

complaint

Mr C complains WDFC UK Limited, trading as Wonga, lent to him irresponsibly.

background

I issued a provisional decision on 14 June 2018, explaining why I thought this complaint should be upheld. A copy of the provisional is attached and forms part of this final decision – the full background to this complaint is set out there.

Both parties have already responded. Mr C accepted the outcome of my provisional decision. Wonga didn't agree with it, saying (in summary):

- it doesn't think it has been shown that, at the time of the application, the loan was unaffordable – *i.e.* that Mr C didn't have sufficient disposable income to repay it
- making an assumption (about the unaffordability of the loan) is not a substitute for proof and there is insufficient evidence the loan wasn't affordable
- *"it is possible for a loan to be wrongly/irresponsibly lent but nonetheless be affordable"*

my findings

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

Having done so, I've not been persuaded to depart from my provisional decision.

I should start by saying that in my provisional decision I did not make a finding that the loan was clearly not affordable to Mr C. I focussed on irresponsible lending and I do not consider whether Mr C had sufficient disposable income to repay the loan is the key aspect in this complaint. Although I do think the evidence Wonga had suggests it was *unlikely* to be affordable to him. After all, if Mr C was struggling to repay three CCJs and his other existing debts were all delinquent, then it's unlikely, given his low income, that further borrowing would be repaid sustainably.

But my main finding was, given what Wonga knew about Mr C's circumstances, including his credit history, it ought to have realised it was likely he was struggling to repay his existing debts and that advancing him further credit was unlikely to be in his best interests – something it had to consider as a licensed credit provider. I said:

"... Wonga knew Mr C wanted to borrow a significant portion of his income. It also knew Mr C had outstanding debts which it was likely he was having difficulty repaying. I don't think Wonga took reasonable care to fully consider Mr C's circumstances when it advanced this loan and I think Wonga ought to have realised it wasn't in Mr C's interests to grant him this loan..."

I made the finding irrespective of whether this loan would have been affordable. I consider that there will on occasion be circumstances in which it wouldn't be responsible to grant a loan whether or not it was technically affordable. I think this includes circumstances such as Mr C's, where he had significant existing problematic debt at the time he applied for the loan which meant that it was unlikely he'd be able to afford to repay it in a sustainable way.

I take the third bullet point I've summarised above to mean that Wonga thinks I should consider whether better affordability checks would've shown the loan to be affordable. This is an approach I would sometimes take where I consider a lender did not carry out proportionate affordability checks – I may then go on to look at what proportionate checks might've shown.

But in Mr C's case, I think the credit history check Wonga carried out, together with what it knew about Mr C's income and broader circumstances was enough to let it know it wasn't in Mr C's interests to grant this loan as it was apparent he was unlikely to be able to repay it in a sustainable way. As I mentioned in my provisional decision, in 2008 the Office of Fair Trading (OFT) described irresponsible lending as, *"failing to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so"*.

I don't therefore think I need to go on to consider Mr C's income and expenditure and whether the loan was affordable to him.

Nothing Wonga has said has changed my mind and I still consider it was irresponsible for it to grant this loan. I'm therefore upholding this complaint.

what Wonga needs to do to put things right

Wonga must:

- refund any fees and interest Mr C paid on his loan
- add interest at 8% simple per year to the above from when Mr C paid them until he gets the refund†
- remove any adverse data about the loan from Mr C's credit history

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

my final decision

I uphold this complaint. WDFC UK Limited must put things right by doing what I've set out above.

Matthew Bradford
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr C complains WDFC UK Limited, trading as Wonga, lent to him irresponsibly.

background

Mr C had a loan with Wonga for £210 in July 2012. One of our team managers looked into this complaint and thought it should be upheld. Although Wonga checked Mr C's income and credit history, the team manager thought it also should've asked him some questions about his regular living expenses and credit commitments. This was because of a number of pieces of negative information Wonga had obtained from Mr C's credit history. He thought the loan wouldn't have looked affordable if Wonga had done this.

Wonga didn't agree with the team manager – so the complaint's been passed to me to decide.

my provisional findings

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

I currently think Mr C's complaint should be upheld – I'll explain why.

Wonga asked for Mr C's income and it has recorded his net monthly income as £800. So the amount Mr C was required to repay would be around a third of his recorded income (after interest).

As well as the loan being large in relation to Mr C's declared income, Wonga was aware from the credit history check it carried out that Mr C had three county court judgements (CCJs) recorded against him, none of which had been satisfied. His credit report also shows three accounts in default and the value of his current active accounts was £1,095 – which from the report appear to have all been in arrears. This is because the report shows that the value of active delinquent accounts is also £1,095.

I've thought about what this means in Mr C's circumstances.

In 2008 the Office of Fair Trading (OFT) described irresponsible lending as, *"failing to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so"*.

The OFT also published guidance about irresponsible lending (ILG) in 2010. Among other things, the guidance said lenders should make sure borrowers could repay their loans sustainably. The OFT (ILG 4.3) considered in order to be sustainable a repayment should be made:

- without undue difficulty – in particular without incurring or increasing problem indebtedness
- out of income and/or available savings, without having to realise security or assets.

And the guidance goes on to say repaying 'without undue difficulty' meant:

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

Given what Wonga knew about Mr C's circumstances, I don't think it acted responsibly when it lent to him. I think the credit history data Wonga obtained gave a clear indication Mr C had ongoing problems with repaying existing debt when he applied for this loan.

The credit report says the oldest CCJ was over 10 months old – but as none had been satisfied it seems likely Mr C was struggling to repay them. The rest of the credit report also suggests Mr C was struggling with his existing debts.

So Wonga knew Mr C wanted to borrow a significant portion of his income. It also knew Mr C had outstanding debts which it was likely he was having difficulty repaying. I don't think Wonga took reasonable care to fully consider Mr C's circumstances when it advanced this loan and I think Wonga ought to have realised it wasn't in Mr C's interests to grant him this loan.

I appreciate that Wonga has said that, in common with other short-term lenders, many of its customers have a less than perfect credit history. And I'm not concluding that it should only lend to applicants who conform to a particular credit profile. But I have considered Mr C's circumstances and what I think Wonga knew about them. In the particular circumstances of Mr C's case I'm satisfied Wonga wasn't acting responsibly when it lent to him.

Overall, I think Wonga had enough information to understand it was unlikely that Mr C would be able to repay the loan sustainably, or without increasing problematic indebtedness. I therefore plan to uphold this complaint.

what Wonga needs to do to put things right

I plan to say Wonga should:

- refund any fees and interest Mr C paid on his loan
- add interest at 8% simple per year to the above from when Mr C paid them until he gets the refund†
- remove any adverse data about the loan from Mr C's credit history

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

my provisional decision

I plan to uphold this complaint and to tell WDFC UK Limited to put things right by doing what I've set out above.

[signed]

Matthew Bradford
ombudsman