

complaint

Miss W says CURO TRANSATLANTIC LIMITED, trading as Wage Day Advance (“WDA”), lent to her irresponsibly.

background

WDA approved eight loans for Miss W – I’ve summarised some of the details provided by WDA in the table below.

Loan no.	Date approved	Date repaid	Term	Amount borrowed
1	05 Jul 16	29 Jul 16	45 days	£200
2	06 Sep 16	26 Sep 16	43 days	£225
3	03 Nov 16	19 Dec 16	46 days	£225
4	09 Jan 17	11 Feb 17	39 days	£360
5	10 Mar 17	20 Mar 17	40 days	£150
6	02 Apr 17	19 May 17	47 days	£150
7	03 Jun 17	18 Sep 17	2 months	£300
8	29 Sep 17	n/a	49 days	£150

An adjudicator considered this complaint and recommended it be upheld in part. She didn’t think WDA should’ve approved loans 3-8. WDA didn’t agree, it said (in summary):

- the checks it carried out before approving loans 3-8 were sufficient
- the regulations didn’t require it to ask for evidence of income and expenditure
- it had discretion about what type of checks to carry out and how to determine affordability
- WDA isn’t to blame if the information Miss W provided about her credit commitments was false
- this service is, *“moving the assessment required under our regulators from ‘reasonable and proportionate’ to specific and disproportionate in relation to the amounts borrowed.”*

As loans 3-8 are the only loans now in dispute, my decision is only about these.

my 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, good industry practice and any relevant regulations at the time.

Relevant regulations and guidance include the Financial Conduct Authority’s (FCA) Consumer Credit sourcebook (CONC). CONC contains rules and guidance for lenders about responsible lending. Among other things, CONC says lenders should carry out affordability checks which are proportionate in the circumstances of the loan. The regulations also say repayments should be sustainable (*i.e.* repayable from the borrower’s income or savings) and that lenders shouldn’t allow a borrower to enter into consecutive credit agreements where it would be unsustainable to do so. The same guidance also notes that payday loans are not appropriate for borrowing over long periods of time (CONC 6.7.21-22G).

With this in mind, I've taken into account whether WDA carried out proportionate checks before lending – and if it didn't what proportionate checks are likely to have shown.

did WDA do enough to check if Miss W could repay the loans sustainably?

WDA says it asked Miss W about her income and outgoings and has shown us that it recorded Miss W's income as £1,600 for all the loans I'm looking at. Her declared outgoings varied and were £1,000 for loans 3 and 4, £900 for loans 5-7 and £1,150 for loan 8. WDA also carried out credit checks for loans 3, 5, 6 and 8.

I think WDA ought to have done more to check if Miss W could afford to sustainably repay the loans. Loan three was the third time Miss W had borrowed from WDA in four months – and although there were gaps of more than one pay period between loans 1 and 2, WDA knew from its credit checks that Miss W was borrowing from other lenders as well. So I think it had enough information to suspect Miss W was using short-term credit quite regularly and quite possibly not as a short-term solution to her financial problems.

With this in mind, I think it would've been proportionate for WDA to build a clearer picture of Miss W's other short-term commitments. Although it carried out credit checks, this might not have been sufficient to tell it everything about her short-term credit commitments – and WDA could've asked Miss W for information about what she owed to other lenders and when payments were due to satisfy itself she could sustainably repay the new loan she wanted.

From loan 4 onwards, I think WDA should've asked Miss W for something to substantiate what she was telling it about her income and outgoings. Her repeated need for short-term finance during this period was such that WDA ought to have been more sceptical about what she was telling it about her circumstances. Looking at bank statements is one – but not the only – way of doing this.

WDA has referred to CONC 5.3.1G (11) – which says “*where a firm requests information from a customer for its creditworthiness ... and the information provided by the customer is false and the firm has no reason to know this is the case...*” then the firm hasn't necessarily failed in its pre-contract assessments. But by the time of loan 3, I don't think WDA had no reason to think the information provided by Miss W might not be complete. When Miss W started to borrow frequently from WDA and others, I think it had reason to suspect her disposable income might be less than stated. And furthermore, I've not been provided with clear and persuasive evidence that WDA did in fact ask Miss W to provide information about her short-term commitments.

I'd also add that I do not accept I am moving the goalposts and suggesting WDA should've carried out checks which were specific and disproportionate. I think it is entirely proportionate to suggest the checks WDA ought to have carried out should have been more rigorous as Miss W appeared to become more reliant on short-term finance. And whilst I have said I think WDA's checks should've at times gone further, exactly how it achieves that is a matter for it.

what would proportionate checks likely have shown?

I think if WDA had asked Miss W to provide information about her other short-term borrowing, it would've seen her commitments were such that she wouldn't have been able to afford the £308 repayment for loan 3. On top of the information WDA had, I think it would've seen short-term commitments of £340 (and perhaps more) and after Miss W repaid these, she'd be left with less than the £308 due. She doesn't appear to have had any savings, so the repayment wouldn't have been sustainable. I don't think WDA would have approved this loan.

I've used Miss W's bank statements to decide what I think WDA would've seen if it had asked Miss W to substantiate her income and outgoings for loans 4-8.

I think WDA likely would've decided Miss W's income was about what she declared - £1,600, made up of income and tax credits. But I think it also would have thought her regular financial commitments and normal living costs were higher than £1,000 and were closer to £1,400 - with Miss W spending around £1,200 on things like rent, utilities, food, travel and insurance and paying £200 to regular creditors. Payments to regular creditors increased by the time of loans 7 and 8.

So at the times loans 4-8 were approved, I think proportionate checks would've indicated to WDA that Miss W's remaining income after her usual living costs was no more than £200 – and that her outgoings sometimes exceeded her income during this period, particularly when Miss W was also making payments to other short-term lenders.

More broadly, I think it would've seen that Miss W was heavily reliant on various forms of credit, including payday, instalment, guarantor and other types of loans. The regulations give guidance that where payday loans aren't appropriate for use over the long-term, or where continuing to lend would lead to the total amount payable being unsustainable (CONC 6.7.22G).

But putting that aside, with disposable income of no more than £200, I don't think it would've been responsible for WDA to approve any of loans 4-8. And I've arrived at the £200 figure before taking into account Miss W's other short-term loans, so the true situation may well have been worse.

In summary, I think proportionate checks likely would have shown WDA that Miss W didn't have enough income left over after her existing commitments to make the repayments on loans 4-8 in a sustainable manner.

For the reasons I've given above, I'm upholding the complaint about loans 3-8.

what WDA needs to do to put things right

WDA must:

- refund the interest and charges paid on loans 3-7
- add to the above interest at 8% simple per year, from when they were paid until the date of settlement†
- for loan 8, remove any interest and charges applied and treat any payments made as if they were payments towards the principal. Then deduct any amount still remaining from the total redress above
- remove any adverse information about loans 3-8 from Miss W's credit history

† HM Revenue & Customs requires WDA to take off tax from this interest. WDA must give Miss W a certificate showing how much tax it's taken off if she asks for one.

my final decision

I uphold this complaint in part. CURO TRANSATLANTIC LIMITED must put things right by taking the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 28 October 2018.

Matthew Bradford
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