

## **complaint**

Mr S is unhappy Casheuronet UK LLC (trading as “Pounds to Pocket”) intends to use the compensation it has offered him, following an unaffordable lending complaint, to reduce the amount he owes on his outstanding loan balance.

## **background**

I attach my provisional decision of 25 April 2018, which forms part of this final decision and should be read in conjunction with it. In my provisional decision, I explained why I didn't think Pounds to Pocket had to pay Mr S any compensation. But I did think that it needed to write off any outstanding balance on Mr S' loan. I invited both parties to provide any further comments they may have had before I reached a final decision.

Pounds to Pocket responded to say that it disagreed with my decision. It said that it didn't think it should have to write off the outstanding balance on Mr S' account. But that it was prepared to come to a repayment arrangement with Mr S.

Mr S also responded with a number of emails. I've read all of his emails and in summary he said:

- my provisional decision made no mention of removal of entries from his credit report and he thought that it was a given that entries were removed in cases where loans shouldn't have been issued;
- it seems as though if he had paid off the outstanding amount with the third party last month, all payments would've been refunded with 8% simple interest added;
- he had a similar complaint with Quick Quid (another trading name of Casheuronet UK LLC) and 8% simple interest was added from the date he made the payments on his Quick Quid loans;
- he took two loans rather than a single loan and some of the proceeds from the second loan were used to repay the first loan;
- while he accepts that it isn't our role to punish businesses firms for bad behaviour this shouldn't mean that lenders should be allowed to profit from such behaviour;
- 8% interest should be added to the payments he made before any outstanding balance is deducted. And this'll show that, contrary to what I said in my provisional decision, he will make a loss as a result of Pounds to Pocket being allowed to buy the debt back from a third party;
- my point about saying that Pounds to Pocket would effectively be issuing an interest free loan would be applicable to any case of putting priority debts before non-priority ones;
- he should be compensated for the trouble, distress and time including dealing with this complaint. £500 should do it;
- the third party debt purchaser is the legal owner of the debt. It is happy to set up a payment arrangement so Pounds to Pocket should refund him what he's paid.

## **my findings**

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

I've carefully thought about all of the points Mr S and Pounds to Pocket have made. And having done so, I still think that Mr S' complaint should be resolved in the way suggested in my provisional decision. I'd like to explain why.

### *Pounds to Pocket's arguments*

I want to start by saying just how disappointing I found Pounds to Pocket's response to be. Pounds to Pocket took a month to respond to my provisional decision and what it said suggests that it didn't even look at the reasoning in my provisional decision. For the avoidance of doubt, I want to make it absolutely clear that I'm fully aware Mr S has had the money he originally borrowed. Indeed I confirmed that this was the case in my provisional decision.

And my provisional decision also explained that in most cases, I'd usually say a consumer should pay back any funds they've had the use of. But, in this particular case, there were two things which led me to conclude that allowing Pounds to Pocket to insist on Mr S paying back what he initially borrowed wouldn't be fair and reasonable.

Firstly, Mr S' outstanding Council Tax bill suggested he was experiencing financial difficulty and paying back what he initially borrowed, in these circumstances, would cause him financial hardship. And secondly the debt appears to have been outstanding for some time and there didn't appear to be any attempt to seek payment for an extended period – over three years.

As Pounds to Pocket hasn't offered any argument or comment in relation to either of these issues, I've not been persuaded to alter my thinking on this. And I remain of the view that Pounds to Pocket should ensure that Mr S has to make no further payments to his loan by following one of the methods set out in the '*putting things right* – what Pounds to Pocket needs to do section of this decision.

I now turn to Mr S' comments.

### *the owner of Mr S' debt*

I accept that Mr S' debt was and may well still be with a third party debt purchaser. But given the circumstances of the debt having been sold some time ago and well in advance of this complaint having been made, I don't think it unreasonable for Pounds to Pocket to call the debt back, or for it to ensure that the debt is cleared with the third party directly.

Equally I don't think that Pounds to Pocket doing either of these things produces an unfair or unreasonable outcome, in this case, as Mr S won't have lost out on something that he's entitled to. Although as this is the reason Mr S isn't being paid any compensation, in this case, I can understand why he disagrees with me.

### *8% simple interest*

Mr S says that 8% simple interest should be added to all of the payments he made to Pounds to Pocket before any outstanding balance is taken into account. But I think it may help for me to start by explaining the reasons why we would typically award 8% simple interest on any refund that a lender is required to pay.

Broadly speaking where we make such an award this isn't to punish a lender for having done something wrong – in this case, Pounds to Pocket giving Mr S a loan it shouldn't have done. In cases where we do make such an award, this is typically because a consumer had to pay interest and charges they shouldn't have and didn't have the use of money they used to do this as a result.

But in this case, Mr S hasn't paid any interest and charges. The total amount of the payments he's made – to Pounds to Pocket and the third party debt purchaser – is significantly less than what he initially borrowed. And as I explained earlier, we'd generally expect a consumer to repay what they initially borrowed because they've had the use of the money.

This means that Mr S hasn't lost the use of any money as a result of paying any interest and charges he shouldn't have had to pay, because he hasn't paid any interest any charges to any party. Of course it goes without saying that Mr S is correct in saying that he would've received interest on the interest and charges – from the date they were paid – if he had paid them. But the fact remains that they weren't paid. So there aren't any interest and charges to refund.

Mr S says that he took out two loans and so he repaid the first one. And in these circumstances, Pounds to Pocket should refund the interest and charges from the first loan and shouldn't be allowed to offset the outstanding debt from the second one. But it's my understanding that Mr S took out a single loan and then Pounds to Pocket provided a 'top up' after he requested further funds.

In any event, even if I were to accept Mr S' argument that he took out two separate loans, he's never been in a position where Pounds to Pocket owed him more than what he owed it (either to Pounds to Pocket alone or what he paid to Pounds to Pocket together with anything paid to the third party debt purchaser). So Mr S has never been in a position where he's lost the use of funds he should've still had. He's always been in a position (even when the interest which should've been added is removed) where he's owed what he initially borrowed.

It's also clear that any 'settlement' of the first loan was only made because Mr S was given loan two and so immediately owed Pounds to Pocket more. This means the two loans are inextricably linked and, in these circumstances, I don't think it's unfair for Pounds to Pocket to recover the balance of loan two before paying any compensation.

Equally I don't think a comparison with our typical approach to redress in complaints involving Payment Protection Insurance ("PPI"), which is a completely different product, provides a like for like comparison here. In PPI complaints, the consumer will often have approached a lender for credit they would've been able to obtain (as they did do so) and there usually isn't any reason to suspect that it shouldn't have been given to them. So – unless there is clear evidence to the contrary – the general presumption will be that the consumer will have still had the credit without the PPI. So in PPI cases there is often an overpayment – at least in the early stages of the loan – because of the mis-sold PPI *before* arrears accrue.

But where a lender accepts, or we say, it lent irresponsibly, we usually say a refund of interest fees and charges is appropriate because it's the interest and charges on the loan that's the main consequence of the lender having lent irresponsibly. It isn't because we think that if things had played out as they should've done the consumer would have been given an

interest free loan. So as there is a general expectation that the consumer should pay back the funds they were initially given, there are no overpayments until what the consumer initially borrowed has been repaid. And as I've already explained that simply didn't happen here.

Mr S has also said that, in a separate complaint, Casheuronet awarded 8% simple interest on payments he made to his Quick Quid loans before deducting an outstanding balance from what he was paid. I don't know Casheuronet's reasons for doing this on Mr S' other cases – it may be because Quick Quid typically offered single payment loans and while Mr S may have had to borrow again before he got paid he received all the funds (rather than it being the case that the funds that those funds went directly to repaying a previous loan).

In any event, it remains the case that what Mr S has actually paid on his Pounds to Pocket loan – even taking into account the payments he made to the third party debt purchaser - is significantly less than what he initially borrowed. And for the reasons I've explained it simply wouldn't be fair and reasonable for me to ask Pounds to Pocket to pay Mr S 8% interest on the payments he made to this loan. Mr S' argument about the settlement on his Quick Quid complaint, doesn't change my view on this.

*Mr S' points regarding his priority debt and my decision allowing Pounds to Pocket to profit from bad behaviour*

My provisional decision acknowledged that the information Mr S provided shows he is in a difficult financial position. Bearing in mind the potential implications for doing so, most consumers don't usually choose not to pay their Council Tax when they are able to. And I really do sympathise with the financial position Mr S is in. But it remains the case that Mr S didn't pay any interest and charges. And, even in circumstances where a consumer has priority debts, I can only direct a lender to issue a refund where there is something to refund. In this case, there simply isn't anything to refund Mr S.

I'd also add that I haven't ignored that fact that Mr S is struggling financially. I've also already said that he appears to be unlikely to be able to make any further payments to his loan because of his financial position. And this is precisely the reason why I've said that Pounds to Pocket needs to ensure that any outstanding balance on Mr S' loan, once the interest and charges are removed from it, is written off.

Equally as Pounds to Pocket will be getting back less than the amount it lent, I simply don't agree that it has profited, from giving Mr S this loan, in the way he appears to be suggesting it has. Mr S may feel that he has lost out. But he had the full value of what he borrowed and he'll repay substantially less than this as a result of his complaint.

Mr S now also says that he should be compensated for his trouble, distress and time including dealing with this complaint. He says £500 should do it. Although he hasn't provided any explanation as to how he's arrived at this figure. I've carefully thought about whether Pounds to Pocket should make a distress and inconvenience payment to Mr S.

I accept that I'm now telling Pounds to Pocket to write off the outstanding balance on Mr S' loan. But this is because of the financial position he's in now and the information he provided to us after our adjudicator's assessment.

I haven't seen anything to suggest that Pounds to Pocket was aware, or that it ought to have been aware, of Mr S' current financial position before he told us about this either. So while

Mr S didn't agree with Pounds to Pocket's suggestion of a settlement and he has taken steps to further pursue his complaint, I don't think Pounds to Pocket has treated him unfairly. And as this is the case, I don't think that Pounds to Pocket needs to make a distress and inconvenience payment to Mr S.

#### *Mr S' credit file*

I want to start by saying that it isn't a given that loan entries are removed from a consumer's credit file in cases where we think that a loan, or loans shouldn't have been given. The action we'd instruct a lender to take is wholly dependent on the facts of any given case. Telling a lender what changes, if any, it should make to a consumer's credit file is typically the most difficult part of putting things right in cases of irresponsible lending.

On the one hand we have to weigh up the fact that although the consumer is now saying that they shouldn't have been given it, they did apply for a loan. And even if the loan hadn't been given – as what should've happened in cases where we uphold a complaint or the lender accepts it – there is likely to have been some information – such as searches and/or a declined application - recorded on the consumer's credit file. This in itself suggests that removing the loans completely won't always be the right thing to do, as it doesn't reflect the fact that the consumer did make a loan application.

I have given careful thought in relation to what the right thing to do in terms of Mr S' credit file. I accept that, in this case, everyone accepts Mr S shouldn't have been given his loans in the first place. But I'm also mindful that I'm telling Pounds to Pocket it needs to write off some of what Mr S initially borrowed. So any adverse information recorded on Mr S' credit file will be because what he borrowed hasn't been repaid – not because of any interest, fees and charges on the loan.

As this is the case, I don't think it would be fair and reasonable for me to say that Pounds to Pocket should write off the outstanding balance (or arrange for it to be cleared) and also amend Mr S' credit file. So given the particular circumstances of this case, I think that Pounds to Pocket can record that it wrote off part of the balance of Mr S' loan on his credit file as it would be fair and reasonable to do so.

#### **putting things right – what Pounds to Pocket needs to do**

In order to put things right, Pounds to Pocket needs to place Mr S in a position where he no longer has to make any payments to this loan. So it should either:

- buy back the outstanding balance from the third party as it has already said it is going to do; and
- remove all of the interest and charges that were added to Mr S' loan from the outstanding balance; and
- write off any outstanding balance remaining, on Mr S' loan, after the interest and charges are removed;

OR

- contact the third party debt purchaser and settle Mr S' account directly.

As Pounds to Pocket will either be writing off some of Mr S initially borrowed (or placing him in the position he'd be in if this was done), I'm not going to ask it to amend Mr S' credit file.

**my final decision**

For the reasons set out above and in my provisional decision of 25 April 2018, I'm upholding Mr S' complaint.

Casheuronet UK LLC (trading as "Pounds to Pocket") should pay Mr S compensation in line with the instructions set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 1 July 2018.

Jeshen Narayanan  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Mr S is unhappy Casheuronet UK LLC (trading as "Pounds to Pocket") intends to use the compensation it has offered him, following an unaffordable lending complaint, to reduce the amount he owes on his outstanding loan balance.

### **background**

Mr S complained about an instalment loan he took with Pounds to Pocket in November 2012. He said Pounds to Pocket didn't do proportionate checks to ensure the loan was affordable or suitable and so it irresponsibly lent to him.

When we requested its file of papers on the complaint, Pounds to Pocket accepted it shouldn't have given Mr S his instalment loan. In order to put things right, Pounds to Pocket eventually said it would buy back the outstanding balance on Mr S' loan, which it had sold on to a third party debt purchaser, and remove all the interest and charges applied from the outset. In other words, it would leave Mr S where he'd only have to repay the amount he initially borrowed.

Mr S disagreed with this. He's said Pounds to Pocket should pay the interest and charges on the loan to him as it sold the outstanding debt on to a third party – so it doesn't have a debt to set off against what it now owes. He's also said that he is currently in Council Tax arrears.

As the parties weren't able to agree on how Pounds to Pocket should put things right, the case was referred to an ombudsman.

### **my provisional findings**

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about short term lending – including what we expect to be done where we say a lender did something wrong or it agrees this is the case - on our website. And I've used this approach to help me provisionally decide Mr S' complaint.

Both Mr S and Pounds to Pocket are in agreement that Mr S shouldn't have been given his instalment loan. So I don't need to look into whether the loan was affordable. I only need decide whether or not what Pounds to Pocket has offered to do to put things right is fair. And having carefully thought about everything provided, I think Pounds to Pocket needs to do a bit more to put things right for Mr S. I'd like to explain why.

I've started by thinking about whether Pounds to Pocket should pay Mr S any compensation. At this point it might help for me to explain that when a business accepts (or we decide) it shouldn't have given a loan to a consumer, we'd expect it to put the consumer in the position they'd be in now if they hadn't had to pay any interest and charges on that loan. A business will usually refund the interest and charges added to the loan – and also add 8% simple interest per year where the consumer paid the interest and charges.

Pounds to Pocket has, in effect, argued that Mr S hasn't paid any interest and charges. It says this is because Mr S hasn't repaid, either to it or the third party the outstanding balance was sold on to, the money he initially borrowed. And that's why it intends to exercise its right to buy back the outstanding balance on Mr S' loan from the third party and reduce it by the total amount of interest added from when the loan started. This is effectively placing Mr S in the position he would be in if he'd had an interest free loan.

Mr S says it's unfair for Pounds to Pocket to do this. He's said Pounds to Pocket sold his outstanding balance so it shouldn't be allowed to buy it back to offset what it now owes. He has also said that he

is struggling financially and that Pounds to Pocket should pay him the compensation as he has Council Tax arrears. He has provided us with evidence to support what he's told us.

I've given a lot of thought to what Mr S has told us. But I'm required to decide what I think is fair and reasonable in all the circumstances of this case. I appreciate that Pounds to Pocket sold the outstanding balance on Mr S' account. But that was before Mr S made his complaint. And Mr S is asking me to tell Pounds to Pocket to refund interest and charges that he has never actually paid. In other words, what he's paid so far doesn't include any interest and charges.

So, in these circumstances, I don't think it is unfair or unreasonable for Pounds to Pocket to exercise its right to buy back the outstanding balance on Mr S' account. Equally I can't see that Mr S has lost out as a result of the outstanding balance having been sold in the first place, or if it is now bought back.

I appreciate the information Mr S has provided shows he is in a difficult financial position. And I really do sympathise with him. But I don't think it would be fair and reasonable for me to tell Pounds to Pocket to refund interest and charges Mr S never paid. If I were to do that, I'd effectively be telling it to lend Mr S more money, even though all parties agree Mr S shouldn't have been given this loan in the first place and it's clear he can't afford to pay back any further money. So having carefully thought about everything I've seen, I don't think that Pounds to Pocket should pay Mr S any compensation.

That said, the information Mr S has provided clearly shows that he is struggling financially. I've also already said that he appears to be unlikely to be able to make any further payments. Pounds to Pocket has confirmed that it is buying back the outstanding balance on Mr S' account. And Pounds to Pocket will be aware of its obligation to treat Mr S positively and sympathetically as he is experiencing financial difficulty. As Mr S is struggling financially – to the extent that he has outstanding priority debts – it's clear that he won't be able to repay any remaining outstanding balance on this loan without suffering any further financial hardship. It also looks like no payments have been collected on this loan for some time either.

So while Pounds to Pocket doesn't have to pay Mr S any compensation, as it's clear that he's struggling financially and repaying this loan will cause him financial hardship, I think that Pounds to Pocket should write off any remaining balance once it has deducted the interest and charges from the balance it buys back.

### **putting things right – what I think Pounds to Pocket needs to do**

In order to put things right I'm intending to say that Pounds to Pocket should:

- buy back the outstanding balance from the third party as it has already said it is going to do; and
- remove all of the interest and charges that were added to Mr S' loan from the outstanding balance;
- write off any outstanding balance remaining, on Mr S' loan, after the interest and charges are removed.

### **my provisional decision**

For the reasons I've explained, I'm intending to uphold Mr S' complaint and tell Casheuronet UK LLC (trading as Pounds to Pocket) to pay redress as set out above.

So unless the comments and evidence I get by 25 May changes my mind, that's what I'll tell Pounds to Pocket to do in my final decision.

Jeshen Narayanan  
**ombudsman**



