

complaint

Mr R complains that CashEuroNet UK LLC, trading as QuickQuid ("QQ"), gave him a loan that he couldn't afford to repay.

background

Mr R took out one loan with QQ for £350 plus interest on 7 July 2012. The loan was repayable by two instalments, but wasn't repaid on the due date. And Mr R contacted QQ in early August 2012 to say he was in financial difficulties and entered into a repayment plan. The loan was then sold to a third party. Mr R said that the lending was irresponsible and that he was trapped in a vicious circle of borrowing to pay off his other payday loans due to the high interest charges.

QQ said it had obtained details of Mr R's monthly income of £1,200 before the loan. It also conducted its standard credit assessment which included checking Mr R's credit report. It said that it analysed his current financial commitments, insolvency and delinquency records and other credit accounts currently opened. It said that the average monthly repayment of £262.50 appeared affordable in relation to Mr R's declared income, and its checks revealed nothing to cause concern.

The adjudicator thought that QQ should have carried out more checks as the loan was for a significant amount compared to Mr R's declared monthly income of £1,200. He said that QQ should have checked Mr R's day to day living costs, regular financial commitments and other short term financial commitments in addition to checking his normal monthly income, to ensure the loan would be affordable for him. He noted Mr R's regular living costs and said that these would have shown QQ that the loan was likely to be unaffordable and shouldn't have been lent to Mr R. He recommended that QQ should:

- Refund all interest and charges that Mr R paid on the loan;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Deduct the amount of £350 being the capital loan balance overdue, from the amount to be refunded.
- Remove any negative information about the loan from Mr R's credit file.

*HM Revenue & Customs requires QQ to take off tax from this interest. QQ must give Mr R a certificate showing how much tax it's taken off if he asks for one. If QQ intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Mr R responded to say that the loan had now been repaid. He also sent this service information about his other debts.

QQ responded to confirm that the debt had been repaid. From the adjudicator's calculations, it noted that Mr R's regular expenditure was £739 excluding bank charges which it didn't think were a regular expense. So it said that Mr R had a disposable income of around £461 and that Mr R would be able to accrue £922 over two months which was more than sufficient to pay a total repayment of £525 over two months. It also referred to the Financial Conduct Authority's ("FCA") consumer credit sourcebook ("CONC") requirements. It said that CONC doesn't set out minimum levels of disposable income and that the adjudicator's approach had the effect of mandating a prescriptive process. It also said that he hadn't explained what

emergency expenses Mr R might have to meet or whether they were foreseeable when the loans were granted.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

QQ was required to lend responsibly. It needed to make checks to make sure Mr R could afford to repay the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr R was borrowing, the length of his agreement and his lending history. But there was no set list of checks QQ had to do.

I note that QQ has referred to the CONC requirements but these weren't in force at the time of Mr R's loan.

The guidance in place at the time of the loan (The Office of Fair Trading's Irresponsible Lending Guidance) sets out the lender's responsibility to take reasonable steps to ensure that a borrower can *sustainably* repay their loans. It said that assessing affordability 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. The guidance also said that repaying credit in a sustainable manner meant being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty*." And it defined "*undue difficulty*" as being able to repay credit "*while also meeting other debt repayments and normal/reasonable outgoings*" and "*without having to borrow further to meet these repayments*".

Before lending to Mr R, QQ asked about his normal monthly income which he said was £1,200. And it also carried out a credit check. QQ has sent us the results of its credit check. I've only seen evidence that it obtained some fairly basic information.

I note that Mr R referred to his other debts and I've seen his credit report. But the information a consumer might see, when they request a copy of their credit file, might be very different to that seen by a lender. A lender might only see a small portion of the credit file, or some data might be missing or anonymised. So, this may explain any differences between the information provided by QQ's credit check and the information seen by Mr R in his credit report.

At the time of the loan, I can see that Mr R's credit report showed that he had a car finance loan and two other loans. I note that Mr R has sent us information about other credit, but other than the loans I've seen in the credit report, the other information appears to refer to credit granted after QQ's loan.

The loan needed to be repaid by two monthly instalments of £87.50 and £437.50 respectively. I note that QQ said that Mr R would be able to accrue £922 over two months which was more than sufficient to pay a total repayment of £525 over two months. So it is effectively saying that I should consider the average repayment Mr R needed to make each month on his loan. But I don't agree. I think if QQ expected Mr R to be able to repay some of his borrowing in the first month it should have structured the loan in that way. And if it had done so, Mr R would have paid less interest on his borrowing. In view of the way the loan was structured, I think it is fair and reasonable that I consider whether Mr R could meet each repayment in isolation.

Considering the amount Mr R was expected to repay in the second month of the loan, I don't think it was reasonable for QQ to base its affordability assessment solely on Mr R's income and its credit checks. I think it should have asked Mr R for some additional information about his normal living costs and regular financial expenditure, including asking him about any credit repayments he was making on things like bank loans, car finance and credit cards, and information about other short term lending. I can't see that it did this. So, I don't think that QQ had made sufficient checks for this loan.

Although I don't think the checks that QQ made on the loan were sufficient, that in itself doesn't mean that Mr R's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown the lender that Mr R couldn't sustainably afford the loan. So I've looked at Mr R's bank statements, to see what better checks would have shown QQ.

I think it was reasonable for QQ to rely on what Mr R had told it about his income. Mr R said that his income was £1,200. So that is what I've used when looking at the affordability of the loans.

As I've said above, I would have expected QQ to ask about Mr R's regular expenditure and any short term loans. To find out what, if any, regular expenditure and short term loans Mr R had, I've reviewed his bank statements for the month before Mr R took out the loan. The bank statements I've seen don't specifically refer to most of the normal expenditure that I'd expect to see such as rent or mortgage payments, council tax, water and utility bills. I note that Mr R has told us that he lived with his parents. So I can see he would have had limited outgoings. He also said that he paid £400 for rent and £280 for food and travel. But I've not seen specific payments for these on the statements, nor have I seen sufficient cash withdrawals for these. I asked the adjudicator to ask Mr R how he paid his rent to his family and he said that the rent was paid in cash as and when he had the money. I've only seen cash withdrawals totalling £220 in the month before the loan. So, if Mr R had been asked by QQ for details of his rent, food and travel costs, I don't think he would have said that they were more than this.

I can also see from the statements that Mr R was making three regular loan repayments, paying for an insurance premium and he was also charged £72 for overdraft interest and bank charges. I can see that some of the charges were account fees and some were charges for missed payments. I think the account fees of £22 were foreseeable and have included these in my calculations. I've also included the overdraft interest as this would have been foreseeable given the overdrawn status of Mr R's current account. So, from the bank statements, I can see that Mr R's regular expenditure was around £732 including an amount of £220 for his rent, food and travel costs. This would have left Mr R with a disposable income of around £468.

So, if QQ had done what I consider to be proportionate checks, I think it would have seen that Mr R didn't have enough disposable income to meet the loan repayments in a sustainable way as he would have been left with very little money for unforeseen expenses. So I don't think a responsible lender would have considered this a sustainable loan.

I note that QQ said that the adjudicator hadn't explained what emergency expenses Mr R might have to meet or whether they were foreseeable when the loans were granted. But emergency expenses are by their very nature unforeseeable. So, I don't think the adjudicator needed to explain what emergency expenses Mr R might have to meet.

So I don't think QQ should have given Mr R the loan, and I think it needs to pay Mr R some compensation relating to this loan. Mr R has provided us with letters and statements from the two respective purchasers of the debt. I note that Mr R has paid the balance outstanding to them in full.

To settle the complaint, I think QQ should refund all the interest and charges that Mr R has paid on the loan, and pay 8% simple interest* a year on the refund from the date of payment to the date of settlement. Any adverse information recorded on Mr R's credit file with regard to the loan should also be removed.

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

my final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order CashEuroNet UK LLC, trading as QuickQuid, to:

1. Refund all interest and charges that Mr R paid on the loan;
2. Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*; and
3. Remove any negative information about the loan from Mr R's credit file.

*HM Revenue & Customs requires QQ to take off tax from this interest. QQ must give Mr R 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 R to accept or reject my decision before 10 September 2018.

Roslyn Rawson
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