

complaint

Mr B complains that WDFC UK Limited (trading as Wonga) gave him loans that he couldn't afford to repay.

background

Mr B has used a claims management company (CMC) to help make his complaint.

The background to this complaint was set out in my provisional decision issued last month. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to uphold most of the complaint. I invited both parties to let me have any further comments and evidence. Mr B has said he accepts my provisional decision. Wonga has said that it has nothing further to add.

my findings

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

Given that neither party has provided me with any new evidence or information I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold most of this complaint and Wonga needs to pay Mr B some compensation.

putting things right

I don't think Wonga should have agreed to give Mr B any of the loans apart from the last. So for the loans given to Mr B between March 2011 and September 2014, Wonga should;

- Refund any interest and charges applied to each of the loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr B's credit file in relation to the loans.

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

my final decision

My final decision is that I uphold most of Mr B's complaint and direct WDFC UK Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 October 2017.

Paul Reilly
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

Mr B complains that WDFC UK Limited (trading as Wonga) gave him loans that he couldn't afford to repay.

background

Mr B has used a claims management company (CMC) to help make his complaint.

Mr B took 25 loans from Wonga between March 2011 and March 2015. All his loans have been repaid. I've attached a summary of Mr B's borrowing history with Wonga in an appendix to this decision.

When Mr B first complained to Wonga it offered to refund the interest he'd paid on three of the loans. Mr B didn't accept that offer so he brought his complaint to this Service. Before his complaint was assessed by one of our adjudicators, Wonga revised its response – it now offered Mr B a refund of the interest he'd paid on ten of the loans. Mr B also rejected that offer.

So our adjudicator considered Mr B's complaint. She didn't think that the checks Wonga could show it had performed were sufficient – for any of the loans. And she thought that 22 of the loans were unaffordable so she asked Wonga to pay Mr B some compensation.

In response, Mr B's CMC provided us with some more information about Mr B's expenditure around the time he was first borrowing from Wonga. And Wonga said that it didn't agree with the adjudicator's findings. Since the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Wonga was required to lend responsibly. It needed to make checks to see whether Mr B 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 B was borrowing, and his lending history, but there was no set list of checks Wonga had to do.

The first 19 loans were given when Wonga was regulated by The Office of Fair Trading (OFT). Its guidance was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The OFT's Irresponsible Lending Guidance states *"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 goes on to say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defines *"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"*

The Financial Conduct Authority was the regulator at the time Mr B took the rest of his loans from Wonga. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These regulations – in CONC 5.3.1(2) - require lenders to take *"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.” CONC 5.3.1(7) defines ‘sustainable’ as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that Mr B managed to repay the loans in full and on time, doesn’t necessarily mean they were affordable for him and that he managed to repay them in *a sustainable manner*. In other words I can’t assume that because Mr B managed to repay his loans that he was able to do so out of his normal means without having to borrow further.

Wonga has told us about the checks it did before each loan application. It has shown us that it asked Mr B for details of his normal monthly income. And it did a credit check before each of his first 16 loans. Wonga also says that it would’ve asked Mr B for details of his monthly expenditure before each application. But Wonga hasn’t been able to provide us with any details of what answers Mr B gave in response to that question.

The first two loans that Mr B took from Wonga were quite large, compared to his normal monthly income. He needed to use around a third of his income to repay each one. So I think this should have caused some concern to Wonga and meant that the lender would have wanted to undertake some relatively detailed checks into Mr B’s finances. And although the amount Mr B asked to borrow on his third loan was much smaller I think Wonga should’ve wanted to maintain a similar level of checks – Mr B was starting to show signs of borrowing repeatedly from the lender.

And I think that by then a pattern had been established. There were periods, of up to five months when Mr B didn’t borrow from Wonga. But I don’t think, given his borrowing history, these should have been sufficient for Wonga to conclude that Mr B was using its lending for one off short term emergencies, rather than using the loans to support his normal day to day living costs.

Put simply, I think from the very start of its relationship with Mr B, Wonga should’ve been looking carefully at his true financial situation. For the first three loans this might have just been asking Mr B some very detailed and specific questions about his income and expenditure. But by the time of the fourth loan and thereafter I think Wonga should have been looking to independently verify what Mr B was saying. So I don’t think that Wonga did proportionate checks on any of Mr B’s loan applications.

I’ve looked at Mr B’s bank statements, and what he’s told us about his finances, to get a picture of what Wonga would have seen if it had done what I consider to be proportionate checks.

Having done so I can see that, until shortly before his last loan application, Mr B was regularly overdrawn at his bank, and by a significant amount. Mr B wasn’t managing his finances particularly well, and often had direct debits returned unpaid and incurred charges for going over his overdraft limit. And looking at what he was spending on his normal living costs such as food and transport, and what he was spending on other debt repayments (both short term and longer term) he had little, if anything, left over each month to repay his borrowing from Wonga.

Mr B’s finances remained in this state until the early part of 2015. By that time he hadn’t borrowed from Wonga for almost six months. And looking at his bank statements he was now often in credit following a large deposit he’d made to the account. It does seem that by then a proportionate check from Wonga would’ve seen an increase in his income, and a reduction in his expenditure. And so it would have been reasonable at that time to consider that Mr B could repay his borrowing from Wonga.

In summary, I don’t currently think the checks Wonga did on any of Mr B’s loans were proportionate. And I currently think proportionate checks would have shown that all the loans, except for the last, were unaffordable. So Wonga needs to pay Mr B some compensation.

Appendix – Summary of Mr B's Borrowing History with Wonga

Loan Number	Borrowing Date	Repayment Date	Loan Amount (inc Top ups)
1	31/03/2011	01/05/2011	£ 300
2	02/09/2011	26/09/2011	£ 400
3	17/11/2011	30/11/2011	£ 101
4	07/12/2011	31/01/2012	£ 601
5	09/02/2012	29/02/2012	£ 700
6	08/03/2012	30/03/2012	£ 201
7	11/05/2012	31/05/2012	£ 641
8	06/06/2012	26/06/2012	£ 1,007
9	27/10/2012	31/10/2012	£ 449
10	24/11/2012	30/11/2012	£ 50
11	12/12/2012	31/12/2012	£ 750
12	04/01/2013	31/01/2013	£ 800
13	15/02/2013	28/02/2013	£ 600
14	12/03/2013	29/03/2013	£ 1,000
15	31/03/2013	07/05/2013	£ 1,000
16	15/10/2013	01/11/2013	£ 600
17	24/01/2014	31/01/2014	£ 206
18	23/02/2014	28/02/2014	£ 210
19	12/03/2014	31/03/2014	£ 350
20	12/04/2014	30/04/2014	£ 468
21	07/05/2014	08/05/2014	£ 120
22	27/07/2014	31/07/2014	£ 130
23	16/08/2014	29/08/2014	£ 550
24	11/09/2014	30/09/2014	£ 450
25	21/03/2015	31/03/2015	£ 220