Financial Ombudsman Service

complaint

Mr R has complained about short-term loans granted to him by CashEuroNet UK LLC trading as Quick Quid ("Quick Quid" or "the lender").

background

I set out the circumstances leading to this complaint and my initial conclusions in a provisional decision to both parties in October 2018. I have included a copy of my provisional decision in its entirety in an appendix to this final decision (Appendix A).

Quick Quid agreed 32 loans for Mr R from June 2010 to May 2014, a period of almost four years. Mr R withdrew his complaint about his first four loans so my decision focusses on the remaining 28. Some of the information Quick Quid provided about Mr R's loans was shown in a table in my provisional decision (Appendix 1).

Mr R says that Quick Quid's loans were unaffordable for him and should not have been agreed. He says the loans trapped him in a *"debt spiral"* where repaying them meant that he needed *"to borrow again to get through the next month or even in some cases twice in one month."* Mr R has asked that the money he paid in interest and charges be refunded to him and that these loans are removed from his credit file.

Quick Quid disagrees that its loans were unaffordable for Mr R. It says that he never told it that he was having financial difficulties and it offered him £75 as a gesture of goodwill when he complained to it.

Mr R declined this offer and brought his complaint to this service. Following this, Quick Quid acknowledged that "*there may be a pattern of dependency arising in November of 2011 and March of 2013*" and offered to refund the interest and charges Mr R paid for three of his loans around those times (highlighted in the loan table) in order to resolve his complaint.

Our adjudicator recommended that Quick Quid refunded interest and charges on more of Mr R's loans, namely from (and including) loan 10 onwards. They said this was because it was irresponsible of Quick Quid to continue to lend to Mr R when it ought to have known that he wasn't using its loans for a short-term solution to temporary cash-flow problems but to support his living costs.

Quick Quid didn't agree with this recommendation and so the case came to me for a decision.

my provisional decision

As mentioned I have included a copy of my provisional decision in Appendix A. For ease of reference, I will set out a summary of my findings below.

Quick Quid agreed 31 of Mr R's loans in the period before the 31 March 2014. During this time consumer credit activities were regulated by the Office of Fair Trading ("OFT"). Quick Quid's 32nd and final loan to Mr R was granted in May 2014, at which point the Financial Conduct Authority (FCA) had taken over the regulation of consumer credit.

In my provisional decision I set out part of the relevant legal and regulatory framework that Quick Quid was subject to over the period it lent to Mr R (see Appendix 2). This includes some of the provisions of the Consumer Credit Act including later amendments, guidance and rules provided by the regulators, and industry codes of best practice.

I also summarised the relevant guidance by saying:

> "Under this framework, in order to hold a consumer credit licence Quick Quid was obliged to lend responsibly. As clarified by the OFT, this meant that Quick Quid needed to make a reasonable assessment as to whether or not a borrower could afford to meet its loan repayments in a sustainable manner. Neither the law nor the OFT specified how the assessment was to be carried out but, whatever the method, it needed to be enough to assess the sustainability of the arrangement for the consumer.
>
> It's important to note that this means the assessment needed to be consumer-focussed. It was not an assessment of the risk to the lender, but of the risk to the consumer. And it needed to be proportionate to both the circumstances of the lending and the circumstances of the consumer. Therefore, a lender's assessment of creditworthiness would need to be flexible – what was reasonable for one consumer might not be for another, or indeed what might be reasonable for a consumer in one circumstance might not be so for the same consumer in other circumstances.
>
> The OFT defined the purpose of payday loans as short-term solutions, unsuitable for supporting sustained borrowing. Its 'Irresponsible Lending Guidance' points to repeated refinancing of payday loans as an example of irresponsible lending. This suggests that a lender needed to consider the risk to the consumer of such lending behaviour. And it seems logical to me that the more instances of repeated lending, the greater the potential risk to the consumer of the credit being unsustainable.
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> Bearing the above in mind, I would expect an assessment of creditworthiness to vary with circumstance. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying carry out more detailed checks
>
> - the higher the loan amount,
> - the lower the consumer's income; or
> - the longer the lending relationship."

And I explained that in coming to a provisional decision on Mr R's case, I considered the following questions:

- "did Quick Quid complete reasonable and proportionate checks when assessing each of Mr R's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way? And if not, would those checks have shown that Mr R would have been able to do so?
- taking into account the short term purpose of the loans provided, did the overall pattern of lending increase Mr R's indebtedness in a way that was unsustainable or otherwise harmful?"

My provisional conclusions to these questions were that Quick Quid:

- didn't complete proportionate checks for any of the loans under consideration. And, had it done so it would have discovered that Mr R wouldn't have been able to repay loans 5 to 9 in a sustainable way.

- didn't consider the impact of repeatedly lending to Mr R and should have done so when he applied for loan 10. Quick Quid agreed 32 high-cost loans for Mr R with an average value of about £150 over a four year period. This pattern of lending meant that Mr R paid over £1,000 in interest and charges over the years to have access to this average loan amount. And he acquired information on his credit file which potentially reduced, and potentially continues to reduce, his creditworthiness.

Quick Quid's response to my provisional decision

Quick Quid did not agree with my provisional decision. In summary, the lender said that:

- *"Mr* [R]*'s chain of lending ceased for periods of 28-123 days on 5 occasions between loans 5 and 32, which does not typically demonstrate dependency on* [high-cost short-term] *credit. With this in mind, there is nothing that would reasonably suggest to Quick Quid that it was not proportionate to rely upon the income and expenditure information provided by Mr* [R] *(and 3rd party validation checks) at the time it funded the loans that followed these breaks in lending, which represented new chains of lending to Mr* [R]*, or any of the subsequent lending."*

- *"CONC. 5.3.1 (6) (in relevant part) defined sustainability such that the 'repayments under the regulated credit agreement can be made by the customer (a) without undue difficulties, (b) over the life of the agreement, (c) out of income and savings without having to realise security or assets.' … It is therefore not possible to have made a determination as to the sustainability of each instance of lending that Quick Quid made to Mr* [R] *without analysing whether the specific repayments for each loan were made without undue difficulty over the life of each loan out of her income and/or savings. There is no possible way to have made such an assessment without looking at the particular circumstances surrounding each instance of lending thereby determining '...the harm on the customer', as stated within your view. Said view suggests that CONC restricts lending to a specific number of loans to a consumer, which it does not, and after which point any subsequent lending is de facto 'unsustainable'. Your view effectively constitutes unauthorised rulemaking."*

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I appreciate that this is going to be disappointing for Quick Quid but having carefully considered what it has said in response to my provisional decision, I am still of the view that it should not have agreed to lend to Mr R from April 2011 (loan 5). I will not repeat everything I've said in my provisional decision (this is set out later in this document) but I will respond to its specific objections.

<u>gaps in lending</u>

In making my provisional decision I took into consideration that there were a number of gaps in the lending relationship between Mr R and Quick Quid. In other words, on occasions a period of time passed between Mr R repaying a loan and applying for another one. The gaps Quick Quid has commented on can be seen in the loan table.

In my provisional decision I said:

> "The first loan I am looking into was taken out on 27 April 2011.This was for £150, with a single repayment of £188 (rounded upwards). Mr R had repaid his previous loan on the 10th of December, over four months prior to this application. The lending relationship between Quick Quid and Mr R was still in its early stages here, so I think it was reasonable for the lender to have seen this gap as an indication that Mr R's finances had moved on from whatever situation had required his previous loans."

I also mentioned two larger gaps in my provisional decision:

> "I note that there were other gaps in lending, for example a period of about four months in mid-2012 (between loans 17 and 18) and the same again in mid-2013 (between loans 27 and 28). Unlike the earlier gap I mentioned, I don't think it would have been reasonable for Quick Quid to have interpreted these gaps as indicative of a change for the best in Mr R's financial circumstances. In these instances there was an established pattern of borrowing and the lender ought to have been concerned about that, irrespective of this length of pause in Mr R's loan applications."

Quick Quid says that the existence of gaps in lending does not typically demonstrate dependency on the credit and so the checks it carried out after such gaps were proportionate.

Firstly, I can accept that where there is a period of time between someone repaying a loan and applying for another one, it might be reasonable to conclude that their immediate funding shortfall had been met and that they were not relying on high-cost short-term credit to meet an ongoing need. And so it might be proportionate for a lender to carry out less stringent checks or gather less information than might be expected for an affordability assessment prior to such a gap.

However, I don't think there is an absolute figure for the length of gap that signifies a dependency on such credit or one that signifies a lack of dependency. I am likely to view a gap of one or two pay cycles differently to a gap of a year. But my conclusions about what a gap might signify will depend on the circumstances of the consumer and the particulars of the lending relationship.

In Mr R's case, there were three gaps of around four months. Where this length of gap occurred early on in the lending relationship I thought it was reasonable of Quick Quid to consider that Mr R wasn't dependent on its loans. Where it occurred later, I felt it wasn't reasonable for Quick Quid to draw this conclusion because of the lending history.

Mr R didn't apply for a loan for about four months after he repaid his 17th loan in June 2012. But by this point Quick Quid had agreed 12 loans for him in quick succession spanning a period of almost a year. And it has acknowledged that Mr R was potentially dependent on its loans during this time. I agree that this pattern of lending indicates an ongoing need for credit. And I didn't think in this case a four month gap was enough for Quick Quid to reasonably conclude that Mr R's circumstances had substantially changed.

Quick Quid agreed Mr R's 18th loan and then went on to agree a further nine loans for him, all in quick succession. Again, Quick Quid has acknowledged Mr R's potential dependency in this seven month period. When Mr R repaid his 27th loan he didn't apply for another for almost four months. But, given the continuing pattern of lending, I didn't think it was reasonable for Quick Quid to conclude that Mr R's situation had changed and that he was no longer dependent on its loans.

In early 2014 Mr R didn't apply for a loan for about two months after repaying his 30th loan. At this point Quick Quid had been lending to him for over three and a half years. Given the length of time Quick Quid had been lending to Mr R, and that in this time he'd gone some months without applying for credit before returning, I don't think it was reasonable of Quick Quid to conclude that this pause meant that it was no longer likely that Mr R was dependent on its loans.

So I can't agree that in this case the presence of gaps in the lending relationship signifies a lack of dependency. Quick Quid hasn't explained why it thinks Mr R's circumstances changed during the time it lent to him and why he was sometimes potentially dependent on its loans and sometimes not. So I remain of the view that the lending relationship between Quick Quid and Mr R was generally continuous. I considered Mr R's complaint on the basis of there being one 'chain of lending' from April 2011 and made my provisional conclusions about the proportionality of the checks Quick Quid carried out on this basis.

<u>the regulations in place</u>

Quick Quid quoted from the FCA's consumer credit handbook (CONC) in its response to my provisional decision. But the FCA was the regulator when Mr R borrowed his 32nd and final loan only. The previous 31 loans were granted when the OFT was the regulator.

For reference, CONC 5.3.1G(6) (a) - in full - states:

For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

> *(a) without undue difficulties, in particular:*
>
> > *(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
> >
> > *(ii) without having to borrow to meet the repayments;*
>
> *(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*
>
> *(c) out of income and savings without having to realise security or assets; and*
>
> *"unsustainable" has the opposite meaning.*
>
> *[Note: paragraphs 4.3 and 4.4 of ILG] **

The OFT defined sustainability in much the same way as the FCA later did. Section 4.2 of the OFT's 'Irresponsible Lending Guidance' (ILG) says:

"Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – **in particular without incurring or increasing problem indebtedness*** (my emphasis)
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

And Section 4.4 defines undue difficulty as the borrower being able to make repayments:

- *While also meeting other debt repayments and other normal/reasonable outgoings and;*
- *Without having to borrow further to meet these repayments.*

So, the first question I considered when making my provisional decision on Mr R's case was:

- did Quick Quid complete reasonable and proportionate checks when assessing each of Mr R's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way? And if not, would those checks have shown that Mr R would have been able to do so?

I concluded in my provisional decision that Quick Quid did not carry out proportionate checks for any of the loans under consideration. I looked into what Quick Quid would likely have found out for loans 5 to 9, had it carried out such checks. And I concluded that it would have learnt that Mr R wasn't likely to have been able to afford to repay these loans in a sustainable manner. And so, as a responsible lender, Quick Quid wouldn't have agreed to them.

I didn't go on to look into the remainder of the loans (10 to 32) in such detail because there were other considerations which brought me to the provisional conclusion that it wasn't responsible of Quick Quid to have agreed them.

Quick Quid said in its response to this decision that it wasn't possible for me to have concluded that Mr R's loans were unsustainable for him without analysing whether or not the specific repayments for each loan were made without him incurring undue difficulty. And, as I didn't do this, I was in effect making up the rules. I strongly disagree with this perspective.

Firstly, the definition of sustainable in both CONC and ILG includes that the borrower should not have to borrow again to meet repayments. And ILG includes that borrowers should be able to repay credit without incurring or increasing problem indebtedness. Bearing this in mind, if a consumer borrows again within a short period of time after repaying a short-term loan, and continues to do so, I think it's reasonable to consider that this might be an indication that they have to borrow again to fill the gap in their finances that the repayment left. And I consider this to be unsustainable, bearing in mind what the regulator said.

I also think it's reasonable to consider that problem indebtedness would include paying a high cost for a relatively low amount of short-term credit over a period of time and *still* having a need for that credit – in other words, paying interest without being able to pay off the original capital borrowed. So the determination of whether or not credit was sustainable would need to include *more than* simply analysing the ability of the consumer to meet the specific repayments for each loan. This was set out clearly in Section 4.2 of the OFT guidance which I quoted above and is worth repeating here:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

Furthermore, the rules and guidance in place at the time covered not just what was required of lenders *before* entering into a credit agreement but what was required after this. I can understand why Quick Quid is focussed on considerations about affordability assessments but my consideration of Mr R's complaint includes *all* of the regulations in place at the time, alongside consideration of the law and good industry practice.

The introduction to OFT's Irresponsible Lending Guidance says:

"Chapters 3 to 7 inclusive identify specific practices at various stages of the lending process which, in our view, may constitute irresponsible lending practices. Chapters 3 and 4 additionally provide further information regarding matters that we would take into account in forming a view as to whether a creditor was providing adequate explanations of credit agreements and/or conducting appropriate assessments of affordability, prior to making a credit agreement with a borrower."

As discussed in my provisional decision and above, Section 4 of the guidance specifically deals with affordability assessments but the guidance also covers other considerations. Section 6 deals with contractual and post-contractual issues and sets out specific examples of what the OFT considered to be irresponsible lending practices. Section 6.25 says that an example of deceptive and/or unfair practice would be:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.

This means that in considering a complaint about irresponsible lending I need to consider not just what happened before the credit was granted but what happened after that time also. This led me to formulate the second question I considered in my provision decision, which was:

- taking into account the short term purpose of the loans provided, did the overall pattern of lending increase Mr R's indebtedness in a way that was unsustainable or otherwise harmful?

So I cannot agree that considering this question constitutes *"unauthorised rulemaking".* And I have reconsidered this question again in coming to my final decision on this case.

Quick Quid said in its response to my provisional decision that asking the above question suggests that the regulations restrict lending to a specific number of loans to a consumer after which point any lending is de facto unsustainable and that this was not the case. I agree with Quick Quid that the relevant regulations are not prescriptive about the number of loans. However, as I've pointed out, the regulations do say that "*allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner"* is an example of irresponsible lending.

Quick Quid's website states that:

"Short-term loans are designed to help you bridge the gap between paydays so that you can take care of any unexpected expenses. If you need a quick cash advance to cover unexpected expenses, a Quick Quid short-term loan may be an option for you. However, you should not take out a short-term loan if you don't think you can pay it back on time, ***or if you are in need of a long-term financial solution."*** (my emphasis)

And;

"Short-term loans should be used for short-term financial needs only, and not as [a] long-term financial solution. As a responsible lender, we do not encourage the frequent use of our service."

My view is that at some point in their lending relationship Quick Quid ought to have considered that continuing to lend to Mr R might be irresponsible because his level of indebtedness was continuing and not decreasing. The pattern of continuous lending suggested that Mr R had an ongoing need for a certain level of credit and that he was not managing to repay this without borrowing again. And Quick Quid's own view is that its payday loans were not a long-term financial solution.

As with my consideration of gaps, I don't think there are an absolute number of loans beyond which further lending is unsustainable. And Quick Quid doesn't define a point at which its short-term loans cease to become the solution to a customer's need for credit. But I would say it's reasonable to think differently about lending to someone for a period of a few pay cycles and lending to them for over a year. As I said at the outset, the potential risk of loans being unsustainable for a borrower is likely to increase the higher the loan value relative to their income or the longer the lending relationship. The point at which I think a lender ought to have considered the impact of repeatedly lending to someone will depend on their circumstances and on the particulars of the lending relationship.

In my provisional decision I said:

> "I think the point at which Quick Quid should have questioned whether or not it was responsible to keep lending to Mr R, the tipping point if you will, should have come when Mr R asked for his tenth loan in August 2011. At this point he'd been borrowing from Quick Quid for over a year, albeit with a few months' gap at the start of the year. This 10th loan was for £250, the largest amount he'd asked for up to that point. This suggests to me that Mr R's need for credit was not only continuing but increasing."

I explained that Quick Quid had offered to refund the interest and charges Mr R paid for loans 13 and 14, taken out in November and December 2011, because it said "*there may have been a pattern of dependency arising by then*." And I said:

> "Quick Quid hasn't explained why it is at this point, with hindsight, it feels a pattern of dependency was visible. There had been shorter gaps between Mr R repaying a loan and asking for another one prior to this. I note these loans were both for £300, a higher amount than he'd applied for previously so perhaps this is what prompted Quick Quid's review and offer."
>
> "…I agree with Quick Quid that it ought to refund Mr R the money he paid for loans 13 and 14. But by the same logic I think it ought to refund him the money he paid for the previous three loans (from loan 10 inclusive) because it should have recognised this dependency earlier. And because he went on to borrow more or less continuously, I don't think Quick Quid can reasonably say that at any point in its lending relationship Mr R was no longer dependent on its loans."

I have spoken at length above about gaps in lending and in my provisional decision so I won't repeat myself here. Following on from the above, I concluded that

> "The amounts Quick Quid agreed to lend to Mr R ranged from £50 to £300, with an average of about £150. His first loan was for £100 and his last for £250. Mr R paid almost £1,070 to have access to this level of credit from June 2010 to May 2014, a period of almost four years. I think agreeing this number of loans over this length of time had the effect of unfairly increasing Mr R's indebtedness to Quick Quid by allowing him to take expensive credit – which the rules and guidance and Quick Quid's own website make clear was only intended for short-term use – over an extended period of time.
>
> In addition, I think the number and frequency of these loans had implications for Mr R's ability to access mainstream credit because the presence of these short-term loans on his credit file is likely to have been viewed negatively by other lenders. In addition to Mr R having to borrow again once he'd repaid a loan, I think this pattern of

> lending was likely to have reduced the credit options available to him, potentially excluding him from other, more suitable, forms of credit, and contributed to him not being able to break the cycle of borrowing from Quick Quid.
>
> Had Quick Quid questioned whether or not it was responsible to keep lending to Mr R when asked for his tenth loan in August 2011, I don't think it would have agreed to this loan. It's likely that it would have understood at this point that Mr R was dependent on its loans for purposes other than to meet unexpected expenses and was probably in need of a longer-term solution. And, as a responsible lender, it wouldn't have agreed to any further credit for Mr R, given that this would increase his indebtedness and potentially impact negatively on his creditworthiness. Therefore, I think Quick Quid was irresponsible to have agreed these loans for Mr R."

in summary

I have considered what Quick Quid said in response to my provisional conclusions. But, having thought about these points carefully, they do not change my view.

My final decision is that I don't think Quick Quid gathered enough information to reasonably assess Mr R's ability to make his loan repayments in a sustainable way and so it didn't discover that he was unable to do so. Furthermore, it went on to offer him high cost loans over almost four years without considering the adverse impact of this repeat lending for Mr R – he paid over £1,000 in interest and charges for this credit, was almost continuously in a position where he had outstanding debt with Quick Quid and over the period acquired information on his credit file which potentially reduced, and potentially continues to reduce, his creditworthiness.

what Quick Quid should do to put things right

I've concluded that Quick Quid was irresponsible to lend to Mr R between April 2011 and May 2014. In order to put Mr R back in the position he would have been in, had it not agreed to this number of loans over this length of time, Quick Quid should:

- refund all interest and charges for Mr R's loans agreed in this period;
- pay interest on these refunds at 8% simple* per year from the dates of payment by Mr R to the dates of settlement;
- remove any adverse information about loans 5 to 9 from Mr R's credit file;
- and remove <u>all</u> information about loans 10 to 32 from Mr R's credit file**.

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

**Putting Mr R back into the position he would have been in had he not been impacted by repeat lending requires the record of these loans to be completely removed from his credit file.

my final decision

I uphold Mr R's complaint about CashEuroNet UK LLC trading as Quick Quid and require it to put things right for him as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 January 2019.

Michelle Boundy
ombudsman

Appendix A Provisional Decision of 24 October 2014

complaint

Mr R has complained about short-term loans granted to him by CashEuroNet UK LLC trading as Quick Quid ("Quick Quid" or "the lender").

background

Quick Quid agreed 32 loans for Mr R from June 2010 to May 2014, a period of almost four years. The lending was generally continuous with a few gaps, the longest of which was about four months. The amounts agreed ranged from £50 to £300, with an average of £150. I've included a table in in an appendix to this decision (Appendix 1) which sets out some of the loan information Quick Quid has provided.

Mr R has since withdrawn his complaint about his first four loans. My decision therefore will focus on the remaining 28 loans Quick Quid agreed for Mr R from 27 April 2011 onwards.

Mr R says that Quick Quid's loans were unaffordable for him and should not have been agreed. He says the loans trapped him in a *"debt spiral"* where repaying them meant that he needed *"to borrow again to get through the next month or even in some cases twice in one month."* Mr R has asked that the money he paid in interest and charges be refunded to him and that these loans are removed from his credit file.

Quick Quid disagrees that its loans were unaffordable for Mr R. It says that he never told them that he was having financial difficulties and it offered him £75 as a gesture of goodwill when he complained to it.

Mr R declined this offer and brought his complaint to this service. Following this, Quick Quid acknowledged that "*there may be a pattern of dependency arising in November of 2011 and March of 2013*" and offered to refund the interest and charges Mr R paid for three of his loans around those times (highlighted in the table in Appendix 1) in order to resolve his complaint.

Our adjudicator recommended that Quick Quid refunds interest and charges on more of Mr R's loans, namely from (and including) loan 10 onwards. They said this was because it was irresponsible of Quick Quid to continue to lend to Mr R when it ought to have known that he wasn't using its loans for a short-term solution to temporary cash-flow problems but to support his living costs.

Quick Quid didn't agree with this recommendation. It asked our adjudicator to provide information about Mr R's income and expenses so it could consider for itself the affordability of each loan.

This Service hasn't provided any further information about Mr R's financial circumstances to Quick Quid beyond what was set out in the adjudication. And I don't feel there is any further income and expenses information that should be shared with Quick Quid, because in the main our adjudicator didn't base their uphold recommendation on the affordability or otherwise of individual lending decisions but on the overall pattern of lending.

I am, however, sending out a provisional decision to explain why I agree with our adjudicator's recommendation and why I think it needed to go further. This will also allow both parties to comment further on this matter before I make my final decision.

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. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Quick Quid agreed 31 of Mr R's loans in the period before the 31st of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities. Its 32nd and final loan was granted in May 2014, by which point the Financial Conduct Authority (FCA) had taken over the regulation of consumer credit.

As I've said above, I have thought about everything to come to a view about what is fair and reasonable in this case. I have set out part of the relevant legal and regulatory framework that Quick Quid was subject to over the period it lent to Mr R in Appendix 2 at the end of this decision. This includes some of the provisions of the Consumer Credit Act including later amendments, guidance and rules provided by the regulators, and industry codes of best practice.

Under this framework, in order to hold a consumer credit licence Quick Quid was obliged to lend responsibly. As clarified by the OFT, this meant that Quick Quid needed to make a reasonable assessment as to whether or not a borrower could afford to meet its loan repayments in a sustainable manner. Neither the law nor the OFT specified how the assessment was to be carried out but, whatever the method, it needed to be enough to assess the sustainability of the arrangement for the consumer.

It's important to note that this means the assessment needed to be consumer-focussed. It was not an assessment of the risk to the lender, but of the risk to the consumer. And it needed to be proportionate to both the circumstances of the lending and the circumstances of the consumer. Therefore, a lender's assessment of creditworthiness would need to be flexible – what was reasonable for one consumer might not be for another, or indeed what might be reasonable for a consumer in one circumstance might not be so for the same consumer in other circumstances.

The OFT defined the purpose of payday loans as short-term solutions, unsuitable for supporting sustained borrowing. Its 'Irresponsible Lending Guidance' points to repeated refinancing of payday loans as an example of irresponsible lending. This suggests that a lender needed to consider the risk to the consumer of such lending behaviour. And it seems logical to me that the more instances of repeated lending, the greater the potential risk to the consumer of the credit being unsustainable.

what should have happened when Mr R applied for credit and did Quick Quid get this right?

Bearing the above in mind, I would expect an assessment of creditworthiness to vary with circumstance. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying carry out more detailed checks

- the higher the loan amount,
- the lower the consumer's income; or
- the longer the lending relationship.

In coming to a decision on Mr R's case, I have considered the following questions:

- did Quick Quid complete reasonable and proportionate checks when assessing each of Mr R's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way?
    - if not, would those checks have shown that Mr R would have been able to do so?
- taking into account the short term purpose of the loans provided, did the overall pattern of lending increase Mr R's indebtedness in a way that was unsustainable or otherwise harmful?
- did Quick Quid act unfairly or unreasonably in some other way?

Having done so, I've concluded that Quick Quid was irresponsible to lend to Mr R in all instances. I plan to uphold his complaint and ask Quick Quid to refund the interest and charges he paid for all of the loans under consideration. I appreciate that this will be disappointing for Quick Quid and I'll explain in some detail why I've reached this conclusion.

did Quick Quid carry out reasonable and proportionate checks when assessing Mr R's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way?

<u>the information Quick Quid obtained</u>

Quick Quid says that it carried out credit and affordability checks each time Mr R applied for a loan. It says *"our affordability assessment incorporates numerous unique customer specific variables. As well as using verified information obtained from the applicant, we also consider an applicant's previous loan repayment history with us, credit-scoring information from Credit Reference Agencies… plus various other third party reports."*

Quick Quid recorded Mr R's monthly income as £545 throughout its lending history. It didn't record any expenses for Mr R, except on two occasions in July 2014, outside of the period of lending in question. It recorded his expenses then as £425. I assume Mr R applied for, but didn't receive, credit beyond his last loan taken out in May 2014.

From Mr R's customer records, I can see that Quick Quid asked a third-party credit reference agency (CRA) for various reports each time he applied for a loan. Mostly these reports were to validate Mr R's identity and check for any associated fraudulent activity.

I can see that Quick Quid checked Mr R's credit file through the CRA twice to four times a year during the time he borrowed from it. It hasn't provided this Service with the results of these checks so I don't know what it would have seen about Mr R's credit arrangements. Quick Quid did provide summary information from a check carried out on the 18th of July 2014 but as Mr R didn't borrow on that occasion or later I don't think it's relevant to this matter.

Mr R provided a recent copy of his credit file and it doesn't show any adverse information which I think might have concerned Quick Quid over the years, apart from a county court judgement in February 2014 which Quick Quid may have picked up in its credit check by May 2014, when Mr R applied for his last (agreed) loan. I appreciate that Mr R's current credit report will probably not show everything which might have appeared at an earlier point, but I can't make any further deductions about what the lender might or might not have seen in these reports with the information I have to hand.

I can also see that in December 2012 (when Mr R asked for his 20th loan) Quick Quid obtained a CRA report which I understand provided data about national income and expenditure figures held by the Office of National Statistics. Quick Quid also obtained this report when Mr R applied for his last five loans. It seems this would have been used to check the reasonableness of Mr R's self-reported information. However, I can't see that Quick Quid ever asked Mr R about his monthly expenditure or credit commitments, formal or otherwise. So it doesn't seem to me that the lender sought an understanding of Mr R's actual disposable income from him at any point.

<u>the information Quick Quid should have sought</u>

The first loan I am looking into was taken out on 27 April 2011.This was for £150, with a single repayment of £188 (rounded upwards). Mr R had repaid his previous loan on the 10th of December, over four months prior to this application. The lending relationship between Quick Quid and Mr R was still in its early stages here, so I think it was reasonable for the lender to have seen this gap as an indication that Mr R's finances had moved on from whatever situation had required his previous loans.

However, given the size of the repayment relative to Mr R's (stated) income of £545, I think Quick Quid ought to have been concerned about his ability to repay this sustainably. It would therefore have been reasonable to have also asked Mr R about his regular expenditure and whether or not he needed to pay anything else out of the money he would have available to repay its loan, such as other short-term loans.

I can see that Quick Quid checked Mr R's credit record around this time. This would likely provide some information about some of his existing credit commitments. But, as mentioned, Quick Quid didn't ask Mr R about his expenses, either regular or outstanding. So, altogether, I don't think Quick Quid did enough to check Mr R's ability to repay this loan in a sustainable manner.

Mr R asked for a sixth loan within a week of repaying his fifth. Even though this was for a lower amount (£100), I think Quick Quid should again have looked for information about Mr R's expenses, given his relatively low income and his speed in asking for yet another loan. And I can't see that it did this.

Mr R applied for his seventh loan the day after repaying his sixth. This was now the seventh time in 11 months that Mr R had applied for credit. Bearing in mind that Quick Quid's loans were intended for short term purposes I think the lender ought to have suspected by now that Mr R was asking for credit for other reasons.

If Mr R was using Quick Quid's loans as a way to supplement his normal means then repaying its loans out of that same pot of money was not going to be sustainable for him. In other words it's likely he would have difficulty meeting this repayment without having to borrow further or go without. So I think Quick Quid should have independently verified information about Mr R’s circumstances to satisfy itself that Mr R’s income was at the level he’d declared and that he had a sustainable level of disposable income to meet this loan repayment when it was due. And, as before, I don’t think it did enough here to reasonably asses the risk to Mr R.

Quick Quid continued to agree loans for Mr R throughout 2011 and 2012. It didn’t do any more when assessing the risk to Mr R in agreeing these loans than it had done when he’d applied for the preceding ones. Given the, generally, frequent and continuous nature of the lending, I think Quick Quid should have continued to look further than it did into Mr R’s circumstances when he continued to apply for loans. I appreciate that the lender obtained statistical data about national disposable income figures in later years, as mentioned, but I don’t think this is relevant in this case as it seems Quick Quid never sought this information from Mr R himself or sought any verification of his circumstances specifically.

I note that there were other gaps in lending, for example a period of about four months in mid-2012 (between loans 17 and 18) and the same again in mid-2013 (between loans 27 and 28). Unlike the earlier gap I mentioned, I don’t think it would have been reasonable for Quick Quid to have interpreted these gaps as indicative of a change for the best in Mr R’s financial circumstances. In these instances there was an established pattern of borrowing and the lender ought to have been concerned about that, irrespective of this length of pause in Mr R’s loan applications.

In summary, I don’t think the checks Quick Quid carried out were proportionate to the circumstances of the lending in all instances under consideration. So I’ve gone on to consider the consequences of this for Mr R.
as Quick Quid’s checks weren’t reasonable and proportionate, what would reasonable and proportionate checks more likely than not have shown?

Mr R has provided this Service with his bank statements. I can see that what he told Quick Quid about his total monthly income was correct (£545), though it fluctuated and he was paid fortnightly until the end of July 2011.

Our adjudicator said that because they couldn’t see substantial outgoings on Mr R’s bank statements they felt loans 5 to 9 were affordable for him. I disagree with this recommendation. I have estimated Mr R’s expenses at this time (April to July 2011) and have come to the conclusion that the loans Quick Quid agreed for him were *not* sustainably affordable.

I can identify some regular transactions on Mr R’s bank statements e.g. mobile phone and insurance payments. And I can see that Mr R withdrew about £200 a month in cash on average around this time. I don’t know exactly what this was spent on as I don’t know the details of Mr R’s living arrangements - it seems from Quick Quid’s records that he told it he was living in rental accommodation. He told this Service that at that time he paid rent and council tax, and gave some expenditure figures for these along with figures for usual living expenses such as food, transport, toiletries and clothes.

But, even without the finer detail of Mr R’s financial circumstances, I don’t think the loans Quick Quid agreed him were affordable for him in a sustainable way because the repayments took up so much of his wages each time that it seems he was left with no choice but to borrow further. Given his income level, the fact that he was paid fortnightly and based on what I understand of his expenses, I don’t think it would be reasonable to conclude that he had any money which could be put aside for future financial commitments.

Had Quick Quid found out about Mr R's expenses, as I think it ought to have done, then as a responsible lender it wouldn't have agreed these loans for him because it's likely it would have seen that he would struggle to repay them. Therefore, I think Quick Quid was irresponsible to have agreed these loans for Mr R.

I could continue to look into the affordability of each of Mr R's 32 loans but, as I will go on to explain, I think Quick Quid shouldn't have agreed Mr R's tenth loan taken out in August 2011, or continued to lend to him beyond this.

taking into account the short term purpose of the loans provided, did the overall pattern of lending increase Mr R's indebtedness in a way that was unsustainable or otherwise harmful?

In considering this question, I first looked at the offer that Quick Quid made on the last two loans it agreed for Mr R in 2011. It offered to refund the interest and charges he paid for loans 13 and 14, taken out in November and December 2011, because it said *there may have been a pattern of dependency arising by then*.

Quick Quid hasn't explained why it is at this point, with hindsight, it feels a pattern of dependency was visible. There had been shorter gaps between Mr R repaying a loan and asking for another one prior to this. I note these loans were both for £300, a higher amount than he'd applied for previously so perhaps this is what prompted Quick Quid's review and offer.

I think Quick Quid is correct here in identifying dependency. It seems likely to me that Mr R was dependent on its loans, bearing in mind the number of loans he'd taken out and the increasing amounts. But, as I've explained above, Quick Quid should have been concerned about this possibility earlier in their lending relationship. And, given this concern, it ought to have carried out more thorough affordability checks. And as it continued to lend, Quick Quid ought to have questioned whether or not the pattern of lending itself could pose a problem for Mr R.

I think the point at which Quick Quid should have questioned whether or not it was responsible to keep lending to Mr R, the tipping point if you will, should have come when Mr R asked for his tenth loan in August 2011. At this point he'd been borrowing from Quick Quid for over a year, albeit with a few months' gap at the start of the year. This 10th loan was for £250, the largest amount he'd asked for up to that point. This suggests to me that Mr R's need for credit was not only continuing but increasing.

As mentioned earlier, the guidance from the regulator at the time states that the purpose of payday loans is to act as a short-term solution. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are more likely to be suitable.

Indeed Quick Quid's own website states that:

"Short-term loans are designed to help you bridge the gap between paydays so that you can take care of any unexpected expenses. If you need a quick cash advance to cover unexpected expenses, a Quick Quid short-term loan may be an option for you. However, you should not take out a short-term loan if you don't think you can pay it back on time, or if you are in need of a long-term financial solution."

And;

"Short-term loans should be used for short-term financial needs only, and not as [a] long-term financial solution. As a responsible lender, we do not encourage the frequent use of our service."

Mr R says that Quick Quid *"made his finances difficult and near impossible to pay back*." He says he feels *"Quick Quid should have realised from my loans that my debt problems were getting worse and it was not responsible to continue to lend to me."*

So - I agree with Quick Quid that it ought to refund Mr R the money he paid for loans 13 and 14. But by the same logic I think it ought to refund him the money he paid for the previous three loans (from loan 10 inclusive) because it should have recognised this dependency earlier. And because he went on to borrow more or less continuously, I don't think Quick Quid can reasonably say that at any point in its lending relationship Mr R was no longer dependent on its loans.

As I noted earlier, I appreciate that there was a gap of about four months between Mr R repaying his 17th loan and taking out his 18th. But I don't think this was long enough for Quick Quid to reasonably conclude that Mr R was now not dependent on its loans, given his borrowing history at that point. I note that he paid additional interest to extend the term of his 17th loan. And he went on to take out his 19th loan within about 10 days after repaying the previous one and had further difficulty repaying it, eventually being charged a late fee (a *"dishonour fee*") for missing the repayment date.

Quick Quid also offered to refund the money Mr R paid for his 24th loan, another amount of £300. Again, I think the lender has correctly identified here that Mr R was dependent on its loans. And, as before, by the same logic I think it ought to refund him for all of his subsequent loans, even though there were gaps in the lending before he asked for his 28th and 31st loans.

The amounts Quick Quid agreed to lend to Mr R ranged from £50 to £300, with an average of about £150. His first loan was for £100 and his last for £250. Mr R paid almost £1,070 to have access to this level of credit from June 2010 to May 2014, a period of almost four years. I think agreeing this number of loans over this length of time had the effect of unfairly increasing Mr R's indebtedness to Quick Quid by allowing him to take expensive credit – which the rules and guidance and Quick Quid's own website make clear was only intended for short-term use – over an extended period of time.

In addition, I think the number and frequency of these loans had implications for Mr R's ability to access mainstream credit because the presence of these short-term loans on his credit file is likely to have been viewed negatively by other lenders. In addition to Mr R having to borrow again once he'd repaid a loan, I think this pattern of lending was likely to have reduced the credit options available to him, potentially excluding him from other, more suitable, forms of credit, and contributed to him not being able to break the cycle of borrowing from Quick Quid.

Had Quick Quid questioned whether or not it was responsible to keep lending to Mr R when asked for his tenth loan in August 2011, I don't think it would have agreed to this loan. It's likely that it would have understood at this point that Mr R was dependent on its loans for purposes other than to meet unexpected expenses and was probably in need of a longer-term solution. And, as a responsible lender, it wouldn't have agreed to any further credit for

Mr R, given that this would increase his indebtedness and potentially impact negatively on his creditworthiness. Therefore, I think Quick Quid was irresponsible to have agreed these loans for Mr R.

did Quick Quid act unfairly or unreasonably in some other way?

From the information I have available, it seems Mr R didn't borrow from Quick Quid after May 2014. As mentioned, Quick Quid ran some credit checks in July 2014 but didn't agree further credit for him. I haven't seen any indications that Mr R has any outstanding debt with Quick Quid and so I've concluded that the lending relationship ended there.

Mr R hasn't raised any other issues with Quick Quid, other than the unaffordability of its loans and their negative impact on him.

in summary

To sum up, I don't think Quick Quid gathered enough information to reasonably assess Mr R's ability to make his loan repayments in a sustainable way and so it didn't discover that he was unable to do so. Furthermore, it went on to offer him high cost loans over almost four years without considering the adverse impact of this repeat lending for Mr R – he paid over £1,000 in interest and charges for this credit, was almost continuously in a position where he had outstanding debt with Quick Quid and over the period acquired information on his credit file which potentially reduced his creditworthiness.

what Quick Quid should do to put things right

As I've concluded, Quick Quid was irresponsible to lend to Mr R between April 2011 and May 2014. In order to put Mr R back in the position he would have been in, had it not agreed to this number of loans over this length of time, Quick Quid should:

- refund all interest and charges for Mr R's loans agreed in this period;
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement;
- remove any adverse information about loans 5 to 9 from Mr R's credit file;
- and remove <u>all</u> information about loans 10 to 32 from Mr R's credit file**.

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

**Putting Mr R back into the position he would have been in had he not been impacted by repeat lending requires the record of these loans to be completely removed from his credit file.

Appendix 1 Mr R's lending history (offers highlighted)

Appendix 2 Some information on the legal and regulatory background to the lending

the Consumer Credit Act 1974

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to have regard to when deciding whether or not to grant a consumer credit licence to a lender. It said:

(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—

(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;

(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;

(c) practices and procedures that the applicant proposes to implement in connection with any such business;

(d) evidence of the kind mentioned in subsection (2A)

(2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*

(a) committed any offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under—

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)

Section 25(2B) set out an example of the type of practice referred to in Section 25(2A(e)) and said:

For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending.

section 140 of the Consumer Credit Act 1974

All of Mr R's loans were given to him after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

(5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) An order under this section in connection with a credit agreement may do one or more of the following—

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.

section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. This included an additional requirement on a lender to carry out an “Assessment of creditworthiness” which was set out in section 55B of the Consumer Credit Act.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor’s creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.”.

regulation by the Office of Fair Trading

In March 2010, the OFT issued its guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. The foreword to its ‘Irresponsible Lending Guidance’ (ILG) set out its purpose saying:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*

- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*

- *treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

“In a sustainable manner” is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe “undue difficulty” and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
- *the borrower’s financial situation at the time the credit is sought;*
- *the borrower’s credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
- *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower, whether or an application form or separately*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a "deceptive and/or unfair practice" where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.

regulation by the Financial Conduct Authority (from 1 April 2014)

Mr R’s final loan was agreed when the FCA was the regulator for consumer credit. The FCA’s Principles for Business (“PRIN”) set out the high level standards which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

The FCA’s Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities. The purpose of CONC is to set out the detailed obligations that are specific to credit-related regulated activities and activities connected to those activities carried on by firms. These build on and add to the high-level obligations, for example, in PRIN and the requirements in or under the Consumer Credit Act.

This handbook sets out the rules which apply to providers of consumer credit like Quick Quid. CONC Section 5 sets out a firm’s obligations in relation to responsible lending. And CONC Section 6 sets out a firm’s obligations after a consumer has entered into a regulated agreement.

There is a high degree of alignment between the OFT’s Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA’s CONC rules specifically note and refer back to sections of the OFT’s *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

*[**Note**: paragraph 4.1 of ILG]*

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

*[**Note**: paragraph 4.3 of ILG]*

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

*[**Note**: paragraph 4.2 of ILG]*

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

*[**Note**: paragraph 4.31 of ILG]*

CONC 6.7 sets out a firm's obligations in relation to its post contract business practices. CONC 6.7.21R to 6.7.23R contains specific obligations for high-cost short-term credit providers like Quick Quid.

CONC 6.7.21G says:

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

*[**Note**: paragraph 6.25 of ILG]*

CONC 6.7.22G says:

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

*[**Note**: paragraph 6.25 (box) of ILG]*

CONC 6.7.23R says:

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

CONC 6.7.17R defines refinancing and says:

(1) In CONC 6.7.18 R to CONC 6.7.23 R "refinance" means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:

   (a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;

   (b) exercising a contractual power contained in an existing regulated credit agreement; or

   (c) other means, for example, granting an indulgence or waiver to the customer.

(2) "Exercise forbearance" means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:

   (a) there is no charge in connection with the refinancing; or

(b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.

(3) The term "refinance" within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.

other relevant publications and good industry practice

The OFT's Irresponsible Lending Guidance (and following that the FCA's Consumer Credit Handbook ("CONC")) set out the regulatory framework that regulated/authorised consumer credit providers have to adhere to. But in making my decision, I am also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice at the time of the events in dispute.

the OFT's Payday Lending Compliance Review Final Report

The OFT published its "Payday Lending Compliance Review Final Report" in March 2013, by which time Quick Quid had already lent to Mr R over 20 times.

The purpose of the review was "…to establish the extent to which payday lenders [were] complying with the Consumer Credit Act, other legislation and [were] meeting the standards set out in the ILG."

The review sought to highlight examples of what the OFT considered poor practice and evidence of non-compliance with the relevant law and failure to meet the minimum standards expected. The analysis was also put together to help the FCA's work on payday lending ahead of it assuming responsibility for regulating the sector from April 2014.

The report began with an overview section setting out the OFT's concerns. Page two of the report says that the OFT:

…is particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can't repay are encouraged to extend them, exacerbating their financial difficulties This is causing real misery and hardship for a significant number of payday users

Page three of the report says:

Our evidence paints a concerning picture of the payday lending market. It appears that irresponsible lending is not a problem confined to a few rogue traders, but it has its roots in the way competition works in this market. The evidence suggests that many consumers are in a weak bargaining position, and that firms compete on speed of approval rather than price

It then goes on to say:

Additionally, firms describe and market their product to consumers as one-off short term loans (costing on average £25 per £100 borrowed for 30 days), but in practice around half *the revenue comes from loans which last longer and cost a lot more because they are rolled over or refinanced. Lenders do not need to compete hard for this source of revenue because by this time they have a captive market. This, and the misuse of continuous payment authorities to reclaim monies owed, may distort incentives for lenders, encouraging them to make loans to people who cannot afford to repay them first time.*

<u>*the Consumer Finance Association Lending Code for Small Cash Advances*</u>

The principal trade association representing the interests of short-term lending businesses operating in the United Kingdom is the Consumer Finance Association ("CFA"). The CFA published a good practice charter entitled 'Lending Code for Small Cash Advances' in July 2012. Quick Quid said that this charter *"provides best practice for payday and short-term lenders to follow"*[1]. I understand Quick Quid was a founding member of the CFA[2].

Section 1 of the code sets out its purpose. Section 1b says:

Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online

Section 1c says:

This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months). The loan is not designed for longer term borrowing, but to improve short term personal cash flow

And Section 1d says:

The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in the Code, and accordingly protects and benefit consumers

Section 3 sets out the general obligations expected of lenders. Amongst other things Section 3 says members shall:

> *b) trade honestly, responsibly and treat customers with respect.*
>
> *l) ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.*

Section 4 of the code sets out a lender's specific lending obligations. Part (a) of this section is concerned with advertising and marketing and amongst other things, it says:

> *iii) members shall ensure all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.*

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[1] https://www.quickquid.co.uk/mediaroom/quickquid-flexcredit-a-more-flexible-loan/

[2] https://www.quickquid.co.uk/mediaroom/the-consumer-finance-association-in-collaboration-with-the-money-charity-produces-short-term-lending-guide/

Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

> *v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining….:*

- *that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.*

-END-