

complaint

Mr M has complained about three instalment loans given to him by Casheuronet UK LLC (trading as Pounds to Pocket). Mr M took out his first loan in September 2012, his second loan in April 2013 and his final loan in January 2014.

Mr M has said the loans were unaffordable for him and so Pounds to Pocket shouldn't have lent them to him.

background

I attach an extract of my provisional decision of 19 April 2017, which forms part of this final decision.

In my provisional decision I set out why I planned to uphold Mr M's complaint. I asked both Mr M and Pounds to Pocket to provide any further comments and any new evidence they wanted me to consider before I made my final decision.

Mr M responded to say he was happy with my provisional decision. Pounds to Pocket didn't agree and made a number of points in response.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I set out in my provisional decision what I would need to think about to decide the case.

I've thought about everything Pounds to Pocket has said in response to my provisional decision, but this hasn't changed my view of this complaint. So I'm not going to change the findings or outcome I set out in my provisional decision. And I still think this complaint should be upheld. But I would like to comment on the points that Pounds to Pocket has raised in response to my provisional decision and which aren't already addressed in my provisional decision.

Pounds to Pocket has said that whilst it's acknowledged Mr M had loans with its sister company (both prior to the first loan and whilst he was borrowing from Pounds to Pocket) it feels that this case should be considered separately and on its own merits. I agree that each case should be considered separately and on its own merits. But I don't agree that this means Pounds to Pocket could ignore information it had available about Mr M's previous and on-going lending with its sister company when deciding whether or not to lend to Mr M. Pounds to Pocket was required to complete proportionate checks to determine if Mr M could've afforded to repay his loans in a sustainable way. And Pounds to Pocket had knowledge of his previous lending history and any on-going lending commitments Mr M had with its sister company. So as part of completing proportionate checks to determine if Mr M could've afforded these loans, I think it's reasonable for Pounds to Pocket to have taken this information into consideration.

Pounds to Pocket has also argued that Mr M didn't tell it he was in financial hardship or gambling during the period he was borrowing from it. Pounds to Pocket has also made reference to Mr M needing to take some responsibility for being able to make the repayments. But, as Pounds to Pocket is aware, it was Pounds to Pocket's responsibility to complete proportionate checks to determine if Mr M could've afforded to repay these loans in a sustainable way. And I've explained in my provisional decision why I don't think it did complete proportionate checks and why I think that if it had, it would've seen that Mr M couldn't have afforded these loans.

I've noted Pounds to Pocket's argument that Mr M made all of his repayments (prior to around half way through his final loan) on time and in some instances he over paid. Firstly, as Pounds to Pocket has said, this wasn't the case on his final loan. And I'd also like to highlight that two of the payments Pounds to Pocket has referenced were his final payments on his first and second loans. But Mr M then went on to almost immediately borrow again with Pounds to Pocket. He took out loan two around five days after loan one and he took out loan three the following day after he repaid loan two. So I don't think Pounds to Pocket can necessarily say that these two payments show Mr M had surplus funds he could've applied to his loan repayments. As despite repaying loans one and two early, he almost immediately went back to Pounds to Pocket for additional lending. And as Pounds to Pocket will be aware, consumers often borrow from one lender to repay another in order to avoid falling into arrears and potentially impacting their credit rating. So the fact that someone repays early doesn't necessarily mean that they can afford to repay their loan in a sustainable way.

Finally Pounds to Pocket has outlined what percentage the highest repayment represented of Mr M's stated monthly income and suggested this shows the lending was affordable. But this doesn't take into account any of Mr M's wider circumstances, which I think Pounds to Pocket would've been aware of if it completed further checks.

So for the reasons I've explained above and in my provisional decision I think that Mr M's complaint should be upheld.

what Pounds to Pocket should do to put things right

To put things right for Mr M, Pounds to Pocket should:

- refund all the interest and charges applied to Mr M's accounts for all three loans; and
- add interest at 8% per year simple on the interest and charges from the date they were paid to the date of settlement†;
- remove any adverse information recorded on Mr M's credit file as a result of the interest and charges.

†HM Revenue & Customs requires Pounds to Pocket to take off tax from this interest.

Pounds to Pocket must give Mr M a certificate showing how much tax it's taken off if he asks for one.

If Pounds to Pocket is still owed the outstanding capital balance from loan three then it can deduct this from the amount it needs to pay Mr M. But if it no longer owns this debt, it needs to buy back this debt or it isn't entitled to make any deduction for it from the amount it needs to pay Mr M.

I also understand that Mr M was subject to a Scottish Trust Deed. But Pounds to Pocket should pay any money owed in this case directly to Mr M. And it is for Mr M to consider his obligations under this agreement and whether he is entitled to keep any money paid to him, or whether it is paid to him on trust.

my final decision

For the reasons given above and in my provisional decision, I uphold Mr M's complaint against Casheuronet UK LLC. And I direct Casheuronet UK LLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 June 2017.

Claire White
ombudsman

extract from provisional decision

my provisional findings

I've considered all the available evidence and arguments to decide what is 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.

Pounds to Pocket was required to lend responsibly. It needed to check that Mr M could afford to repay his loans sustainably. There was no set list of checks Pounds to Pocket needed to do, but the checks should have been proportionate to the circumstances of each loan which might include considerations about the amount borrowed, Mr M's borrowing history and so on.

In making my decision I've first considered whether Pounds to Pocket did everything it should have when assessing Mr M's loan applications. And, if I don't think it did, I've gone on to consider whether or not any assessment failings resulted in Pounds to Pocket agreeing to lend to Mr M when it should have known that it would be difficult for him to repay.

Having done so, I'm planning to uphold Mr M's complaint. I appreciate that this will be disappointing for Pounds to Pocket, but I hope my explanation makes it clear why I have come to this provisional conclusion.

Firstly it would be helpful to detail the loans in question. Mr M initially took out a £1,000 twelve month instalment loan in September 2012. He repaid this loan in April 2013 and the following day took out a £1,150 twelve month instalment loan. Mr M then repaid this loan in January 2014 and around five days later he took out his third instalment loan. This loan was for £1,150 and was also structured to be repaid in twelve monthly instalments.

the checks Pounds to Pocket completed

From the information I have available, I can see that Pounds to Pocket took details of Mr M's net income and completed a credit search. But Pounds to Pocket can't provide the results of the earlier searches it completed. It has provided some limited details from the final search it says it completed before agreeing Mr M's final loan. In addition, Pounds to Pocket has said it considered other factors such as the information Mr M provided during his applications and his lending history. And I can see Pounds to Pocket took information about his expenditure, but this wasn't until several months after the final loan was given.

Having carefully considered all the information I've been provided with, I currently don't think Pounds to Pocket completed proportionate checks before agreeing any of these three loans to Mr M.

At the time of the first loan Mr M was in arrears on his mortgage and I think it's likely this would've appeared on the results of the credit search Pounds to Pocket has said it completed. In addition, Mr M also had two defaults on his credit file (one of which was satisfied) which Pounds to Pocket would've also been likely to have seen. Mr M had also borrowed consistently in the year leading up to loan one with a sister company to Pounds to Pocket. And Pounds to Pocket has said it would've had access to this information when making its lending decision. So I think that given the information Pounds to Pocket had available, it needed to complete more checks before agreeing loan one. And I think that proportionate checks would've included independently verifying the information provided about Mr M's regular income and expenditure (including other credit commitments).

I also think that Pounds to Pocket needed to do more checks before agreeing loans two and three. Mr M continued to be in arrears on his mortgage throughout this period and he received another default which was likely to have been on his credit file at the time loan three was agreed. Mr M was also continuing to borrow from Pounds to Pocket's sister company during the time he was repaying loans one and two. I think that, like loan one, proportionate checks would've also included independently verifying the information provided about Mr M's regular income and expenditure (including other credit commitments).

what I think proportionate checks would've most likely shown

I currently think that had proportionate checks been completed, Pounds to Pocket would've seen that Mr M didn't have capacity to take on any additional borrowing.

I've considered that the monthly loan repayments were relatively low in comparison to Mr M's stated monthly income. However, looking at Mr M's circumstances leading up to the first loan and up until the final loan was agreed, I don't think Mr M could've afforded to repay these loans in a sustainable way.

Mr M was in arrears on his mortgage throughout this period and he's said he fell behind on other debts such as council tax and credit card commitments. He was also borrowing heavily from two other short term lenders (including Pounds to Pocket's sister company). And at times Mr M was also borrowing from additional short term lenders. Mr M was also involved in a Scottish Trust Deed and was making regular payments to this, together with paying child maintenance payments. And during the period of lending I can also see some online gambling on his statements. So taking all of this into consideration, I don't think Mr M could've afforded any of the three loans Pounds to Pocket gave him.

So for the reasons I've explained, I currently don't think Pounds to Pocket completed proportionate checks before agreeing any of the three loans. And I think that had it done so it would've seen Mr M couldn't have afforded these loans, so it wouldn't have lent them to him.