010
14 December 2010	£115		24 December 2010
5 January 2011	£250		31 January 2011
1 March 2011	£500	2 deferrals	31 May 2011
4 June 2011	£600	3 deferrals	3 October 2011
5 October 2011	£200		31 October 2011
31 October 2011	£600	2 deferrals	31 January 2012
3 February 2012	£225		29 February 2012
8 March 2012	£600		n/a

Before Mr W brought his complaint to this service, CFO reduced Mr W's outstanding balance from £1,177 to £414 as part of an agreement with the regulator.

Our adjudicator thought Mr W's complaint should be partly upheld. She said CFO didn't carry out appropriate affordability checks from the fifth loan onwards. And she said that if it had done this, it would've seen the loans were unaffordable for Mr W and wouldn't have lent to him.

CFO disagreed with the adjudicator. It said in summary:

- Guidance at the time didn't specify which affordability checks it had to do. And what it did was sufficient.
- The amounts Mr W borrowed weren't high in relation to his income.
- Mr W paid off all of his loans on time except for the last one.
- It was Mr W's responsibility to tell CFO if his circumstances changed.

CFO asked that an ombudsman look at the complaint.

my findings

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

CFO was required to lend responsibly. It needed to make checks to see whether Mr W could afford to pay back the loan each time it lent to him. Those checks needed to be proportionate to things such as the amount Mr W was borrowing, and his lending history, but there was no set list of checks that CFO had to do.

CFO says that each time it lent to Mr W it asked him about his monthly income and carried out 'further affordability checks' over the telephone. It's recorded Mr W's income as £2,200 - £2,500. But I don't know what information it got from Mr W over the telephone as it hasn't given us anything showing this.

I've thought about whether these checks were proportionate. The first couple of loans Mr W took out were for quite small amounts in comparison to his income. And I don't think there was anything CFO should've known about Mr W at this point to make it think he couldn't afford to repay them. It didn't carry out a credit check – and didn't have to – so it wouldn't have been aware of Mr W's payment history on other accounts or other payday loans. I don't think CFO needed to get more information than it did at this point so it wasn't wrong for it to lend.

The third loan was for more than double the amount of the second, and the fourth loan was double that again. So there were signs that Mr W may have been becoming dependent on his loans with CFO. I think it would've been reasonable to ask for some more information before agreeing to these loans – even if that was just Mr W's basic outgoings like rent, food, bills etc. and his regular credit commitments. CFO says it checked the loans were affordable but I don't know whether it got this kind of information from Mr W. So I can't be sure it did enough before agreeing to lend to him on these occasions.

I've considered what Mr W's basic expenses and credit commitments are likely to have been – and therefore what CFO would've seen if it had asked for this kind of information. I've done this by looking at Mr W's bank statements and what he's told us about these expenses. Mr W told CFO he earned £2,500 before the third loan and £2,200 before the fourth. And it looks like his basic expenses and credit commitments were around £1,100. Based on this information I think the two loans would've looked affordable.

So, although I don't think CFO carried out appropriate affordability checks before agreeing to these two loans, I think it would still have lent to Mr W even if it had.

Mr W borrowed more again when he asked for the fifth loan. By now CFO knew that Mr W had taken a new loan or deferred one almost every month between December 2010 and June 2011, he was asking for increasing amounts each time and he'd had to defer the repayment of his previous loan – for a smaller amount – twice before he was able to pay it off. So this time I think CFO should've got a full understanding of Mr W's finances before agreeing to lend him any more money.

I've looked at Mr W's bank statements to get a full understanding of his circumstances although there's lots of ways CFO could've done this. And if it had, I don't think it would've lent to Mr W. He was gambling quite large sums and had to repay almost £1,000 to other payday lenders alone in the same month he had to repay the fifth loan. So he couldn't afford to repay the loan when it was due.

There were no significant gaps between lending after this except when Mr W deferred loans. And his self-declared income remained roughly the same. So I see no reason why CFO shouldn't have been getting a full understanding of Mr W's circumstances each time it lent to him after the fifth loan.

And if it had I don't think it would've agreed to lend to Mr W any more. His circumstances did not improve, the amounts he spent on gambling increased and he continued to borrow from numerous short term lenders. So he couldn't sustainably afford to repay any of the remaining loans he took out.

All in all, I don't think CFO should've lent to Mr W from the fifth loan onwards. It should refund all interest and charges on those loans and remove any adverse information about them from Mr W's credit file.

Mr W received the benefit of any capital amount he borrowed so I think it's fair that he pays this back. CFO can deduct any capital amount still owed to it from the refund as well as any sums it's already refunded to Mr W when it reduced his outstanding debt to it.

my final decision

My final decision is that I uphold Mr W's complaint in part. To put things right CFO Lending Limited should:

- refund any interest and charges applied to all loans taken from (and including) 4 June 2011 onwards less those already refunded to Mr W;
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*;
- deduct any capital amount still owed from the refund and pay the balance to Mr W;
- remove any adverse information about the loans I'm asking to be refunded from Mr W's credit file.

*HM Revenue & Customs requires CFO Lending Limited to take off tax from this interest. CFO Lending Limited must give Mr W a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 April 2017.

Michael Ball
ombudsman