complaint

Mr M complains that WDFC UK Limited, trading as wonga.com, gave him loans that he couldn't afford to repay.

Background

Mr M took out 7 payday loans with Wonga as follows:

Loan number	Date	Date repaid	Amount (£)	Top-up loan
1.	3 December 2011	23/12/2011	380	
2.	11 January 2012	27/1/2012	425	
3.	1 February 2012	10/2/2012	599	
4.	14 February 2012	24/2/2012	645	
5.	2 March 2012	30/3/2012	730	
6.	30 March 2012	27/4/2012	900	1
7.	30 April 2012	31/10/2014	1,091	

Mr M said that he started taking payday loans as he was in financial difficulty. He felt that Wonga didn't properly assess his ability to repay the loans. He took out new loans with them shortly after he'd repaid previous loans and for ever increasing amounts. This ended up with him being in a vicious circle of debt. Mr M also said that he was in arrears with various credit commitments that would have shown on his credit file.

Wonga said that it wasn't aware of any factors which indicated unaffordability. But it had agreed to write off the outstanding balance on Loan 7 under its affordability forbearance programme, and remove all record of the loan from Mr M's credit file.

The adjudicator said that as Wonga had already agreed to write off Loan 7, she would only assess the other six loans. She noted that Wonga had taken details of Mr M's income before granting the loans. It had also carried out checks through its internal system and a credit reference bureau to assess if Mr M could afford to repay the loans. But, the adjudicator said Wonga should also have obtained details of Mr M's monthly living costs and his regular financial commitments for Loans 1, 2 and 3. In addition, before granting Loan 3, it should have asked for details of any short term loans. And for Loans 4 onwards, she said it should have carried out a full review of his finances. So, she concluded that Wonga hadn't made sufficient checks on any of the loans.

Having assessed Mr M's income and expenditure, the adjudicator didn't think that he could afford to repay the first three loans from his usual monthly income. But she also couldn't verify Mr M's outgoings fully. He'd provided copies of his bank statements which showed his income, the short term loans he was taking and other transactions, but these didn't show his normal monthly living expenses and longer term loans. Mr M said that these were paid from an account held by his former partner, but he couldn't provide the statements from this account. So, the adjudicator couldn't say with absolute certainty that Mr M couldn't afford the first three loans.

With regard to Loans 4 to 6, the adjudicator was also unable to fully verify Mr M's outgoings for the same reason as the previous loans. But she noted from his current account statements that he was making a significant number of what looked like gambling transactions. And she said that if Wonga had carried out sufficient checks, it couldn't have failed to see these transactions, and being a responsible lender, it would've declined to lend to Mr M. So she concluded that Wonga should:

- refund all interest and charges that Mr M paid on Loans 4 to 6 and one top up loan;
- pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- remove any negative information about Loans 4 to 6 and the top up loan from Mr M's credit file.

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

Wonga disagreed but responded to say in summary that Mr M had confirmed to them that he'd considered how he could repay their loan whilst meeting his other outgoings. In addition, it considered that it was entitled to rely on the checks it conducted with the credit reference agencies and the information that Mr M had provided on his income before it made its lending decisions. It also said that it wasn't required to carry out an additional thorough examination of Mr M's bank statements to assess disposable income. It said that although the borrowing was rising, the loan values still represented a modest proportion of Mr M's declared monthly income and the loans were repaid in full and by the due date. And as the adjudicator was unable to fully verify Mr M's outgoings, it didn't think she had demonstrated that the loans were unaffordable. It also said that there was sufficient disposable income to repay Loan 4 based on the adjudicator's figures. With regard to the gambling transactions it said that the adjudicator hadn't referred to any winnings derived from this activity, so it didn't think she had demonstrated that Mr M had suffered financially as a result. But as Mr M had clearly struggled to repay Loan 5, it agreed that it wasn't appropriate to advance another even larger loan immediately afterwards. So, it offered to refund all the interest and charges Mr M paid for Loan 6 and remove this from his credit file.

Mr M didn't accept Wonga's offer.

my findings

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

As Wonga has agreed to make a refund of interest and charges on Loan 6 and has written off the balance of Loan 7, I only propose to review Loans 1 to 5 below.

Wonga was required to lend responsibly. It needed to make checks to make sure Mr M could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr M was borrowing, and his lending history. But there was no set list of checks Wonga had to do.

The guidance in place at the time of the loans (The Office of Fair Trading's Irresponsible Lending Guidance) sets out the lender's responsibility to take reasonable steps to ensure that a borrower can *sustainably* repay their loans. It said that assessing affordability 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. The guidance also said that repaying credit in a sustainable manner meant being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defined *"undue difficulty"* as being able to repay credit *"while also meeting other debt repayments and normal/reasonable outgoings"* and *"without having to borrow further to meet these repayments"*

Whilst Mr M was able to repay nearly all the loans, this didn't necessarily mean they were affordable or that he managed to repay them in *a sustainable manner.* I also can't assume that Mr M was able to pay them out of his normal income without having to borrow further.

Wonga has shown us the checks that it did before lending to Mr M. Wonga checked Mr M's income before giving him the loans and did a credit check. Mr M's income was declared at £31,200 for all the loans, which is around a monthly amount of £2,600. It isn't clear to me from the credit search details provided by Wonga whether there was anything of concern on their searches.

I note that Mr M said that he was in arrears with various credit commitments that would have shown on his credit file. But, I've not seen Mr M's credit file so can't say that Wonga would have seen this. I've also not seen evidence of Mr M's credit commitments on his bank statements.

I can see that the first two loan amounts to be repaid were around £461 and £498 respectively. I think that these were substantial amounts relative to Mr M's income. So I don't think it was proportionate for Wonga to rely on the information it had collected from Mr M to make a reasonable assessment of whether Mr M could afford to repay the loans. I also think Wonga should have asked him for more information about his normal monthly living costs and regular financial commitments to ensure that he'd be able to afford the loans.

Loan 3 was taken out five days after Loan 2 was repaid and the amount to be repaid had increased substantially to around £658, an even larger proportion of Mr M's declared income. I think this should have been a warning to Wonga that Mr M's finances were under pressure, and should have prompted it to look more carefully at Mr M's financial situation before agreeing to lend further. I think in these circumstances, it should also have asked Mr M for information about his short term lending as well as his normal monthly living costs and regular financial commitments to ensure that he'd be able to afford the loans.

Loans 4 and 5 were also taken very shortly after the previous loan was repaid and the amounts to be repaid had increased to around £714 and £924 respectively. I think this should have been a clear indication to Wonga that Mr M was struggling with his finances and I think it would have been proportionate for it to fully review Mr M's financial circumstances before lending. There were many ways that Wonga could have gathered more information. It could have asked Mr M for things like his pay slips and evidence of his expenditure. Or it could have looked at his bank statements as I have done.

I note that Wonga thought that the loan amounts were a modest proportion of Mr M's income. But I also think Wonga needed to be concerned that Mr M was borrowing regularly and shortly after the previous loan was settled. And all the loans increased in amount, so that by Loan 5, Mr M was borrowing almost double his first loan amount taken just three months earlier. Overall, I think Wonga should have realised that Mr M was showing the signs of someone who was dependent on short term lending, rather than using it for one-off emergencies. So, I also don't think it was reasonable for Wonga to say it was entitled to rely on the information declared to it by Mr M and its own credit searches. I think it should have carried out more detailed checks of his financial circumstances as set out above.

Although I don't think that any of the checks Wonga did on the loans were sufficient, that in itself doesn't mean that Mr M's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Wonga that Mr M couldn't sustainably afford the loans.

The adjudicator asked Mr M to provide us with evidence of his financial circumstances at the time he applied for the loans, so we could see what information Wonga should've taken into account before agreeing to lend to him. Mr M has only been able to give us bank statements for his current account. He said that household bills and regular financial commitments were around £2,000 and were paid from his former partner's bank account. But, he hasn't been able to obtain statements from that account. So, with regard to Loans 1 to 3, I haven't been able to fully verify the outgoings Mr M has told us he had at the time. So, as I can't be sure what was being paid, I'm not able to conclude that Wonga should do anything more about these loans.

By the time of Loans 4 and 5, I think Wonga should have also been asking Mr M for full information about his financial circumstances. And I think if it had done this, it would have quickly realised that it shouldn't be lending to Mr M. I've looked at Mr M's current account statements, and what he's told us about his finances, to get a picture of what Wonga would have seen if it had done what I consider to be proportionate checks.

It's clear from the statements that at the time he was asking for the loans, Mr M was spending heavily on what appear to be gambling transactions. Wonga has queried whether Mr M's winnings were taken into account. I've looked at this and as far as I can see, after winnings were taken into account, Mr M's net expenditure on gambling for the month before Loan 4 was around £3,500 and for the month before Loan 5, it was even more. As his net expenditure on gambling appears to be greater than his income, I can see that Mr M didn't have any money left over each month with which to repay his loans. So, I don't think that Loans 4 and 5 were affordable. And, I think Wonga would have known that if it had carried out what I consider to be proportionate checks. So I don't think that Wonga should have agreed to lend Loans 4 and 5 to Mr M.

As Wonga has agreed to refund the interest and charges for Loan 6, I'm including this loan in my proposed decision below.

To put things right for Mr M, I think that Wonga should:

- refund all the interest and charges as a result of Loans 4 to 6 and the top up loan;
- add interest at 8% per year simple* on the above interest and charges from the date they were paid to the date of settlement;
- remove any adverse information recorded on Mr M's credit file about Loans 4 to 6 and the top up loan.

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

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it, I order WDFC UK Limited, trading as wonga.com to:-

1. Refund to Mr M all the interest and charges as a result of Loans 4 to 6 and the top up loan;

2. Add interest at 8% per year simple* on the above interest and charges from the date they were paid to the date of settlement; and

3. Remove any adverse information recorded on Mr M's credit file about Loans 4 to 6 and the top up loan.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 December 2017.

Roslyn Rawson
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