

complaint

Mr H says that CashEuroNet UK LLC lent to him irresponsibly.

background

Using the information CEN has given us our adjudicator created this table most of which I have duplicated here. It is a brief summary of approved loans.

Loan	Date Taken	Date Repaid	Instalments	Amount
1	07 June 2010	12 November 2010	2	£200
2	15 November 2010	11 February 2011	2	£200
3	11 February 2011	08 October 2011	2	£250
4	08 October 2011	20 April 2012	2	£250
5a	22 April 2012	29 August 2012	2	£300
5b*	07 June 2012	29 August 2012	2	£300
5c*	14 June 2012	29 August 2012	2	£150
6	08 October 2012	01 March 2013	2	£1,150
7a	03 March 2013	08 March 2013	2	£200
7b*	06 March 2013	08 March 2013	2	£100
8a	08 March 2013	23 August 2013	2	£1,100
8b*	10 March 2013	23 August 2013	2	£250
9	23 August 2013	15 February 2014	3	£1,000
10a	15 February 2014	03 July 2015	3	£1,100
10b*	16 February 2014	03 July 2015	3	£250

* additional borrowing

One of our adjudicators looked at this complaint and thought that CEN should put things right for Mr H from the fourth deferral of Loan 1 through to the last additional borrowing approval – Loan 10b. CEN did not agree. The complaint remains unresolved and was passed to me for a decision.

my findings

I have considered all the available evidence and arguments to decide what I consider to be fair and reasonable in the circumstances of this complaint. We have 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.

CEN 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 H 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 CEN should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include: where a customer's income is particularly low; where the repayments are particularly high; and/or where the frequency of the loans and the length of time over which a customer has been given loans needs to be looked at: repeated refinancing could 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 demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that CEN was required to establish whether Mr H 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 regulatory bodies in place at the time defined 'sustainable' as being the ability to repay without undue difficulties. In particular the customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr H's complaint.

Loan 1 was deferred several times and by the fourth occasion CEN ought to have taken into consideration that Mr H was having trouble making the loan repayments. The repeated deferrals did not assist Mr H as it increased the amount of interest due for that loan and pushed back the date for repaying the principal sum due. It would have been fairer at the time Mr H asked for the fourth deferral to have considered a repayment plan. Instead, it was deferred again and he incurred late fees. I agree with the adjudicator's view that this fourth deferral ought not to have been approved.

Three days after repaying that principal sum on 12 November 2010 Mr H applied for a further loan for the same amount - £200 – on 15 November 2010. It was approved. So at that stage CEN had information about his income, some personal details and knowledge of his repayment history for Loan 1. I have been given a list of the credit searches CEN has said it carried out, but I have not been given the results of those searches. The sequence of events with the repayment history of Loan 1 means that CEN was on notice that Mr H was not likely to be able to sustainably repay Loan 2.

So I do uphold Mr H's complaint for Loan 2.

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

Given the particular circumstances of Mr H's case, I think that this point was reached by Loan 3. I say this because:

- Loan 3 was the third loan in under 8 months and he had taken long periods of time to repay Loans 1 and 2;
- from Loan 3 onwards Mr H was provided with a new loan within days of settling a previous one and often on the same day. So CEN ought to have realised it was more likely than not Mr H was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr H's indebtedness was increasing unsustainably;
- Mr H wasn't making any real inroads to the amount he owed CEN. Loan 10 was for £1,100 and was taken out three and a half years after Mr H's first. And it was for a larger amount. Mr H had paid large amounts of interest to, in effect, service a debt to CEN over an extended period.

I think that Mr H lost out because CEN continued to provide borrowing from Loan 3 onwards because:

- these loans had the effect of unfairly prolonging Mr H's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time;
- additional funds were approved during some of the loans as well;
- the sheer number of loans and deferrals was likely to have had negative implications on Mr H's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I am upholding the complaint about Loans 3 to Loan 10 including 10b and CEN should put things right for Mr H.

putting things right – what CEN needs to do

- refund all interest and charges Mr H paid on the loans from the fourth deferral of Loan 1, through to Loan 10b; and
- pay interest of 8% simple a year* on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- remove any negative information about the fourth deferral to Loan 1 (if this is possible) and Loan 2 from Mr H's credit file;
- the number of loans taken from Loan 3 onwards means any information recorded about them is adverse. So all entries about Loans 3 to 10b should be removed from Mr H's credit file.

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

my final decision

For the reasons given above, I am upholding Mr H's complaint in part. CashEuroNet UK LLC should do as I have set out above.

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

Rachael Williams
ombudsman