complaint

Mr W complains CashEuroNet UK LLC, trading as QuickQuid, gave him loans he couldn't afford to repay.

background

Our adjudicator recommended the complaint be upheld in part. QuickQuid disagreed and so the case was passed to me for a decision.

I issued a provisional decision on 19 April 2018. I've attached it here and it forms part of my final decision. I explained why I thought the complaint should be upheld in part, but for different reasons and with a different approach to putting things right.

Mr W accepted the provisional decision. QuickQuid disagreed with it saying (in summary):

- It isn't accurate to say Mr W used the FlexCredit account as if it were a payday loan. The design of the running-account credit facility is comparable to a credit card.
- Leisure (such as gambling) is not a priority outgoing, as the contractual agreement with QuickQuid was - and Mr W is "wholly culpable" for what he does with the money he earns and borrows.
- It changed the terms and conditions in June 2014 requiring repayments of 10% of each draw down plus interest. This action was taken with the consumer and their ability to sustainably repay this longer-term credit agreement in mind. This change was a clear indication that the business continually assessed agreements and considered affordability in comparison with income and expenditure.

my findings

I've once again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've taken into account the law, good industry practice and any relevant regulations at the time.

I've considered the points raised by QuickQuid in response to my provisional decision. I've also reconsidered everyone's original submissions. Having done so, I've not been persuaded to change my provisional findings.

I don't agree with QuickQuid that the FlexCredit account is comparable to a credit card. The Flexcredit agreement says:

"Credit of this type is designed to provide you with the option to drawdown credit up to your credit limit and repay it over a maximum of 10 months (as determined by our minimum repayment requirements)."

It goes on to say:

"Please note, this type of lending is a very expensive form of credit, and is not suitable for long term or ***regular*** *borrowing but for short-medium term borrowing needs"* (bold emphasis mine).

So I don't think the FlexCredit account can reasonably be treated as if it were supposed to be used for regular drawdowns (as a credit card could be used for payments). I think the agreement makes it clear that it would be expensive and shouldn't be used over the long term. I therefore continue to think the way in which Mr W used the account should've caused QuickQuid some concern, and should've caused it to look more closely at his circumstances.

Despite the agreement stating the type of lending wasn't suitable for regular borrowing, Mr W was permitted to make 10 drawdowns totalling over £4,200. Each drawdown was a new request for credit and was subject to approval by QuickQuid.

The relevant regulations at the time the account was opened said creditors should, *"monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty…"*

I think if QuickQuid had properly monitored the facility, it would've noticed that Mr W was borrowing and repaying almost every month without any real break for much of the time he had the account. This wasn't the purpose of the facility.

So I continue to think that QuickQuid should've asked Mr W for information to help it verify his income and expenditure when he asked for the fourth drawdown on 28 February 2014, for the same reasons I gave in my provisional decision.

I've also considered what QuickQuid has said about gambling and Mr W's borrowing and expenditure. I don't think whether or not Mr W is responsible for the way he spends what he borrowed or earns is the key point here. I've taken Mr W's gambling spend into account because had a responsible lender undertaken a proportionate assessment of his ability to repay the credit in a sustainable way, it would've seen that gambling transactions were being made regularly and were taking up a significant part of Mr W's income. And this was likely to continue. These types of transactions may in themselves potentially lead a responsible lender to the conclusion that it would not be appropriate to continue to provide credit. But that aside, as this type of spending – the regularity and amounts involved - was something that a full review would have revealed, it is something a responsible lender ought to have taken into account.

I said in my provisional decision that a proportionate assessment of affordability (from February onwards) would've shown Mr W was spending more than he was earning – so it wouldn't be responsible for QuickQuid to continue lending. Nothing QuickQuid said in response to my provisional decision has changed my mind on this.

Finally, I've noted that QuickQuid has referred to the change in its terms and conditions. But this appears to be a general change, rather than something it did in response to Mr W's circumstances. And in any event, the change came after the point at which I think QuickQuid should've realised the lending was not affordable. So this point doesn't change my provisional findings.

what QuickQuid needs to do to put things right

- refund any interest and fees Mr W paid from 28 February 2014 onwards
- add interest to the above at 8% simple per year from when the fees and interest were paid until the date of settlement†
- remove any adverse information reported to credit reference agencies after 28 February 2014

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

my final decision

I uphold this complaint in part. CashEuroNet UK LLC must put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 June 2018.

Matthew Bradford
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr W complains CashEuroNet UK LLC, trading as QuickQuid, gave him loans he couldn't afford to repay.

background

Mr W was given two loans by QuickQuid. The first was a payday loan for £200, with a term of nine days, which started on 20 November 2013. Mr W repaid the loan on time with a payment of £250.

The second loan was a FlexCredit account – an open ended credit account that allowed him to borrow up to an agreed credit limit and repay his borrowing over around ten months.
Mr W's credit limit was £600. The FlexCredit contract says if Mr W drew down the £600 limit on 3 December 2013 and made ten repayments, starting on 20 December 2013, he'd have to repay £133.65 in December. The highest of the ten payments was £245.64 and would be due on 31 January 2014.

An adjudicator looked at Mr W's complaint and didn't think QuickQuid was wrong to give Mr W the payday loan. She thought QuickQuid had carried out proportionate checks before lending to Mr W.

But our adjudicator didn't think QuickQuid had carried out proportionate checks before giving Mr W the FlexCredit facility. And she thought if it had carried out better checks, it would've likely found Mr W couldn't afford the repayments.

QuickQuid didn't agree with the adjudicator – so the case has come to me 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 regulations and good industry practice at the time.

the payday loan

Having looked at everything, I don't think QuickQuid was wrong to give Mr W the payday loan. QuickQuid has recorded Mr W's income as £1,500 – meaning the repayment of £250 left him with £1,250 to put towards his other expenses. I haven't seen detailed results of the credit reference check QuickQuid carried out. But based on what I have seen, I don't think QuickQuid was wrong to lend Mr W the amount it did, based on Mr W's income alone.

I don't therefore intend to uphold the complaint about this loan.

the opening of the FlexCredit facility

The information QuickQuid had about Mr W's income didn't change when he applied for the FlexCredit facility. But I don't think it was reasonable for QuickQuid to rely on information about Mr W's income alone. I think the long-term nature of the agreement means QuickQuid should've gathered more details about Mr W's usual monthly expenditure, so that it could be satisfied the repayments would be sustainable over a longer period of time. I think a proportionate affordability assessment would've therefore included asking Mr W for information about his usual monthly outgoings, including his typical living costs and regular credit commitments.

If QuickQuid had asked Mr W for these details, I think it's likely it would've seen that Mr W had regular credit commitments of around £700 a month. I also agree with the adjudicator that a figure of £200 a month for normal living costs seems reasonable, based on the bank statements.

I should say at this point I'm aware QuickQuid isn't happy about the level of detail our adjudicator provided about Mr W's regular monthly commitments. It asked for a more detailed breakdown of the figure provided.

Mr W provided copies of his bank statements and from these I'm satisfied I've been able to form a reasonably accurate picture of his income and expenditure. And I think it's perfectly reasonable to provide a summary of this information, particularly where a figure specifically for monthly credit commitments has been given.

So based on what I've seen so far, I think proportionate checks would've shown Mr W to have disposable income of around £600 a month. On this basis, I think the FlexCredit facility would've appeared affordable to QuickQuid at the time it was opened.

how the FlexCredit account was operated

I've also looked at the way Mr W's account was operated after it opened. Under the regulator's (then, the Office of Fair Trading) guidance, creditors should've monitored borrowers' repayment records during the course of the agreement.

Mr W made his first draw down of £600 on 3 December 2013. Ten days later, on 13 December, Quick Quid sent Mr W an email, telling him a payment of £673.65 would be due on 20 December. So it seems like the entire principal and interest was due for repayment within 17 days.

Quick Quid has told us that, *"…one of the options that the consumer receives with their Flex Credit loan when they request a new draw down is the ability to repay their loan in as few as one repayment or up to ten repayments. It appears that [Mr W] requested to repay their loan in one period versus two through ten…"*

I take this to mean the FlexCredit facility allowed Mr W to make drawdowns and select a repayment option of as little as one statement period – in the case of the first drawdown, this was just 17 days.

I think if Mr W was permitted to use his account in this way, the nature of the proportionate affordability checks should've changed. If Mr W was able to drawdown the whole amount and select a repayment period of about a month – similar to an ordinary payday loan – then Quick Quid should've checked if that was affordable.

Mr W drew down £600 on 31 December 2013 and Quick Quid requested a payment of £706.72 on 31 January 2014. The next £600 drawn down was on 31 January 2014 and Quick Quid requested a payment of £727.66 on 28 February 2014. This pattern continued in March, April and May 2014.

I've thought about when Quick Quid should've realised Mr W was likely to keep using the facility in this way. I think it's reasonable to say a pattern had emerged by the time Mr W made the third draw down request.

So from the fourth draw down (made on 28 February) onwards, I think Quick Quid ought to have checked if lending £600 (plus interest), with the repayment due in one period, was affordable to Mr W.

The repayment was due on 31 March 2014 and was for about £730. I've thought about what a proportionate check would look like, bearing in mind this repayment amount.

The repayment due was a little under half of Mr W's declared income – and it was his fourth repayment along these lines within four months. To check whether a repayment was affordable in these circumstances, I think it would've been proportionate for Quick Quid to get a comprehensive picture of Mr W's financial situation – including asking Mr W to provide verifiable details of his income and expenditure (for example, bank statements and payslips).

I've looked at Mr W's bank statements for January 2014, to help me understand what proportionate checks are likely to have shown. In this month, it looks like Mr W received pay of around £2,500. Mr W's regular outgoings included approximately: £2,000 of gambling expenditure, £1,000 to other payday lenders and £750 to regular creditors. Mr W also withdrew around £200 in cash. So in January Mr W spent around £4,000. Mr W also borrowed about £2,400 from other short-term lenders.

So Mr W's spending for January showed he was spending around £1,500 a month more than he was earning. And his bank statements suggest he was using short-term loans not to meet a short-term cash flow problem but instead to subsidise an unsustainable level of regular spending. This included spending around 80% of his income on gambling in the month I've looked at above.

Based on the above, I don't think Quick Quid should've allowed Mr W to make this draw down on the basis he requested. I also note that the information it's likely Quick Quid would've seen suggests Mr W had no capacity to take on new credit on the basis of any of the repayment options offered by the FlexCredit facility – including the ten month repayment period.

I've looked at Mr W's bank statements for the rest of the period of lending and I'm satisfied the situation remained broadly the same. I've seen, for example, that between March and December 2014, Mr W was typically spending his entire monthly salary on repaying existing regular and short-term creditors (spending around £1,000-£1,700), as well as unsustainable levels of regular spending (of £850-£1,400). So I'm satisfied that Mr W wasn't in a position to sustainably repay the drawdowns he continued to make from February 2014 until the account closed in January 2015.

I also think I should highlight that although the way Mr W repaid his FlexCredit did eventually change, this appears to coincide with a change made by Quick Quid - rather than something Mr W chose to do. I can see that on 26 June 2014 Quick Quid wrote to Mr W advising that the terms and conditions of his account would change and he'd be required to make repayments of 10% of each draw down made plus interest. It seems like Mr W's payments from July 2014 onwards reflect this change. Whilst I've noted this change, I don't think it means the payments became more affordable during this period. As I've explained above, I think proportionate checks would've shown Quick Quid that Mr W's existing commitments indicate he didn't have the capacity to keep drawing down new principal amounts from February 2014 onwards.

Finally, I think it's also worth noting that by allowing Mr W to keep borrowing large amounts each month, he paid a lot more in interest than is assumed in the contract. The contract says that if Mr W drew down the maximum £600 and repaid in ten instalments he'd pay £785 in interest and charges. But because of the way Mr M was permitted to operate it – similarly to a series of monthly pay day loans - he paid around £1,700 in interest. So the overall impact of allowing Mr W to operate the account in this way is that the FlexCredit became a more expensive product than envisaged at the outset. This reinforces my view that Quick Quid ought to have carried out more comprehensive affordability checks when it became aware of how Mr W was using the account, as I've described above.

provisional conclusions

Based on everything I've seen so far, I don't think Quick Quid was wrong when it gave Mr W the payday loan – and I don't think proportionate checks would've shown Quick Quid the FlexCredit account would be unaffordable at the outset.

But I do think the way Quick Quid permitted Mr W to use the FlexCredit – making repeated drawdowns with a one period repayment option – should've at some point caused Quick Quid to realise that it needed to look again at Mr W's circumstances. In other words, proportionate checks should've taken into account how Mr W *actually* used the account – because this was quite different to what was suggested in the contract.

I think Quick Quid should've realised how Mr W was likely to continue using the account after he made the third draw down. I therefore think a proportionate check at this stage should've taken into account the amount Mr W would have to repay within the repayment window he requested.

If Quick Quid had carried out proportionate checks in the way I've described, I think it's likely it would've seen it wasn't appropriate to continue lending to him after the third draw down – for the reasons I've given above.

what the business needs to do to put things right

I've provisionally decided that Quick Quid shouldn't have allowed Mr W to make the fourth or any subsequent draw downs on his FlexCredit account. So I intend to say that Quick Quid should:

- refund any interest and charges Mr W paid from the date of the fourth draw down onwards – that's 28 February 2014
- add interest to the above at 8% simple per year from when the fees and interest were paid until the date of settlement
- remove any adverse information reported to credit reference agencies after 28 February 2014

my provisional decision

I plan to uphold this complaint in part and to tell CashEuroNet UK LLC to put things right by doing what I've set out above.

Matthew Bradford
ombudsman