

complaint

Mr W complains that Curo Transatlantic Limited (trading as Wage Day Advance) gave him loans that he couldn't afford.

background

Mr W took out a total of eight loans with Wage Day between May 2012 and April 2014. He says the loans contributed to a significant spiral of payday lending, and eventually to defaults. With the exception of the second loan, Mr W repaid all the loans on time until the seventh loan. He deferred payment of the seventh loan for a month, and after he repaid it, he re-borrowed the same amount a fortnight later. Mr W ended up repaying the final loan over several months, with the help of a payment plan.

Our adjudicator recommended that the complaint should be upheld in part. Briefly, she thought that the checks that Wage Day carried out before agreeing to make the first three loans went far enough. This was because of the gaps between the loans, and the amounts that Mr W borrowed, when considered alongside what he told Wage Day about his income and expenditure. But she didn't think it had carried out thorough enough checks before agreeing to the remaining loans, which had gradually increased. And she thought that if it had carried out proportionate checks, it would have seen that Mr W was borrowing extensively from other payday lenders and from friends and family. So she thought that Wage Day should have realised that Mr W couldn't afford all but the first three loans.

Following receipt of the adjudicator's view, Wage Day accepted that based on the information provided, loans four, five and six were unaffordable to Mr W. It offered to refund all charges and interest on loans four to six. But it wasn't willing to make any refund for the final two loans, as the adjudicator had recommended. Mr W wasn't happy with Wage Day's offer, so the complaint was passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered. Having done so, I've reached the same conclusion as the adjudicator, and for much the same reasons.

Wage Day was required to lend responsibly. It needed to make checks to see whether Mr W could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr W was borrowing, the length of the agreements and his borrowing history. But there was no set list of checks Wage Day had to do.

Wage Day has told us that it asked Mr W about his monthly income and expenditure before agreeing to make the first loan. And it's pointed out that when he applied for subsequent loans, he confirmed that his situation hadn't changed. The information Mr W gave Lending Stream suggested that he had significant disposable income each month, after taking his normal expenses into account.

There were several months between the first and second loan, and between the second and third loan. It's true that Mr W had deferred the payment of the second loan by a month, but

on balance, I don't think it was unreasonable of Wage Day to make the first three loans without carrying out further checks.

Wage Day has accepted that, based on the information the adjudicator provided, Mr W couldn't afford loans four to six. I agree. Loan four was for more than loan three, and Mr W applied for it less than a fortnight after he'd repaid loan three. I think that the increased amount Mr W was applying to borrow, and the short interval since he'd repaid the previous loan should have prompted Wage Day to question why he needed to borrow so soon after repaying the previous loan if his disposable income was as it appeared to be.

So Wage Day should have taken more care to make sure that Mr W would be able to afford to repay the loan. At the very least, I think it should have asked specifically for details of other short-term commitments. If it had done so, it would have realised that Mr W was only managing to repay his loans with the help of short-term loans from other lenders. And his position hadn't improved when he took out the fifth and sixth loans.

Wage Day doesn't accept that loans seven and eight weren't affordable to Mr W. I acknowledge that by the time Mr W applied for loan seven, it had been four months since he'd repaid loan six. But loan seven was for over a third of the monthly income Mr W had told Wage Day about when he'd taken the first loan more than 20 months before. Even though there had been gaps between some of the loans I think that Wage Day ought to have questioned why Mr W was repeatedly applying to it for loans if his disposable income was as high as he'd said. And I don't think it should have agreed to lend further without getting a full picture of Mr W's financial position.

If Wage Day had carried out a thorough review of Mr W's financial circumstances when he applied for the final two loans, it would have been aware that he was routinely borrowing large sums from other lenders every month. He was also borrowing from friends and carrying out a large number of gambling transactions. His debt repayments and his regular living expenses left him with no disposable income, and it's clear from looking at the statements, both for Mr W's own current account, and the current account that he held jointly with his wife, that he was trapped in a cycle of debt and was borrowing large sums repeatedly just to get by.

So I think it should have been clear to Wage Day that Mr W was highly unlikely to be able to repay the borrowing in a sustainable way. And I don't think it should have agreed to give him the seventh and eighth loans either. Taking everything into account, I think it's fair to require Wage Day to refund all interest and charges on those loans, in addition to loans four to six, and to remove any adverse information (such as defaults and late payments) about them from Mr W's credit file.

my final decision

My final decision is that I uphold this complaint in part. To put things right, Curo Transatlantic Limited (trading as Wage Day Advance) should:

- refund all interest and charges Mr W paid on the loans he took out from 30 April 2013 onwards;
- pay interest on those refunds at 8% simple[†] per year from the dates of payment to the date of settlement; and
- remove any adverse information about the loans referred to in the first bullet point from Mr W's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 May 2017.

Juliet Collins
ombudsman