complaint

Mr S has complained about a series of payday loans he took out with WDFC UK Limited (trading as “Wonga”.com).

He’s said Wonga failed to correctly identify that he’d become dependent on payday loans and had become stuck in a cycle of borrowing to repay previous loans. He’s also said that Wonga failed to identify that its short term lending didn’t help him satisfy his long term financial needs. And finally Mr S has said that Wonga failed to provide a duty of care when continuing to provide additional finance to an existing customer.

background

Mr S started borrowing from Wonga in January 2012. In total, he went on to take a total of 79 loans. On 23 occasions, Mr S increased the loan amount after the initial funds had been provided. These additional advances, which are commonly known as “top-ups”, meant that Wonga advanced credit to Mr S on 102 separate occasions.

On the face of things, there was a 10-month gap in Mr S’ borrowing from Wonga which began in January 2014 – after Wonga had already provided 49 loans. Wonga started lending to Mr S again in November 2014. There was then another 8 month break in lending from February 2016 to October 2016 – after Mr S had been given 27 loans in what I imagine Wonga would describe as the ‘second chain’ and Mr S was given the last of his 79 loans in April 2017.

For the sake of clarity, I’ve set out Mr S’ overall loan history (including the instances where Wonga declined Mr S’ loan applications) in a table (appendix 1) at the end of this provisional decision.

When it looked at Mr S’ complaint, Wonga didn’t agree that it lent irresponsibly to Mr S. It said that the checks it carried out, amongst other things, included:

- Mr S’ credit score at the time of application;
- Mr S’ employment status;
- whether Mr S was currently insolvent;
- whether Mr S had any outstanding loans with Wonga;
- whether any historical accounts had been subject to a “Do not Relend” status;
- whether Mr S had a previous loan which was written off due to outstanding arrears.

Wonga said that it considered all of this information before approving Mr S’ loans. And that it didn’t think it had done anything wrong on any occasion apart from when it gave Mr S loan 49. It also said that Mr S had already been redressed for anything that may have gone wrong in relation to loan 49.

So Wonga didn’t uphold Mr S’ complaint.

my provisional decision

On 16 July 2018, I issued a provisional decision setting out my thinking on Mr S’ complaint. I won’t copy that decision in full, but I will provide a summary of my findings.

Firstly, I summarised the regulatory framework, relevant law, relevant publications, what I consider to be good industry practice, and the content of Wonga's own website at the time (this is copied in full in appendix 2 and I ask Mr S and Wonga to read this again in order to give proper context to this final decision).

In light of that review, I explained that there were three overarching questions I needed to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These were:

1. Did Wonga, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay in a sustainable way?

    a. If not, would those checks have shown that Mr S would've been able to do so?

2. Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr S' indebtedness in a way that was unsustainable or otherwise harmful?

3. Did Wonga act unfairly or unreasonably in some other way?

I also explained that I had identified that Mr S' borrowing history was made up of two distinct chains of loans, or periods of borrowing. The first was from loan 1 to loan 76 (October 2013 to April 2016). Following the six-month gap in lending, the next chain ran from loan 77 to loan 79 (October 2016 to April 2017).

I noted that, throughout its lending relationship with Mr S, Wonga had re-lent to him on the same day (or soon after) a previous loan had been settled. I questioned whether this was compliant with CONC rule 6.7.23R which says that lenders "must not refinance high-cost, short-term credit on more than two occasions" – other than by exercising forbearance. Because the definition of refinancing in the CONC rules includes the replacement of one loan agreement with another, I wasn't satisfied that Wonga had complied with this rule when granting Mr S at least some of his loans.

When considering the first overarching question – whether Wonga, each time it lent, completed reasonable and proportionate checks to satisfy itself that Mr S would be able to repay in a sustainable way – I explained that a lender had to think more widely than simply whether it would get its money back from a borrower.

Lenders also had to carry out a reasonable assessment of whether the borrower could afford to meet the repayments in a sustainable manner. This is sometimes referred to or called an "affordability assessment" or "affordability check". Checks should be both "borrower-focused" and "proportionate".

I also explained that what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I provisionally concluded that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income); and

- the *greater* the number and frequency of loans, and the *longer* the period of time during which a customer has been given loans (reflecting the risk that ongoing use of these loans may signal that the borrowing had become, or was becoming, unsustainable).

I explained that there may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans.

On this basis, I concluded that Wonga's checks before giving Mr S loans 1, 2 and 3 were proportionate. I said this because at the outset of its lending relationship with Mr S – and given that he was seeking relatively small sums of £62, £175 and then £49 – even a relatively light check could be proportionate.

Wonga had taken information about Mr S' income, which didn't appear to be obviously insufficient to repay the loan. Separately, I also explained that, even though Wonga had told me that it had completed a credit check on Mr S, it hadn't adequately explained what those checks showed and so I felt unable to place much, if any, weight on the credit check.

For loans 4 to 49, Wonga was unable to show that it had done anything differently to what it did for loans 1, 2 and 3 before approving the loans. I noted that, whilst the checks for loans 1, 2 and 3 were proportionate, continuing to do the same level of checks on subsequent loans was not. It would have been fair and reasonable for Wonga to have done more.

I said this because Mr S' third loan with Wonga came less than a month after settling his second one. And it was less than two months since taking his first one. In these circumstances, I thought Wonga ought to have done more to ascertain whether Mr S was able to repay his borrowing from his disposable income. So I said it was fair and reasonable to expect Wonga to have undertaken further checks to verify the information provided to make sure that its lending was affordable and sustainable for Mr S.

For example, rather than simply continuing to rely on what it had been told by Mr S (given his failure to repay previous loans without further borrowing) I pointed out that Wonga could have sought further evidence and information about his outgoings. Or it might have asked Mr S to provide proof that his income was what he'd declared.

There was no evidence that Wonga did any of this – or any other additional assessment of affordability – from loans 4 to 49. So I didn't think Wonga completed reasonable and proportionate affordability checks on loans 4 to 49.

From loan 50 onwards, it appeared to be the case that Wonga started doing less in terms of I could only see that Wonga had asked Mr S for his income (either £1,685.00 per month or

£20,220.00 annually it wasn't clear which measure was used). And it appeared to have stopped doing credit checks at this point.

But Wonga would have also known at this stage that Mr S had a previous history of persistent use of high-cost short-term credit. And I noted that Wonga's record of its previous dealing with its customer was – among other things – a source of information to consider. I was also especially concerned that Wonga gave Mr S loan 50 a mere eleven days after it had written off a balance that had been outstanding on loan 49 for ten months, as part of a voluntary remediation scheme Wonga had agreed with the regulator the Financial Conduct Authority ("FCA").

By loan 50 Mr S had being using many short-term loans for approaching two years. And I concluded that it would've been fair, reasonable and proportionate for Wonga to have done even more detailed and thorough checks on Mr S' subsequent loan applications – particularly in light of Mr S' track record, which suggests he had previously become reliant on consecutive loans – rather than the less detailed checks it appeared to be carrying out.

As an example, I suggested that Wonga might have sought further evidence of Mr S' income, evidence of his expenditure or taken steps to see whether there was any sign of other problem debt – especially as he had nine declined applications between loans 51 and 52 (including four within the same day) to see whether the loans were affordable. And by doing this Wonga would have been able to get a better understanding of why Mr S kept having to come back for further loans so frequently. But there was no evidence for loans 50 to 64 that Wonga did anything other than continue to log Mr S' income.

It looked like Wonga did start asking Mr S more questions (specifically about his expenditure) from loan 65. But this extra level of detail in the check came too late in the loan chain and did not, I explained, go far enough in the circumstances.

I noted that for the twelve times that it gathered information about Mr S' expenditure from loan 65 to 76 (and the 16 associated top-ups), the information recorded was exactly the same. In my view, to have accepted these figures – particularly knowing Mr S' previous borrowing history – and to have used them to assess whether these loans and top-ups were affordable for Mr S wasn't fair and reasonable. I thought it was more likely than not that using these figures would have resulted in an affordability assessment which gave an obviously over-optimistic view of Mr S' ability to repay his loans.

I explained that – in line with the relevant rules in CONC 5.3.1G and 5.3.7R – Wonga ought fairly and reasonably to have queried these numbers before accepting an application for credit. These were 12 further loan requests for a customer who had already taken over sixty previous loans.

It seemed unlikely to me that a customer who was claiming to have a disposable income of approaching £900 a month would find themselves repeatedly seeking this level of regular, short-term credit. So Wonga should've sought more assurances about Mr S' finances.

And I also concluded that Wonga failed to carry out reasonable and proportionate affordability checks before agreeing to give Mr S loans 50 to 76 (including any top ups).

I noted that Loan 77 was taken over six months after Mr S had repaid loan 76. So I thought that this could be considered to be a "new chain" of lending. And for loan 76 Wonga logged income details – subject to my concerns set out about whether a gross annual or net monthly salary was recorded – and asked Mr S for details of his expenditure too.

It looked like Mr S declared that his expenditure was significantly more than what he'd declared for loans 65 to 76 (and the associated top-ups) too. And it also looked like Wonga repeated the same checks for loans 78 and 79 too. These checks indicated that Mr S declared a less optimistic figure in relation to his disposable income.

I was also mindful that the amount Mr S asked for was significantly lower than what he'd borrowed for 76 too. Mr S then applied for loan 78 some two months after he'd repaid loan 77. The amount borrowed for loan 78 was also lower than that borrowed for loan 77. And loan 78 was taken in the run-up to Christmas - so at a time where someone might take short-term borrowing to cover a temporary shortfall in their finances. Mr S then applied for loan 79 almost four months after he'd repaid loan 78. And again this was also for a lower amount than had been previously borrowed – albeit only slightly lower.

Mr S declaring a monthly disposable income of around, at least, £500 together with the gaps in borrowing and decreasing amounts sought led me to think that it wasn't unreasonable for Wonga to have relied on the information provided for loans 77 to 79, or for it not to carry out further enquiries before giving these loans. And overall I didn't think that Wonga's check was unreasonable and/or disproportionate bearing in mind all of the circumstances. As a result I didn't think Wonga acted unfairly in providing Mr S loans 77 to 79.

I then went on to consider whether reasonable and proportionate checks, for the loans where these hadn't been carried out, would have indicated to Wonga that Mr S would have been unable to sustainably repay the loan(s). In doing this I set out that I had to form some judgments about what a reasonable and proportionate check would've involved.

I thought proportionate checks for loan 4 would've involved finding out – for example – about Mr S' normal monthly living costs and regular financial commitments. From loan 5 onwards, given the number of loans and the regularity of Mr S' borrowing, I thought that Wonga's checks needed to provide it with an even more thorough understanding of Mr S' financial position.

I suggested that Wonga might have asked for information and evidence about all of Mr S' regular outgoings, including other debts. Using this information, I believed Wonga would've been better able to assess whether Mr S was slipping into a longer-term reliance or dependency on these loans.

As proportionate checks weren't carried out for these loans, I couldn't say for sure what they would've shown. Mr S had provided us with evidence of his financial circumstances at the time he applied for these loans. And I accepted that different checks might show different things – just because something shows up in the information Mr S has provided, it didn't mean it would've shown up in any checks Wonga might've carried out. But in the absence of anything else from Wonga showing what information it gathered (and how it interpreted it), I believed that it was fair and reasonable to place considerable weight on it as an indication of what Mr S' financial circumstances were likely to have been at the time.

Having considered the information Mr S provided, I thought that it was more likely than not, if Wonga had gathered adequate information before granting loans 4 and 5, that it would've seen that he could *just about* afford to repay them. His bank statements suggested that he could make the payments – with not much left spare – whilst also meeting his normal commitments.

However, for loans 6 and 7 I thought that it was more likely than not Wonga would've seen Mr S was:

- paid weekly rather than monthly as the "Account Review Affordability" information provided appears to suggest Wonga thought was the case;
- committing a fairly chunky proportion of his weekly wage to the repayment of loans 6 and 7;
- already trying to manage a significant amount of arrears that had built up on a loan he'd fallen behind on;
- also regularly borrowing from another short-term loan provider;
- making regular payments to a number of credit cards and catalogue shopping accounts, meaning that he was carrying debts on these accounts;
- incurring returned transaction and unpaid transaction fees due to having insufficient funds in his account;

On this basis, I thought that reasonable and proportionate checks would've shown Wonga that Mr S had already been feeling the strain financially and that his application for loans 6 and 7 was (at least in part) driven by Mr S' need to manage his existing debt. And I don't think Wonga would've provided loans 6 and 7 in these circumstances.

So I intended to uphold Mr S' complaint about loans six and seven because I don't think that Wonga carried out reasonable and proportionate checks and such checks would've more likely than not shown Wonga that Mr S' couldn't sustainably repay these loans – in other words I thought that reasonable and proportionate checks would more likely than not have shown these loans were unaffordable for him.

I didn't recreate individual, proportionate affordability checks for loans 8-76 because I didn't think that was necessary to do so.

This was because, in addition to assessing the affordability of each *individual* loan provided to Mr S by Wonga, I also thought that was fair and reasonable to look at the *overall pattern* of lending. In other words, I also had to consider the second of the three overarching questions I set out on page 2 of this decision. In considering this, I thought about the short-term purpose of this type of credit and the relevant rules, guidance and good industry practice at the time – which is summarised in appendix 2 at the end of this decision.

It seemed to me that there may come a point at which a responsible lender would reasonably question whether continuing to offer further short-term loans to a customer who appeared to be persistently reliant upon them was unsustainable or otherwise harmful. So I considered whether the overall pattern of lending could be shown to have increased Mr S' indebtedness in a way that was unsustainable or harmful in some other way.

I had already concluded that reasonable and proportionate affordability checks weren't completed from loan 4 onwards. And that based on the evidence on file, I couldn't say that proportionate checks would've shown loans 4 and 5 to have been *individually* unaffordable. But I also thought such checks would've shown that loans 6 and 7 were *individually* unaffordable.

I also explained that a more in depth assessment of Mr S' circumstances, showed that he was paid weekly rather than monthly – in the way that Wonga's information appeared to suggested that it thought. Equally even though the number of loans had been becoming quite high, these loans were taken over shorter terms. So the period of time that it took Mr S to reach his seventh loan (around three and a half months) was still relatively short.

So even though I thought that there were some warning signs that Wonga ought to have been alert to, I didn't think I could say that the pattern of lending had, in itself, become demonstrably unsustainable or harmful – such that I could reasonably say that the facts spoke for themselves – before loan 8.

Looking beyond loan 8, though, I thought that there was a clear mismatch between the intended purpose of this type of credit and the way in which Wonga has allowed it to be used. These loans were meant to be a short-term solution to temporary cash flow problems. Yet Wonga persistently and repeatedly provided consecutive loans to Mr S over an extended period of time – a period encompassing well over five years.

From this perspective, and having carefully considered everything, I thought the point at which this chain of lending became unsustainable and harmful was from loan 8. I thought that it was the case that there was an emerging pattern, between loans 1 and 7, of Mr S taking out new loans shortly after repaying previous ones. And I thought that, by loan 8 Wonga ought fairly and reasonably to have regarded that pattern as established.

Furthermore when Mr S applied for loans 8 and 9 he was seeking substantially more than what he'd previously borrowed. Those loans were taken over very short terms and the total payments – amount borrowed plus interest – represented a high proportion of what was Mr S' weekly income. A loan to income ratio which I understand Wonga, itself, accepted was unsustainable. And, in my view, Mr S was never able to recover and get himself on an even financial keel from this point onwards

While Wonga may have been received payments from Mr S after this, he wasn't truly settling his loans over the life of the credit agreements. Instead, what Mr S was doing was borrowing further funds from Wonga in order to cover the gap in his finances left by the repayment of the previous loan. And when he applied for reduced amounts (presumably because he was trying to get out of borrowing continually) – such as for loans 11, 13, 15 and 16, 23 and 30 – he had to borrow an increased amount shortly after.

Mr S' borrowing history between his first and seventh loan shows that the capital owing to Wonga hadn't reduced either. Loan 7 was for nearly three times as much as loan one. And while there was one loan that was for a lower amount all of the others were for more.

After loan 8, the amounts Mr S borrowed continued to fluctuate. But there was a clear upward trajectory in the amount that was being lent by Wonga.

Looking at the loans in this chain (loans 8 – 76), I saw that:

- only 5 were for less than his starting amount of £62 – and on each occasion Mr S then went on to borrow substantially more (on two of these occasions on the same day)

- 64 were for more than £62 and 20 were for £250 or more (in other words, more than four times Mr S' original starting amount)

- there were times when Mr S was borrowing more than ten times what he initially borrowed and as much as £828

Over the approaching three and a half year period of this loan chain, Mr S borrowed an average amount of £217. For access to this money, he paid approaching £1800 in interest, fees and charges.

I thought that, during those periods, Mr S was, in effect, merely servicing his debt to Wonga – in other words, he was paying interest without making inroads into the outstanding capital. And although the amounts fluctuated, there was a clear upward trend in what he was borrowing. In my view, this should've fairly and reasonably shown Wonga that these loans were unsustainable. Mr S was proving unable to clear his indebtedness within a reasonable period of time and in the case of loan 49 he was unable to clear his indebtedness at all.

Yet Wonga continued to provide credit repeatedly to Mr S over this chain of lending. And I was mindful of the fact that Wonga did this even though its own website said it would only lend Mr S (and other borrowers such as him) money for up to a month. And it said it was different from other lenders because it wouldn't keep rolling his balance endlessly.

In these circumstances, I couldn't see how it was fair and reasonable for Wonga to have given Mr S all of these loans in the way that it did. I accepted that none of Mr S' loans had their terms individually extended. But the *effect* of allowing Mr S to take such a long sequence of loans was that he found himself paying high interest charges over an extended period for loans that were only intended to be for short-term use.

I was also concerned that Wonga even lent to Mr S even when he clearly hadn't repaid what he owed on a previous loan and so might've been experiencing financial difficulty. Mr S had a balance on loan 49 which had been outstanding for around 10 months. And this balance was only cleared because Wonga cleared it as part of the remediation scheme it agreed with the FCA. Yet Wonga gave Mr S a further loan only 11 days after it had written off the balance on loan 49.

I also thought that there appeared to be very little appreciation of Mr S' financial position or method behind Wonga's lending decisions too. For example, Wonga declined loan applications of £250, £198 and £208 on 4 June 2015 and 12 June 2015. Yet it then granted Mr S a loan of £403 – so significantly more than what he'd previously been declined for – less than two months later on 31 July 2015.

The information provided suggested that this loan was granted on the basis of similar information being provided. Bearing in mind the short period between applications, I couldn't see what Wonga could've fairly and reasonably believed had changed in Mr S' circumstances, which meant it considered it reasonable to lend Mr S £403 a matter of weeks after it'd declined loan applications for significantly lower amounts and it was being provided with the same information.

So given all of Wonga's obligations, the short-term purpose of this kind of high-cost credit, and what I thought was fair and reasonable taking into account the circumstances and everything else I covered, I thought Wonga acted unfairly in providing Mr S with loans 8 to 76.

I also concluded that Mr S lost out as a result in three key ways.

- Firstly, Mr S' indebtedness to Wonga was unfairly prolonged because he was allowed to take expensive credit – intended for short-term use only – over an extended period of time. The loans charged high rates of interest and he repaid many multiples of the amount he typically had access to in interest, fees and charges. I concluded that this had an adverse effect on Mr S' financial situation because he was effectively trapped in an unfair debt cycle, churning one loan into another, where he had to pay high interest rates for a prolonged period.

- Secondly, Wonga's decision to continually re-lend to Mr S – even though he'd proved unable to properly repay his debts without needing further loans – meant that information appeared on his credit file which perpetuated his difficult financial circumstances. I concluded that the sheer number of loans and top-ups Wonga provided was likely to have implications for his ability to access mainstream credit (at lower rates) in future.

I therefore set out a method of putting things right for Mr S which I believed addressed these failings and Mr S' resulting loss.

Wonga's response to my provisional decision

In response to my provisional decision, Wonga provided a response which aimed to explain:

- how Wonga thought about the law and regulation in designing its affordability checks;

- how Wonga approaches affordability checks and summarised the checks which it applied during the period Mr S was borrowing from Wonga;

- Wonga's view and approach to repeat borrowing; and

- consider this context in relation to the facts of Mr S' case.

In doing the above Wonga:

- argues that, prior to FCA regulation of the industry, it was reasonable for a lender to consider Article 8 of the Consumer Credit Directive 2008 (CCD) and s.55B(3) of the Consumer Credit Act 1974, rather than the requirements set out in the OFT's *Irresponsible Lending Guidance;*

- says, accordingly, that it was "left open" for lenders themselves to determine an appropriate level of checks;

- conceded that "a well-advised lender would have considered the OFT's guidance". But also maintains that "Wonga complied with the strict letter of the law in this period" (i.e. prior to April 2014). That said it accepts that customer outcomes were on occasion not satisfactory because its creditworthiness and affordability checks were applied too lightly;

- says its overarching test when considering pre-FCA regulation lending decisions, isn't whether it complied with the law, but whether the lending decision was fair and reasonable in all the circumstances;

- believes that, as an online digital company whose products are algorithm-driven and sold online, "it will never be proportionate or viable from a business model perspective" to undertake certain checks (such as reviewing bank statements) when conducting an affordability assessment;

- acknowledges the similarities between the OFT's ILG and the FCA's Consumer Credit sourcebook (CONC) by stating that CONC has "enshrined…much of the guidance set out in the ILG";

- says its affordability assessments from October 2014 are "robust and appropriate";

- asserts that it has always complied with the FCA's CONC rule 6.7.23R on refinancing. It disputes my interpretation of refinancing as refinancing involves an extension of the repayment period. And so it believes that top-ups, which increase the *amount* of the loan without altering the *repayment term*, cannot be considered "refinancing";

- states that "the short-term loan product was originally considered to be an emergency product, used by customers facing a one-off event which had left them short of cash at a particular point in the month". Wonga says this is reflected in the ILG but (despite acknowledging that the relevant section – ILG 6.25 – is transposed into CONC 6.7.21 and 6.7.22), also argues that "CONC does not reflect on the purpose of short-term loans";

- observes that many of its customers are repeat users of its short-term loan product and use it as a liquidity tool in the way that customers may use an overdraft facility. It says that research, including by consumer groups like *Which?*, has shown payday loans can be cheaper than some unarranged overdrafts;

- it concludes that repeat lending is appropriate as long as strict affordability checks are applied for each and every loan;

- despite what it says above accepts that, in Mr S' case, its checks weren't always as stringent as they could have been given expenditure was not validated (prior to loan 65). And it agrees that considering the relative size of loan 8 it would have been prudent to satisfy itself that Mr S could afford the loan and that there were no underlying circumstances it was unaware of. So it was prepared to refund the interest and charges Mr S paid on loans 8 to 48. But it intended to deduct the capital amount it wrote off on loan 49 as part of its remediation scheme from this;

- also offered to refund interest, fees and charges on loans 50 to 76 because while the loans from loan 50 onwards would have been subject to a more in depth inspection, loan 49 was an outstanding debt for ten months. And this should have led to a review of Mr S' finances over and above the measures introduced from October 2014;

- didn't agree to settle Mr S' complaint about loans 6 and 7. But it didn't go into any specific detail as to why it didn't agree with my conclusions on these loans.

Mr S' response to my provisional decision

Mr S agreed with my provisional decision and provided nothing further for me to think about.

my findings

I've considered all the available evidence and arguments provided from the outset, including the responses to my provisional decision, in order to decide what's fair and reasonable in the circumstances of this complaint.

In reaching my decision, I've taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. I've set out all of this in appendix 2.

Taking into account the relevant rules, guidance, good industry practice and law, I think that the three overarching questions that I set out in my provisional decision remain the ones I need to consider in deciding what's fair and reasonable in the circumstances of this complaint:

- Did Wonga, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay in a sustainable way?
    - If not, would those checks have shown that Mr S would've been able to do so?
- Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr S' indebtedness in a way that was unsustainable or otherwise harmful?
- Did Wonga act unfairly or unreasonably in some other way?

Wonga has accepted that these overarching questions are the relevant to deciding this complaint. And in truth it also appears to have agreed with the outcome I reached on the vast majority of Mr S' loans – it agreed to compensate Mr S on 69 of the 71 loans that I upheld in my provisional decision.

As both parties appear to be in agreement with the conclusions I reached on loans 1 to 5, 8 to 48 and 50 to 79, I think it would be logical for me to start by considering whether Mr S' complaint about loans 6 and 7 should be upheld.

- **my conclusions on loans 6 and 7**

While Wonga hasn't agreed with the conclusions I reached on loans 6 and 7 in my provisional decision, it hasn't clearly explained why. But Wonga has referred to Loan to Income ratios ("LTI") and the fact that it carried out credit checks. And, in these circumstances, I'm assuming that it is arguing that its checks were proportionate.

I've considered Wonga's points but I've not been persuaded to change my view on these loans. Wonga says it disagrees with my view that it didn't do anything differently, in terms of checks from loan 3 onwards, because it carried out credit checks and these credit checks provided fresh data at the time of each application.

In its view, each creditworthiness and affordability check made across the series of loans was more exhaustive and relevant than the previous. If the data contained in the credit check hadn't changed, this meant Mr S' circumstances hadn't changed, rather than it being the case that it failed to do anything further.

For example, if Mr S had defaulted on other credit commitments, his indebtedness had increased significantly or he had other pay day loans active in the period since the last check it had undertaken, this would have been visible from the relevant credit checks and considered accordingly in line with its lending policy.

The first thing for me to say is that even though Wonga might have obtained fresh information at the time of each credit check, it still remains the case that asking for Mr S for income details and carrying out a credit check (for loan 4 and subsequent applications) was pretty much the same check as that carried out for loans 1 to 3.

Secondly, Wonga has given me the output of "credit bureau data" it collected about Mr S for loans 6 and 7, as well as all of the loans taken up to loan 49, (there appears to be no credit bureau data from loan 50 onwards). But Wonga hasn't told me what the data reveals about Mr S' circumstances when he applied for loans 6 and 7. I'm not in a position to be able to attempt to interpret dozens of pages of coded information. If Wonga doesn't, or perhaps can't, describe what the data it has provided shows about Mr S, then it's difficult for me to place much weight on it.

In any event, as I explained in my provisional decision, the information I've seen about Mr S' financial circumstances by the time of loan 6 showed me, he was:

- already trying to manage a significant amount of arrears that had built up on a loan he'd fallen behind on;
- also regularly borrowing from another short-term loan provider;
- making regular payments to a number of credit cards and catalogue shopping accounts, meaning that he was carrying debts on these accounts;
- incurring returned transaction and unpaid transaction fees due to having insufficient funds in his account.

Given the weight Wonga places on its credit checks, I would expect at least some of the above to have shown up in the information Wonga gathered. And, in these circumstances, I think it would've been fair and reasonable for Wonga to have asked Mr S for more information in order to ascertain that loans 6 and 7 were affordable for him.

I'd also add that even if a proportionate check didn't reveal these circumstances to Wonga in the early stages of its relationship with Mr S (the first five loans), in my view, loan 6 was the point that a proportionate check – of increasing thoroughness – ought to have revealed that the individual instances of lending loans 6 and 7 was unaffordable. That was the conclusion I reached in my provisional decision.

Wonga has also referred to the LTI for loans 6 and 7. While LTI can sometimes act as a useful starting point for establishing what might've amounted to a proportionate check for a given loan, I don't think the LTI being below a certain threshold, will in itself always mean that a check is proportionate. I set out the circumstances where a reasonable and proportionate check ought generally to have been more thorough in my provisional decision and have repeated them on page three of this decision. So I won't set them out again.

I'd also like to explain that my concerns with Wonga's approach on LTI centre on the fact that a consumer – such as Mr S here - might not have disposable income of 30% of their monthly salary. So they would be unable to repay a loan of that amount (particularly after the addition of interest, which is likely to push the total repayment amount closer to 40% of their total monthly income) – irrespective of whether it met Wonga's retrospectively applied (October 2014) lending criteria. So providing a loan on the basis that it didn't exceed a lender's LTI alone won't, in itself, always be fair and reasonable in the circumstances of the individual case.

Equally I'm also not persuaded with the LTI Wonga has arrived at for Mr S. As I explained in my provisional decision, Mr S was paid weekly rather than monthly. And the loans in question were taken over terms of much less than a month. So I don't think comparing the loan amount to Mr S monthly income provides a fair comparison *unless* all of the loans due to be repaid in that monthly pay cycle are included. And I can't see that Wonga has done this here.

So having given careful thought to Wonga's further arguments, they have not persuaded me to alter my conclusion on these loans. And it remains the case that I think Mr S' complaint about loans 6 and 7 should be upheld.

Whilst this section covers my thinking on the loans that remain in dispute, Wonga has raised a number of arguments in its response to my provisional decision. And I think it is worth me reflecting on them so as to give a proper sense of my thinking in reaching my overall decision on this case.

- **the relevance of the OFT's *Irresponsible Lending Guidance* (ILG)**

Wonga gave Mr S the first 49 loans whilst it was under the regulation of the OFT. In my view, its response to my provisional decision seeks to downplay the ILG as being of secondary importance to lenders. It says that lenders would reasonably view their primary obligations as being those set out in section 55B of the Consumer Credit Act and the legislation implementing the provisions of the Consumer Credit Directive 2008.

As I explained in my provisional decision – and have already reiterated in this final decision any relevant rules, guidance and standards set out by the regulator form part of the fair and reasonable determination that I am required to make. And I think it's fair, reasonable and proper for me to place significant weight on the ILG in deciding what's fair and reasonable in this complaint. I say this because:

- the OFT was Wonga's industry regulator which set the standards that all licenced businesses – including Wonga – had to achieve at the time. I note that the OFT had consulted widely on the ILG from August 2008 before its launch in March 2010.

- the development and launch of the ILG was undertaken by the OFT in order to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974.

    - this 'section 25 test' required the OFT to ensure that consumer credit licences are only given to – and retained by – those who are fit to hold them. And the ILG outlined the types of deceitful or oppressive or otherwise unfair or improper business practices which, if employed by a consumer credit business, would call into consideration its fitness to hold a consumer credit licence. So I think a lender like Wonga would and should have been striving to comply with the standards set out in the ILG at the time it was giving Mr S his first 17 loans.

  - Wonga has itself described the Consumer Credit Act 1974 as being "the primary piece of legislation which governed the credit agreements of the type offered by Wonga". So I think it would have been familiar with the steps its own regulator was taking to ensure that the provisions of the Act were being met.

- section 55B of the Consumer Credit Act was concerned with an "Assessment of creditworthiness" and it didn't supersede or replace section 25. Indeed the ILG was amended rather than replaced when the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force on 1 February 2011. Both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

- the OFT had made clear (in paragraph 1.8 of its July 2009 consultation paper, ahead of the launch of the ILG) that: "**The OFT expects all consumer credit businesses to fully comply with both the word and spirit of this guidance**" (the OFT itself included this sentence in bold text in the consultation paper).

- Wonga's own trade body (the FLA) responded to the consultation process and subsequently welcomed the launch of the guidance, saying it "will help to protect consumers and enable [the OFT] to clamp down on unscrupulous lenders".

- Wonga has acknowledged being aware of the provisions and expectations of the ILG – indeed, in its response, it has quoted them where it believes they support its position.

- after its publication in March 2010, the OFT regularly referred back to the ILG as the standard it expected lenders to adhere to – this culminated in the publication of the OFT's March 2013 *"Payday Lending: Compliance Review Final Report"*, from which I quoted in my provisional decision.

So, having thought about Wonga's points, I still consider the OFT's *Irresponsible Lending Guidance* to be of central importance in reaching a fair and reasonable outcome in Mr S' case. I don't find Wonga's arguments – that the guidance should be treated as being, in effect, optional for lenders at the time – to be persuasive.

Indeed I can't see how Wonga could possibly form a view on whether a "*lending decision (prior to FCA regulation) was fair and reasonable in all the circumstances"*, as it says it does without considering the ILG.

- **Wonga's arguments regarding its post October 2014 lending**

Wonga has described certain improvements it made to its lending processes following the FCA becoming the industry regulator in April 2014. As I've explained, Wonga admits that its affordability checks, prior to 2014, "often did not lead to good customer outcomes". But it says, in implemented a number of affordability measures (after discussions with the FCA) in October 2014. This resulted in a tightening of its lending criteria.

The measures included:

- A maximum loan to income ratio of 30% of a customer's net monthly income;
- Amending the CallCredit affordability criteria "debt to income ratio" to less than 18;
- A cooling off period of 30 days after a customer was decline an application for a credit-related reason;
- A cooling off period of 30 days for customers who were 7 days or more in arrears on their previous loan; and
- No lending to customers who have an unsatisfied CCJ

Whilst this information provides useful background and it sets out the broad parameters within which Wonga was prepared to lend,, it does not show me that Wonga's decision to provide what was intended to be short-term credit to Mr S on a further 30 occasions (after providing him with 49 loans previously) was fair.

I've also considered Wonga's argument that a management consultancy firm had audited its lending and concluded that its new process was "functioning as intended" but this doesn't change matters or provide me with further assurance. As the deciding ombudsman in Mr S' case looking into Wonga's decisions to lend to Mr S on the occasions it did, I don't think that it would be fair and reasonable for me to outsource my judgment on these matters to a third-party appointed by one of the parties to the complaint.

In my view, the fact that Mr S' applications might have met Wonga's new lending criteria does not make those lending decisions obviously fair and reasonable – especially in circumstances where these loans were taken after Wonga had to write off a balance that had been outstanding for ten months. And I'm pleased to see that Wonga has agreed that it ought to have carried out more thorough checks – over and above the new criteria – given the circumstances of its lending history with Mr S.

- **proportionality in the context of an online business model**

Wonga states that it is "an online digital company, meaning that all of Wonga's products are algorithm-driven and are sold online". Wonga emphasises the speed at which loan applications are completed, and money then provided, as being part of its attraction for borrowers. In its view, "it will never be proportionate or viable from a business model perspective to collect bank statements from customers to verify the income and expenditure information they provide as part of our affordability checks.

I've carefully thought about what Wonga has said. And I've also carefully thought about the *"Common misconceptions and proportionality"* section of Policy Statement 18/19 ("PS 18/19") published by the FCA in July 2018, which Wonga has referred to.

I want to start by saying that my provisional decision didn't say that Wonga always had to review bank statements as part of its application process. That said, if I take Wonga's argument to its logical conclusion, it is in effect arguing that the manual checking of any documentary financial evidence from a consumer before granting a loan would always be an excessive expectation simply because it sells loans through an online platform.

Wonga's position appears to be that, whilst a face-to-face or retail lender *might* be expected to complete a certain check before lending, an online lender – offering the same loan to the same customer on the same terms – should be held to a different standard. I consider this argument to be unfair – especially in the context that it is the lender that it is the regulated business and there isn't anything in Wonga' marketing warning consumers that they should expect less protection as a result of applying for loans through an online platform.

I agree that FCA's CONC rules don't stipulate that a lender must run any particular check or gather a particular piece of evidence for every loan application. But CONC rules (and the sections of the ILG which it specifically refers back to) do set out very clear principles – including some rules – that all lenders, including those who operate online as there doesn't appear to be any sort of exemption, were expected to stick to. And these standards do form a significant part of my thinking about what's fair and reasonable in this case.

For example, CONC rules are very clear that, before providing credit, lenders *must* think about whether the loan might adversely impact the borrower's financial situation and *must* base their lending assessment on "sufficient" information. CONC is also very clear that lenders' assessments should be dependent upon *and proportionate to* a number of factors, which may include one or more of the following:

- the type of credit
- the amount of the credit
- the cost of the credit
- the financial position of the customer at the time of seeking credit
- the customer's credit history, including any indication that the customer is experiencing, or has experienced, financial difficulties
- the customer's existing financial commitments, including any repayments due in respect of other credit agreements, rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm
- any future financial commitments of the customer
- any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer
- the vulnerability of the customer

I note that CONC does not list a lender's business model as a relevant factor in determining what a proportionate check should (or need not) involve for any given loan application. And so the fact that Wonga chooses to operate online should not recuse it from the same obligations as other lenders to conduct proportionate checks – whatever that may involve – for each loan application.

CONC also says that lenders should consider the "types and sources" of information they use when assessing a loan application. Depending on the circumstances, this may include:

- its record of previous dealings
- evidence of income
- evidence of expenditure
- a credit score
- a credit reference agency report
- information provided by the customer.

So I'm not persuaded by Wonga's argument that it (and presumably other online lenders) should be held to different (i.e. lower) expectations compared to retail lenders.

- **Wonga's approach to working out the cost of these loans and its comparison to overdrafts**

Wonga has also argued that most of its customers are repeat users of its short-term loan product and use it as a liquidity tool in the way that customers use an overdraft facility. It has also attempted to suggest its loans weren't that expensive by drawing a comparison with the costs of an unauthorised overdraft.

Given the information Wonga has provided to me about Mr S' account history, I have doubts about the veracity of its numbers. But I consider that Wonga's method of working out what Mr S' paid in comparison to what he borrowed, gives a misleading impression of the rates of interest that Wonga levied.

For loans 8 to 76 Mr S borrowed an average amount of £217. For access to this average loan amount, the total interest, fees, and charges levied on his account was £1,800.00. In other words, across this period of indebtedness (ignoring the short gaps between some loans), Mr S incurred nearly 9 times more in interest, fees and charges than he typically had access to. And those interest, fees and charges were incurred without Mr S making any inroads into the capital borrowed.

I recognise that Mr S repaid some of his loans after very short periods of time and that these incurred relatively low interest charges, in cash terms, as a result. But I remain of the view that the *overall* cost of the lending was significant and harmful, and the interest rates were high. Having given proper thought to Wonga's points about the cost to Mr S of its products, I think the description I used in my provisional decision as being "very expensive" is fair.

Equally leaving aside my concerns with how Wonga's is describing the cost of its product, I also have concerns with the description of its product. If I take its argument to its logical conclusion, Wonga is effectively arguing that its customers treat these loans as running account credit. CONC has separate creditworthiness and sustainability requirements for such credit facilities. Indeed CONC 5.3.1G(6) says:

"For the purpose of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

(a) without undue difficulties, in particular:

(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and

(ii) without having to borrow to meet the repayments;

(b) over the life of the agreement, ***or for such an agreement which is an open-end agreement, within a reasonable period;*** *[my emphasis] and*
(c) out of income and savings without having to realise security or assets; and

"unsustainable" has the opposite meaning.

Wonga lent to Mr S for a period of around five years. So I don't think that the period Wonga lent to Mr S was reasonable. And, in my view, I think that this means Mr S didn't settle his agreement over a period. I also think that this ought fairly and reasonably to have alerted Wonga to the fact that Mr S may have been having possible repayment difficulties, as its agreement to settle these loans appears to suggest it now accepts.

- **the purpose of payday loans in the context of repeat lending**

The position I set out in the second overarching question of my provisional decision (which Wonga has agreed is appropriate in the fair assessment of this complaint) is that the products Mr S was given by Wonga were intended for short-term use only.

Wonga has replied that "CONC does not reflect on the purpose of short-term loans" and that it "does not state that they are only appropriate for occasional emergency use".

It's not for me to offer a definitive interpretation of CONC. My role is to look at the published rules, guidance, and statements of good (and bad) industry practice made by the regulator, alongside all other relevant considerations, to decide what's fair and reasonable in this case.

Having carefully considered Wonga's arguments, I continue to believe that my position – that these products are intended for short-term use only – is entirely consistent with CONC and other actions/statements made by the FCA. I believe it's also consistent with what industry trade bodies and, in fact, Wonga itself has said in the past. I say this because:

- it accepts that I correctly set out the key overarching questions I needed to consider, in order to decide what's fair and reasonable in the circumstances of the case, in my provisional decision. Question 2 said:

    - ***Taking into account the short-term purpose of the loans provided*** *[my emphasis]**,** did the overall pattern of lending increase Mr S' indebtedness in a way that was unsustainable or otherwise harmful?*

  So by accepting that I correctly set out the key overarching questions I needed to consider, Wonga is by definition accepting that the loans provided have a short-term purpose.

- in any event, the FCA has specifically transposed the most relevant section of the ILG (6.25) into section 6.7.21G and 6.7.22G of CONC. These sections of ILG and CONC are quoted in full in appendix 2 to this decision and they make several clear statements, including:

    - *The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.*

- Wonga says that section 6.25 of the ILG being transposed into CONC 6, which covered post contractual requirements, somehow suggests it's less relevant post April 2014. But this ignores the fact that section 6.25 was included in section 6 of the ILG which similarly covered contractual and post-contractual issues, rather than the assessment of affordability or pre-contractual matters.

- upon assuming its role as regulator of this market, the FCA introduced a new rule (CONC 6.7.23R) which prohibited lenders from "refinancing" high-cost, short-term credit on more than two occasions, unless in order to exercise forbearance. I think this reflects the short-term nature of the product (and arguably reflects the FCA's acceptance of the risks associated with repeated refinancing or "churning" of loans, which had also been identified by its predecessor, the OFT).

- the FCA defines the kind of products which Wonga lent to Mr S as being "high-cost, ***short-term*** credit" (my emphasis). The FCA defines these products as those which are "due to be repaid, or substantially repaid, within a maximum of 12 months".

- Wonga only had authorisation to provide high-cost short term credit. It didn't have authorisation to provide longer term products. So it was only authorised to provide short-term loans.

- **Wonga's arguments regarding refinancing**

Wonga has also said that it has a different interpretation of CONC than the one I set out in my provisional decision. It says the definition of refinance is important as it requires an extension of the period over which a payment is to be made. And this means that it doesn't apply to Wonga's top-up agreements.

I want to start my response to this point by referencing the relevant section of my provisional decision, which was on page 16 of it. It said:

"I note that, throughout this lending relationship, it would appear that Wonga has provided a ***new loan*** [my emphasis] *on the same day (or soon after) a previous loan was settled. To be clear, I make this point in relation to fresh loan agreements Mr S entered into, rather than in relation to any 'top-up' of funds given in addition to an existing loan.*

CONC rules (6.7.23R), in place from 1 July 2014, state that firms "must not refinance high-cost, short-term credit on more than two occasions" – other than by exercising forbearance. So, on the face of things, it would appear that Wonga didn't comply with the regulatory requirements when granting Mr S at least some of these loans."

My reference to new loans was in relation to the occasions Wonga provided Mr S with a further loan – for a similar amount - on the day he settled a previous one. And, in these circumstances, the period of time Mr S was in debt to Wonga was extended. Advancing further loans was arguably agreeing with the customer to replace, vary or supplement and existing regulated agreement. This is especially the case in the circumstances of the later loans where Mr S' pattern of borrowing put Wonga on notice that this was happening regularly.

So I think that by referring to top-up agreements, Wonga misunderstood the point I was making in provisional decision. And as a consequence Wonga hasn't addressed it.

- **Wonga's arguments regarding Mr S' declined applications**

My provisional decision also set out my concerns about Wonga continuing to lend even after declining a number of applications from Mr S.

My provisional decision said:

"There also appears to be very little appreciation of Mr S' financial position or method behind Wonga's lending decisions too. For example, Wonga declined loan applications of £250, £198 and £208 on 4 June 2015 and 12 June 2015. Yet it then granted Mr S a loan of £403 – so significantly more than what he'd previously been declined for – less than two months later on 31 July 2015.

The information provided suggests that this was granted on the basis of similar information being provided. Bearing in mind the short period between applications, I can't see what Wonga could've reasonably believed had changed in Mr S' circumstances, which meant it considered it reasonable to lend Mr S £403 a matter of weeks after it'd declined loan applications for significantly lower amounts and it was being provided with the same information. I'd welcome Wonga's thoughts on this matter."

Wonga responded saying that Mr S applying for a higher amount than it was prepared to lend him automatically triggered a 30-day cooling off period. And the further applications were automatically declined because they were made within that period. It considers that this was an adequate measure in the circumstances – rather than marking his account as 'do not lend'.

I've thought about what Wonga has said. And I agree that marking Mr S' account as 'do not lend' after his first declined application may well have been disproportionate. But there were nine declined applications here. And I'm concerned that this many applications, doesn't appear to have warranted any further scrutiny outside of the 30 day cooling off period. I remain of the view that Wonga ought to been alert to the possibility that Mr S' declined applications might've been an indication he was struggling. And I'm pleased to see that Wonga appears to have accepted my conclusions on these loans.

Having carefully thought about all of Wonga's further points, I remain of the view that Mr S' complaint about loans 6 to 49 and 50 to 76 should be upheld. So I think that Wonga should put things right for Mr S. And I'll now set out what I think Wonga should do.

fair compensation – what Wonga needs to do to put things right for Mr S

I've carefully thought about what amounts to fair compensation in this case.

Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Wonga putting Mr S in the position he'd now be in if he hadn't been given the loans I'm upholding.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr S *was* given the loans in question and he's used the funds – albeit in reality what he's effectively done is repaid previous loans with the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr S back in the position he would be in if he hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to fully explain the reasons why I think that it would be fair and reasonable for Wonga to put things right in the following way.

interest and charges on the loans Mr S shouldn't have been given

As I've explained throughout my provisional decision (and this final decision), Wonga continually lending to Mr S left him in a position where he wasn't able to properly settle his debt. This was because Mr S kept having to find additional funds (usually through borrowing elsewhere) to pay the (increasing) interest and charges on his Wonga loans. And he then had to borrow again from Wonga to either repay others or cover the hole left in his finances and he incurred more interest and charges when he did this. So to start with, I think that Wonga should refund the interest and charges Mr S paid on loans 6 to 76.

I've also given thought to the argument that Mr S had to borrow – from elsewhere – in order to repay the interest and charges he paid to Wonga and so he should be refunded any borrowing costs he incurred to pay Wonga's interest and charges.

In my provisional decision, I accepted that there were occasions where Mr S was simply cycling money around borrowing from multiple sources in order to pay other debts. I also explained that in circumstances, where it is clear a consumer incurred additional costs in order to be able to repay a lender's interest and charges, it might be appropriate to direct a lender to pay the consumer extra compensation to cover those additional costs.

But, in this case, my provisional decision explained that while it's clear that Mr S was borrowing from multiple sources, I couldn't see a clear correlation showing that funds from a particular source (or sources) of credit directly went towards repaying Wonga's interest and charges.

In other words, I couldn't say that Mr S directly incurred additional cost as a result of taking a specific loan or loans just to repay Wonga's interest and charges. And I wasn't provided with anything in response to my provisional decision to change my mind on this. So I don't think that Wonga should refund extra interest because Mr S might've paid interest elsewhere in order to repay his Wonga loans. That said, it's clear that Mr S did lose the use of the funds he used to pay the interest and charges, I now think that Wonga needs to refund to him. As Mr S lost the use of these funds, I think that he should be compensated for this.

We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So Wonga should pay Mr S 8% per year simple interest on the interest and charges he paid from the date those charges were paid to the date it settles Mr S' complaint.

Wonga's write off of the outstanding balance on loan 49

As I've previously explained, Wonga wrote off the outstanding balance on loan 49, in November 2014, as a result of a remediation scheme that it agreed with the FCA. It's my understanding that £657.36 of the written off balance included part of the £856 Mr S originally borrowed for loan 49.

Where we decide a lender unfairly lent to a consumer and money that was lent is outstanding or has been written off (on a loan that's part of the chain upheld – like here), we'd usually say that it would be fair for the outstanding money lent to be deducted from any compensation the lender now has to pay. After all the consumer has had use of the funds and it's usually fair for them to pay this back.

But there might be circumstances where it wouldn't be right for the outstanding or written off money lent to be deducted. For example, if an arrangement to pay has already been reached, is being adhered to and unwinding it would cause financial hardship or difficulties. Or if it can clearly be shown that any written off money lent wasn't part of the upheld loan chain. Or even where deducting an amount from the compensation due would unfairly cause a consumer to suffer financial hardship.

My provisional decision concluded that I hadn't seen anything to suggest that any of these circumstances were present in this case. And I haven't been provided with anything in response to my provisional decision, which persuades me to alter my decision on this.

So having carefully thought about the overall circumstances of this complaint, I think that Wonga can deduct any capital (money originally lent) it wrote off on loan 49 from what it now needs to pay Mr S, should it wish to do so.

Mr S' credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

So to start with I think that Wonga should remove any adverse information recorded on Mr S' credit file as a result of the interest and charges on loans 6 and 7, as the loans were clearly unaffordable and Mr S shouldn't have had to pay those interest and charges.

But I'm upholding Mr S' complaint about loans 8 to 76 because I think the overall pattern of lending increased Mr S' indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of Wonga having given Mr S so many loans. Firstly it caused him to pay an excessive amount of interest and charges. And I've already explained how Mr S should be compensated for this.

I also explained that the sheer number of loans and top-ups involved is likely to have had implications for Mr S' ability to access mainstream credit. The greater the presence of short-term loans on Mr S' credit file the less likely Mr S was able to rehabilitate his finances and regain access to mainstream credit. And I think my direction in relation to Mr S' credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Mr S' credit history and creditworthiness so that a lender can make an informed decision on whether lend to him, I think that the mere presence of this many loans on Mr S' credit file, in itself, constitutes adverse information.

I think that this many short term loans appearing on Mr S' credit file is likely to continue adversely affecting Mr S going forwards. In these circumstances, I think that it is fair and reasonable for Wonga to remove all reference to loans 8 to 76 from Mr S' credit file, as the number of loans in itself is adverse information. And Wonga agrees with this.

All of this means that I think it would be fair and reasonable in all the circumstances of Mr S' complaint for Wonga to put things right in the following way:

- refund all the interest, fees and charges for loans 7 to 48 and loans 50 to 76 (and the associated top-ups); and
- add interest at 8% per year simple on the above interest and charges from the date they were paid by Mr S to the date of settlement†;
- remove any adverse information recorded on Mr S' credit file as a result of loans 6 and 7;
- remove all reference to loans 8 to 76 from Mr S' credit file.

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

I've removed loan 49 from the above because Mr S never paid the interest and charges for that loan. And as I've already explained, Wonga can deduct any capital (money that it initially lent to Mr S) that it wrote off on loan 49 from what it now needs to pay Mr S should it wish to do so.

my final decision

For the reasons given above and in my provisional decision of 16 July 2018, I'm upholding Mr S' complaint. WDFC UK Limited (trading as "Wonga".com) should pay Mr S compensation as 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 3 October 2018.

Jeshen Narayanan
ombudsman

appendix one - Mr S' overall loan history with Wonga (loans in grey upheld)

Loan	Application date	Settled	Top Ups	Total borrowed	Charges
1	10 January 2012	20 January 2012	0	£62	£12.16
2	25 January 2012	03 February 2012	0	£175	£21.52
3	06 February 2012	10 February 2012	0	£49	£7.65
4	04 March 2012	09 March 2012	0	£109	£11.15
5	01 April 2012	06 April 2012	0	£100	£10.70
6	06 April 2012	09 April 2012	0	£190	£11.28
7	21 April 2012	04 May 2012	0	£160	£26.72
8	24 May 2012	04 June 2012	0	£318	£40.60
9	08 June 2012	15 June 2012	0	£302	£26.73
10	16 June 2012	06 July 2012	0	£230	£51.95
11	15 September 2012	21 September 2012	0	£49	£8.73
12	02 October 2012	05 October 2012	0	£167	£10.60
13	07 October 2012	12 October 2012	0	£24	£6.95
14	12 October 2012	19 October 2012	0	£139	£15.48
15	24 October 2012	27 October 2012	0	£75	£7.88
16	30 October 2012	02 November 2012	0	£65	£7.59
17	06 November 2012	09 November 2012	0	£110	£8.92
18	10 November 2012	16 November 2012	0	£345	£26.24
19	26 November 2012	04 December 2012	0	£120	£15.40
20	20 December 2012	21 December 2012	0	£100	£6.54
21	12 January 2013	25 January 2013	0	£170	£28.00
22	14 February 2013	20 February 2013	0	£168	£15.77
23	25 February 2013	27 February 2013	0	£25	£6.10
24	03 March 2013	08 March 2013	0	£200	£15.63
25	15 March 2013	22 March 2013	0	£203	£19.90
26	27 March 2013	05 April 2013	0	£149	£19.21
27	05 April 2013	12 April 2013	0	£122	£14.30
28	12 April 2013	13 April 2013	0	£220	£7.72
29	29 April 2013	03 May 2013	0	£160	£12.03
30	14 May 2013	17 May 2013	0	£89	£8.30
31	04 June 2013	21 June 2013	0	£170	£34.93
32	14 July 2013	19 July 2013	0	£70	£9.28
33	19 July 2013	26 July 2013	0	£300	£26.89
34	02 August 2013	09 August 2013	0	£599	£32.44
35	09 August 2013	16 August 2013	0	£223	£21.50
36	17 August 2013	23 August 2013	0	£130	£13.63
37	27 August 2013	30 August 2013	0	£120	£9.27
38	04 September 2013	06 September 2013	0	£30	£5.86
39	06 September 2013	13 September 2013	0	£110	£13.59
40	14 September 2013	20 September 2013	0	£220	£19.03

41	21 September 2013	28 September 2013	0	£180	£47.02
41	03 October 2013	25 October 2013	0	£750	£129.39
43	25 October 2013	01 November 2013	0	£291	£32.46
44	03 November 2013	29 November 2013	3	£828	£81.82
45	30 November 2013	04 December 2013	0	£400	£21.72
46	08 December 2013	13 December 2013	0	£51	£8.33
47	16 December 2013	20 December 2013	0	£111	£10.16
48	31 December 2013	03 January 2014	0	£101	£8.70
49	05 January 2014	04 November 2014	0	£401	£476.01
50	15 November 2014	28 November 2014	0	£220	£34.82
51	30 November 2014	05 December 2014	1	£175	£17.89
Declined	05 December 2014	N/A	N/A	£703	N/A
Declined	05 December 2014	N/A	N/A	£665	N/A
Declined	05 December 2014	N/A	N/A	£550	N/A
Declined	05 December 2014	N/A	N/A	£400	N/A
Declined	05 December 2014	N/A	N/A	£252	N/A
Declined	06 December 2014	N/A	N/A	£360	N/A
Declined	07 December 2014	N/A	N/A	£214	N/A
Declined	20 December 2014	N/A	N/A	£237	N/A
Declined	03 January 2015	N/A	N/A	£258	N/A
52	24 January 2015	29 January 2015	0	£103	£4.12
53	07 February 2015	27 February 2015	0	£130	£20.80
54	08 March 2015	27 March 2015	0	£150	£22.80
55	08 April 2015	10 April 2015	0	£221	£3.53
56	16 April 2015	23 April 2015	0	£142	£7.95
Declined	04 June 2015	N/A	N/A	£250	N/A
Declined	04 June 2015	N/A	N/A	£198	N/A
Declined	12 June 2015	N/A	N/A	£208	N/A
57	04 July 2015	31 July 2015	0	£167	£36.07
58	31 July 2015	07 August 2015	0	£403	£22.56
59	07 August 2015	21 August 2015	0	£236	£26.43
60	23 August 2015	28 August 2015	0	£101	£4.04
61	30 August 2015	10 September 2015	0	£333	£29.30
62	16 September 2015	25 September 2015	1	£336	£21.79
63	29 September 2015	09 October 2015	0	£201	£16.08
64	09 October 2015	16 October 2015	2	£383	£16.13
65	17 October 2015	18 October 2015	0	£89	£0.71
66	01 November 2015	06 November 2015	0	£100	£4.00
67	07 November 2015	13 November 2015	2	£403	£13.11
68	19 November 2015	20 November 2015	0	£148	£1.18
69	22 November 2015	26 November 2015	1	£257	£8.22
70	28 November 2015	30 November 2015	1	£182	£2.22

71	01 December 2015	11 December 2015	3	£434	£24.53
72	21 December 2015	24 December 2015	0	£158	£3.79
73	02 January 2016	09 January 2016	1	£208	£10.98
74	12 January 2016	22 January 2016	3	£337	£18.24
75	27 January 2016	05 February 2016	3	£402	£22.84
76	09 February 2016	01 April 2016	2	£329	£14.44
77	05 October 2016	09 October 2016	0	£235	£7.52
78	22 December 2016	26 December 2016	0	£165	£5.28
79	11 April 2017	19 April 2017	0	£156	£9.98

appendix two – relevant considerations as set out in my provisional decision

A the regulatory framework
B key publications and good industry practice
D information on Wonga's website

A the legal and regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

Wonga gave Mr S his first 49 loans in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—

(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;

(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;

(c) practices and procedures that the applicant proposes to implement in connection with any such business;

(d) evidence of the kind mentioned in subsection (2A)

(2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*

(a) committed any offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under—

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

> *(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
>
> *(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*
>
> ***(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)** [my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the **OFT to involve irresponsible lending** [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Mr S' case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*

- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*

treat borrowers fairly and with forbearance if they experience difficulties

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, 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 and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
  - *the borrower's financial situation at the time the credit is sought;*
  - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
  - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*

- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a "deceptive and/or unfair practice" where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.

<u>Section 55B of the Consumer Credit Act 1974</u>

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an "Assessment of creditworthiness" was set out in section 55B of the Consumer Credit Act.

It's important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.".

By the time of loan 50 and for all of Mr S' subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

regulation by the Financial Conduct Authority (from 1 April 2014)

Wonga gave Mr S loans 50 to 79, plus the final 20 top-ups, after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. Wonga initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a high-cost short-term credit provider. Wonga's interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to providers of consumer credit like Wonga. CONC also replaced the requirements set out in Section 55B CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

*[**Note**: paragraph 4.1 of ILG]*

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

*[**Note**: paragraph 4.3 of ILG]*

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

*[**Note**: paragraph 4.2 of ILG]*

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking 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.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

*[**Note**: paragraph 4.31 of ILG]*

CONC 6.7 sets out a firm's obligations in relation to its post contract business practices. CONC 6.7.21G, CONC 6.7.22G and CONC 6.7.23R contained specific obligations for high-cost short-term credit providers like Wonga.

CONC 6.7.21G says:

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

*[**Note**: paragraph 6.25 of ILG]*

CONC 6.7.22G says:

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

*[**Note**: paragraph 6.25 (box) of ILG]*

Section 6.25 of the ILG is set out on pages four and five of this decision and is concerned with what the OFT referred to as 'deceptive and/or unfair practices'.

CONC 6.7.23R (which applied from 1 July 2014) says:

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

CONC 6.7.17R defines refinancing and says:

(1) In CONC 6.7.18 R to CONC 6.7.23 R "refinance" means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:

(a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;

(b) exercising a contractual power contained in an existing regulated credit agreement; or

(c) other means, for example, granting an indulgence or waiver to the customer.

(2) "Exercise forbearance" means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:

(a) there is no charge in connection with the refinancing; or

(b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.

(3) The term "refinance" within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.

<u>*Section 140 of the Consumer Credit Act 1974*</u>

All of Mr S' loans were given to him after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

> (5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

> (2) *An order under this section in connection with a credit agreement may do one or more of the following—*
>
> > (a) *require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*
> >
> > (b) *require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*
> >
> > (c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*
> >
> > (d) *direct the return to a surety of any property provided by him for the purposes of a security;*
> >
> > (e) *otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*
> >
> > (f) *alter the terms of the agreement or of any related agreement;*
> >
> > (g) *direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

B key publications and good industry practice

The ILG and CONC set out the regulatory framework that regulated/authorised consumer credit providers have to adhere to. But they represent a minimum standard for firms. And as I've explained, I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

the OFT's Payday Lending Compliance Review Final Report

The OFT published its "Payday Lending Compliance Review Final Report" in March 2013, by which time Wonga had already lent to Mr S on at least 26 separate occasions and would go on to lend at least another 53 times.

The purpose of the review was "…to establish the extent to which payday lenders [were] complying with the Consumer Credit Act, other legislation and [were] meeting the standards set out in the ILG."

The review sought to highlight examples of what the OFT considered poor practice and evidence of non-compliance with the relevant law and failure to meet the minimum standards expected. The analysis was also put together to help the FCA's work on payday lending ahead of it assuming responsibility for regulating the sector from April 2014.

The report began with an overview section setting out the OFT's concerns. Page two of the report says that the OFT:

…is particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can't repay are encouraged to extend them, exacerbating their financial difficulties This is causing real misery and hardship for a significant number of payday users

Page three of the report says:

Our evidence paints a concerning picture of the payday lending market. It appears that irresponsible lending is not a problem confined to a few rogue traders, but it has its roots in the way competition works in this market. The evidence suggests that many consumers are in a weak bargaining position, and that firms compete on speed of approval rather than price

It then goes on to say:

Additionally, firms describe and market their product to consumers as one-off short term loans (costing on average £25 per £100 borrowed for 30 days), but in practice around half the revenue comes from loans which last longer and cost a lot more because they are rolled over or refinanced. Lenders do not need to compete hard for this source of revenue because by this time they have a captive market. This, and the misuse of continuous payment authorities to reclaim monies owed, may distort incentives for lenders, encouraging them to make loans to people who cannot afford to repay them first time.

<u>*the Consumer Finance Association Lending Code for Small Cash Advances*</u>

The principal trade association representing the interests of short-term lending businesses operating in the United Kingdom is the Consumer Finance Association ("CFA"). The CFA published its Lending Code for Small Cash Advances ("the code") in July 2012.

I accept that Wonga wasn't a member of the CFA. But as the code was published by the main trade association representing short-term lenders, I consider it to be indicative of the standards of good industry practice expected of lenders such as Wonga at the time.

What's more, most of the relevant parts of this code went on to be included in the 'Good Practice Customer Charter Payday and Short-term Loans' which members of all the relevant trade associations signed up to just four months later, in November 2012. The Finance and Leasing Association (FLA) was a signatory to this charter at its launch. Wonga was a member of the FLA at that time and, according to the FLA website, remains a member today.

Section 1 of the code sets out its purpose. Section 1b says:

Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online

Section 1c says:

This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months). The loan is not designed for longer term borrowing, but to improve short term personal cash flow

And Section 1d says:

The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in the Code, and accordingly protects and benefit consumers

Section 3 sets out the general obligations expected of lenders. Amongst other things Section 3 says members shall:

> *b) trade honestly, responsibly and treat customers with respect.*
>
> *l) ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.*

Section 4 of the code sets out a lender's specific lending obligations. Part (a) of this section is concerned with advertising and marketing and amongst other things, it says:

> *iii) members shall ensure all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.*

Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

> *v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining….:*

- *that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.*

C information on Wonga's website

In addition to the relevant considerations set out above, I also note that in 2012 Wonga had a section on its website entitled *Wonga & APR: the facts*. This section contained the following information:

It is impossible to borrow money from Wonga for a year

We do not offer long term loans and an annual product simply doesn't exist

Even if we were to launch a year-long loan at the same interest rate we charge now, the APR would be much lower than the current figure, more like 360%, because there would be no artificial compounding involved.

Mr S applied for his first loan in January 2012. And around this time the *How Wonga works* area of the website had a section entitled "*Short term credit*". And it said:

"We don't want to keep you in debt. That may sound funny coming from any lender, but Wonga provides short term loans for a few days or weeks. We'll only lend you money for up to a month and you are always free to make an early repayment and save money, with no hidden fees. Unlike some lenders, we won't keep rolling your balance endlessly or encourage you to make minimum repayments. So please think very carefully before you apply, because we expect you to repay us when you promise to."