

## **complaint**

Mr V complains about a total of 8 payday loans CashEuroNet UK LLC (trading as QuickQuid) gave to him. Mr V has said the loans were unaffordable.

## **background**

I issued a provisional decision on this complaint on 25 February 2019. In my provisional decision, I set out a detailed background to this complaint and that decision is attached as an appendix to my final decision.

In summary, I concluded that QuickQuid shouldn't have given Mr V loan 2 and loans 4b to 8 and as I was making a new finding on the complaint, I gave both parties the opportunity to provide any further comments they wanted me to consider.

## **my findings**

I've again 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.

Mr V responded to my provisional decision by saying he had nothing further to add however, QuickQuid provided further comments it wanted me to consider. QuickQuid provided a table with figures on the monthly estimated disposable income (EDI) it used to make its lending decision and attached its 13 page document with its generic lending process post March 2015. In summary, the lender said:

- It didn't think Mr V was dependent on the loans from loan 3 onwards and there were some breaks in the lending history.
- It wasn't fair to look at the total repayment Mr V was required to make on his loans as the loans are similar to giving Mr V an advance on his income.
- As the loans were due to be repaid over 2 – 3 pay periods, this gave Mr V the opportunity to 'regain his financial footing'.
- It couldn't reasonably have found out about Mr V's gambling or that he had other short term loans.

In my provisional decision I explained that from loans 3 onwards, Mr V's loans were lent at a time when the Financial Conduct Authority (FCA) was the regulator for lenders such as QuickQuid. And under the relevant regulation at the time, QuickQuid needed to carry out borrower focused checks to satisfy itself that Mr V could *sustainably* afford to repay the loans.

I wasn't intending on upholding Mr V's complaint about loans 1, 3 and 4a and as neither party has raised an objection to my provisional findings on those loans, I don't see the need to depart from my line of thinking in relation to those loans.

QuickQuid concedes that it should've done more before lending loan 2 and has agreed to refund the interest and charges on that loan.

So the loans that remain in dispute are loans 4b to 8.

QuickQuid has said Mr V wasn't dependent on the loans as there was an 18 day break between loans 5 and 6 and a 95 day break between loans 7 and 8. I've carefully considered these breaks and having done so, I don't consider that they were long enough to break Mr V's lending chain. I say this because for the breaks to make a significant impact on Mr V's situation, I think it needed to be long enough so that it was reasonably likely Mr V's finances had improved. In my opinion, these breaks weren't sufficient to make QuickQuid reasonably believe that Mr V's financial circumstances had sufficiently changed for the better.

It then follows because Mr V was coming back regularly for loans, he was likely to be dependent on these loans and from the time he took loan 3 for the best part of the next two years, he was either borrowing or repaying QuickQuid for the loans.

QuickQuid's response says it wasn't fair to consider the capital repayment alongside the interest charged to determine whether the loan was responsibly lent. However, I disagree with this because Mr V had to make the total repayment from his available income and each repayment had to be assessed as sustainable in Mr V's personal circumstances. So even if I accept QuickQuid's argument that the loans were an advance on his income, the total repayments and not just the interest had an impact on his income. Not taking into account the full repayment would be incorrectly reducing the actual burden Mr V had on his income. Also, QuickQuid's correspondence with Mr V took into account the capital repayments when it structured the loan repayments and so in my opinion, it's fair that the loan repayments are considered in the same way.

I've also considered the new estimated disposable income figures that QuickQuid has provided. And I can see that after Mr V made the repayments on his loans, he was left with little or no income. This wasn't a sustainable position as I already explained in my provisional decision.

In the time of Mr V borrowing from QuickQuid, he was left with such small amounts of disposable income that I think he needed to borrow again to meet the need the repayments left in his finances.

QuickQuid has made an argument about giving Mr V the opportunity to regain his footing with the structure of the loans – being repaid over 2 – 3 periods. But it still hasn't been able to tell me why in Mr V's particular circumstances it believed this would be reasonable. In my provisional decision I said:

*"If QuickQuid felt Mr V needed to take some extra action to meet his loan repayments when they were due, this suggests that it understood that there was a risk that he wouldn't be able repay the loan the way it was structured unless preventative action was taken. It then left this to Mr V to address. It didn't, for example, offer to structure the loan repayments to reflect its expectations of Mr V's money management."*

*QuickQuid seems to be suggesting that for the loans where the final balloon payment exceeded or took up most of the disposable income, Mr V would have saved over the previous months before he needed to make the balloon repayment. But it hasn't specifically said why it thought this would be reasonable in Mr V's specific circumstances."*

I've also gone into quite some detail in my provisional decision about QuickQuid's 13 page document and I don't intend to repeat my findings here. But I essentially explained that the document appeared to be QuickQuid's generic approach to making lending decisions but it wasn't specific to Mr V's complaint and how QuickQuid made its decision to lend to him s. As I explained above, the relevant regulatory guidance expects that lenders carry out borrow focused checks and so the checks should take into account the circumstances of the specific consumer.

In my provisional decision, I reconstructed Mr V's circumstances at the time of the loans using his credit file and bank statements. I also explained that QuickQuid wasn't required to use Mr V's bank statements but it had to show that it took reasonable steps to independently verify what it was told. QuickQuid has said it's unlikely to have seen the gambling transactions from the bank statements and unless the short term loans were in arrears it wouldn't have been flagged up. But I did find Mr V's gambling transactions on his bank statements and the transactions weren't encrypted as QuickQuid says. In any event, had QuickQuid carried out what I consider to be proportionate checks, it's likely to have seen a substantial amount of outgoings and even if it wasn't clear that there gambling transactions or short term loan repayments, I think it would have been reasonable for QuickQuid to query what those outgoings were before for making its lending decision.

While I understand that my findings would be disappointing for QuickQuid, after carefully considering its further comments, I still think it shouldn't have given Mr V loans 2 and loans 4b to 8. And it needs to put things right.

### **putting things right**

For each of those loans (2, 4b to 8), QuickQuid should;

- refund any interest and charges Mr V paid towards these 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 V's credit file in relation to these loans.

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

### **my final decision**

I uphold Mr V's complaint in part and require 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 V to accept or reject my decision before 12 April 2019.

Oyetola Oduola  
**ombudsman**

**appendix****Provisional decision****complaint**

Mr V complains about a number of payday loans CashEuroNet UK LLC (trading as "QuickQuid") gave to him between December 2011 and August 2017. Mr V has said the loans weren't affordable and QuickQuid shouldn't have given them to him.

**background**

Mr V borrowed a total of eight payday loans from QuickQuid. The loan amounts varied from £50 to £300. From the information QuickQuid has provided, the loans were as follows:

loan number	date taken	amount	date repaid
1	07/12/11	£200	31/01/12
2	02/02/12	£300	30/03/12
3	03/02/16	£150	29/02/16
4a	18/08/16	£50	30/09/16
4b	21/08/16	£50	30/09/16
5	13/10/16	£150	30/11/16
6a	18/12/16	£100	28/02/17
6b	11/01/17	£50	28/02/17
7	04/03/17	£200	28/04/17
8	01/08/17	£150	22/01/18

Mr V requested additional borrowing on loans 4 and 6 before he had repaid any of the original principal. When Mr V complained to QuickQuid, it didn't uphold his complaint. It said it didn't think Mr V was dependent on these loans and that it carried out sufficient checks before lending to him.

Unhappy with the response, Mr V referred his complaint to this service where it was looked at by one of our adjudicators. Our adjudicator thought that QuickQuid shouldn't have given Mr V loan 2 and loans 5 to 8 and recommended that Mr V's complaint about those loans should be upheld.

QuickQuid disagreed with the adjudicator's findings and asked for this complaint to be reviewed by an ombudsman. And so this complaint has been passed to me - an ombudsman for a decision.

**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. When loans 1 and 2 were given, these loans were regulated by the Office of Fair trading (OFT) but from loans 3 onwards, these loans were regulated by The Financial Conduct Authority (FCA).

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Under both regulators, QuickQuid was required to lend responsibly. It needed to make checks to see whether Mr V could afford to make each loan repayment before it lent to him. So, in making this decision I've first considered whether QuickQuid did everything it should have when assessing Mr V's credit applications. And, if it didn't do everything it should have done, I've thought about whether any assessment failings resulted in QuickQuid agreeing to lend to him when it should have known that it would be difficult for him to repay.

QuickQuid has said it searched Mr V's credit file before agreeing to lend and although it hasn't provided this service with the full results of its searches, it has provided a summary. So I don't know exactly what its checks showed. Mr V has also provided a copy of his credit file and from what I can see, there were no defaults or county court judgements (CCJs) recorded on Mr V's file.

QuickQuid also said it checked Mr V's income before lending each loan and checked his expenses before agreeing to lend loan 3 onwards. It says from loan 3 onwards, it used the income confidence factor (ICF) to gauge the accuracy of Mr V's declared income and that it compared his declared expenses with the average expense data published by the Office of National Statistics (ONS). It also says it validated the data given to it by Mr V to determine his estimated disposable income and lent on the basis that the total loan repayment was less than 80% of the estimated disposable income.

At the time of loans 1 and 2, Mr V's declared his income to be £1,440. Loan 1 was for £200 which Mr V could repay over two months with a maximum repayment of £259. As this was Mr V's first loan and the maximum repayment was relatively low compared to his declared income, I think QuickQuid's checks far enough for this loan.

Mr V took out loan 2 within two days of repaying loan 1 and he was now requesting £300 – a larger sum compared to his first loan. Again, this was a loan he could make in two repayments with the maximum repayment of £388.50. Given this amount and how quickly Mr V asked for this loan after repaying loan 1, I think QuickQuid should have had some concerns about lending to him without further checks. The repayment amount was a greater proportion of his declared income and QuickQuid should have wanted to know about his normal living costs and regular credit commitments he may have had. So I don't think QuickQuid's checks for this loan went far enough.

Sufficient checks before lending loan 2 are likely to have shown that Mr V couldn't afford the maximum loan repayment of £388.50. Mr V has provided copies of his bank statement and I've used these to reconstruct his circumstances at the time. And from what I can see, his living costs including were over £950 – I've taken into account a reasonable cost for food and transport. And his regular credit commitments were around £80. Bearing in mind his declared income of around £1,440, he wasn't in a position to sustainably repay this loan.

As stated above, from loan 3 onwards, these types of loans were regulated by the Financial Conduct Authority (FCA). The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities. It sets out the rules and guidance specific to consumer credit providers, such as QuickQuid. At the time, these required 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 5.3.1G (2).

CONC 5.3.1G (6) defined 'sustainable' as being able to make repayments without undue difficulty. It went on to explain that this means *"the customer should be able to make repayments."*

I agree with QuickQuid that the checks weren't prescriptive *but* QuickQuid needed to carry out customer focussed checks to satisfy itself that Mr V could afford to sustainably make each loan repayment when it fell due.

QuickQuid in its response to our adjudication said that this service was imposing a 'mandatory obligation' on it to consider disposable income and this was contrary to what CONC 5 provided for. It included a link to the FCA's common misunderstanding questions and answers document. I've considered this carefully and as stated above, CONC 5 refers to the consumer being able to make repayments *"on time, while meeting other reasonable commitments; and without having to borrow to meet the repayments"*. The FCA document QuickQuid referred this service to states that *"It is open to a lender to assess creditworthiness by other means, provided that they can demonstrate if asked that their policies and procedures are effective in mitigating the risks of unaffordable borrowing and treating customers fairly."*

Where a firm lends to the consumer and repaying the loan would leave the consumer with such a little amount that makes it likely the consumer will experience significant adverse circumstances or undue difficulty for example being unable to meet personal or home emergencies as a result. The fact the Mr V had income left over in pounds and pence calculation doesn't on its own, effectively mitigate the risk of the loan being unaffordable. So while I agree that CONC isn't prescriptive, QuickQuid's checks needed to focus on Mr V's ability to repay the loan sustainably.

QuickQuid also sent this service a 13 page documents predominantly detailing its general approach to lending after March 2015. The document isn't specific to Mr V's complaint and doesn't show me its specific assessment for Mr V's loan application

With this document, QuickQuid seems to be saying that because it reviewed its processes and incorporated regulatory changes as it was required to, all loans for all customers granted from 1 March 2015 onwards were granted responsibly.

I don't agree with this argument. It doesn't follow that a firm can't have treated any consumer unfairly simply because it has been authorised and is regulated by the FCA. This assumes that an authorised firm's regulated activities are always implemented in a way that results in fair outcomes for all consumers. This isn't always the case and my statutory role requires me to look what is fair and reasonable in all the circumstances of Mr V's complaint.

Turning to the loans QuickQuid lent to Mr V after March 2015, QuickQuid recorded Mr V's monthly outgoings at the time of loan 3 as £850 and his income was £1,440. Given the length of time that has passed between when Mr V repaid loan 2 and when he borrowed loan 3, I think the checks QuickQuid carried out went far enough. The loan repayment was around £187, which I think was a small amount compared to his declared income. Mr V's declared monthly expenses and income suggest he was in a position to sustainably afford the loan repayment.

From loan 4a onwards, Mr V's recorded income had increased to £1,700 and his expenses were now £1,500 per month. When he took out loan 4a, he was due to repay a maximum of around £62. Again I think the checks QuickQuid carried out before agreeing to lend was 4a. This is because the loan amount was relatively low compared to his income and his previous lending history hadn't raised any concerns – this was his second loan since the break in lending. From the information QuickQuid gathered from Mr V, it could've reasonably believed that Mr V was able to sustainably afford this loan's maximum repayment.

Mr V requested loan 4b just three days after borrowing loan 4a and he hadn't repaid any of the capital on the previous loan. This meant that he was due to repay around £124 for this loan. Although QuickQuid checked Mr V's income and monthly expenses before lending, these checks showed that he would have been left with around £76 after repaying the loan. QuickQuid should have taken steps to react to what its checks showed. I don't think this was a sufficient amount to satisfy QuickQuid that Mr V could sustainably afford to make this loan repayment. This is because the amount Mr V would have been left with after repaying the loan was quite low, it's likely he would have had to borrow or gone through some other form of undue hardship to repay it.

Mr V was in a similar position when he took out loans 5, 6a and 6b as QuickQuid's own checks suggested that Mr V wasn't in a position to sustainably repay the loans he was given. And I think this should have prompted QuickQuid to do more before lending to Mr V. QuickQuid's checks show that Mr V had £200 left after his outgoings had been paid. The maximum repayments due for loans 5, 6a and 6b were around £186, £124 and £184 respectively. After making these repayments, Mr V would have been left with low sums of disposable income after repaying these loans in some cases with less than £20. Here there was a high risk that Mr V would've been unable to sustainably repay these loans.

By loan 7, QuickQuid's checks didn't go far enough and the checks it did carry out showed that Mr V couldn't afford the loans. And had QuickQuid been concerned about his ability to repay and taken steps to get a clearer picture of his circumstances and independently verified some of the information before lending loans 7 and 8, it's likely to have found that Mr V was in fact unable to sustainably repay these loans.

To reconstruct his circumstances at the time I've used Mr V's bank statements and credit report but I'm not saying QuickQuid had to request Mr V's bank statements, it could've requested other documents like payslips. At the time of these loans, Mr V was in at least two repayment plans, he was borrowing from other short term lenders and he was gambling. For loan 7, Mr V's loan repayment was almost £290. His living costs and regular credit commitments were over £1,250 and at the same time he had borrowed around £350 from other short term lenders that remained outstanding. Taking into account his income of around £1,796, Mr V's outgoings exceeded his income. This position wasn't sustainable and from what I've seen Mr V was using short term loans to substitute his income.

Mr V was in a similar position when he took out loan 8 – his income was similar and his living costs and credit commitments were more than £1,000. I can see that Mr V was borrowing from at least three other short term lenders had more than £1,850 outstanding. Mr V continued to spend significant amounts on gambling. I can see that around this time he spent more than £1,000 on gambling.

I'd have expected QuickQuid to follow its own internal process; it has said the loan repayments wouldn't exceed 80% of the estimated disposable income. Although QuickQuid hasn't told this service what the estimated disposable income it found for each of these loans or how it in fact worked out this estimate, on the surface Mr V was unable to afford these loans. And apart from loans 4b and 6a, the maximum repayment of the loans exceeded 80% of Mr V's known disposable income. And whether or not QuickQuid followed its internal process, these loans were still unaffordable for Mr V.

Loan 7 exceeded Mr V's disposable income of £200 as the maximum repayment was £290. In QuickQuid's 13 page document, it says that *"where the final balloon payment of the loan exceeds the validated estimated disposable income for that last month, the customer must read and check a box that advises them of the fact that they may need to save income from the previous months in order to have sufficient funds to pay the final payment."*

The declaration states:

*"By checking this box you acknowledge you can afford to make a repayment of [£X] on [date] and [£Y] on [date]. You acknowledge that you understand your final repayment is greater than you[r] normal disposable income and you may need to save money over the life of the loan in order to make the final repayment out of disposable income."*

I don't know the context within which this statement appeared, or how prominent it was. But irrespective of this, advising Mr V that he may need to take some action in order to be able to make a repayment that is more than the money he would usually have available to him does not take away QuickQuid's own responsibility to assess whether or not the loan was going to be sustainably affordable for Mr V.

CONC 5.2.1(2) (b) R stated that a creditworthiness assessment needed to *consider "the ability of the customer to make repayments as they fall due over the life of the credit agreement..."*

If QuickQuid felt Mr V needed to take some extra action to meet his loan repayments when they were due, this suggests that it understood that there *was* a risk that he wouldn't be able repay the loan the way it was structured unless preventative action was taken. It then left this to Mr V to address. It didn't, for example, offer to structure the loan repayments to reflect its expectations of Mr V's money management.

QuickQuid seems to be suggesting that for the loans where the final balloon payment exceeded or took up most of the disposable income, Mr V would have saved over the previous months before he needed to make the balloon repayment. But it hasn't specifically said why it thought this would be reasonable in Mr V's specific circumstances.

Given what QuickQuid knew about Mr V and what it ought to have known, as a responsible lender, it shouldn't have lent him loans 2 and loans 4b to 8.



**proposed way of putting things right**

As I don't think QuickQuid should have given Mr V loans 2, 4b to 8. So for each of those loans, QuickQuid should;

- refund any interest and charges Mr V paid towards these 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 V's credit file in relation to these loans.

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