

complaint

Mr P has complained about two instalment loans Trusted Cash Limited (TCL) T/A Trusted Quid lent to him. He has said he was struggling financially at the time and had TCL carried out sufficient checks, it wouldn't have lent to him. Mr P has also said that on one occasion, TCL took out more than the agreed monthly loan repayment from his account.

background

Mr P took out two loans with TCL between August 2017 and July 2018. Both loans were instalment loans due to be repaid over six instalments. The first loan was for £100 and Mr P was due to repay £46.31, £36.17, £32.27, £27.59, £25.52 and £20.42. Mr P repaid this loan in February 2018.

A few days after repaying this loan, Mr P took out his second loan for £600. This loan was also due to be repaid in six monthly instalments as follows; £184.08, £228.39, £193.32, £172.25, £146.82, £123.30. Mr P repaid this loan in July 2018.

When Mr P complained to TCL, it didn't uphold his complaint, it said it carried out sufficient checks before lending both loans and there was nothing from those checks that showed Mr P was unable to afford the loans.

Unhappy with TCL's response, Mr P brought his complaint to this service where it was looked by one of our adjudicators. Our adjudicator thought that TCL's checks went far enough before lending both loans and so didn't recommend that Mr P's complaint should be upheld. Our adjudicator also thought that TCL didn't do anything wrong by debiting Mr P's account with over £400 in one month as this included the missed payment from the previous month.

Mr P didn't agree with the adjudicator and asked for an ombudsman to look into his complaint. And so this complaint has been passed to me for a decision.

my findings

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

At the time of the loans, this type of borrowing was regulated by the Financial Conduct Authority (FCA). The rules in CONC 5.2 at the time of the loans stated that lenders must consider *"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 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"*.

In short, TCL had to carry out customer focused checks to determine whether Mr P could sustainably afford to make each repayment when it fell due over the entire term of each loan, before agreeing to lend.

what checks did TCL carry out?

TCL has said that it searched Mr P's credit file, it hasn't provided the results from its search but has said there were no defaults or county court judgements (CCJs) within the last six months. Mr P has provided a copy of his file and I can see that there was a registered default on his file in 2015 – about two years before took out his first loan. I wouldn't have expected TCL to automatically decline his loan applications because of this as it was on the file from a long time ago. Aside from the default in 2015, there were no other defaults or county court judgements (CCJs) recorded on Mr P's file.

TCL also checked Mr P's income which was declared as £2,000 at the time of both loans. And TCL checked Mr P's monthly outgoings including his other short term loan commitments. For loan 1 Mr P's expenses totalled £835 which included rent £150, housekeeping £150, travel £75, credit card £100, payday loans £200, other expenses £160. For loan 2 Mr P's expenses totalled £1,225, this included rent £150, housekeeping £100, phone £75, travel £100, car £200, credit card £100, payday loans £200 and other expenses £200.

were the checks sufficient/proportionate?

Mr P's first loan was for £100 and he was due to repay a maximum of £46.31. This was Mr P's first loan with TCL and the maximum repayment was relatively low compared to his declared income of £2,000. From the information TCL has provided, I can see that the purpose of this loan was recorded as being for unexpected bills. So TCL in addition to the checks listed about also checked why Mr P needed to take out this loan. Overall, I think TCL's checks before lending this loan went far enough.

The second loan was for £600, considerably more than the first loan and I can see that Mr P took out this loan within days of repaying the first loan. The maximum repayment for this loan was £228.39; this maximum repayment amount was also relatively low compared to Mr P's declared income of £2,000. I think TCL's checks for this loan also went far enough.

Given what Mr P told TCL about his income and expenses at the time of both loans, his disposable income suggests that he could sustainably afford to repay both loans over their terms.

A lender of high cost credit is expected to carry out proportionate checks, these are not prescribed checks but could take into account things like the loan amount, the repayments, term of the loan and information about the borrower the lender was aware of at the time. Given the checks TCL carried out and the information it knew about Mr P at the time, I can't see anything that should have prompted it to carry out further checks or be concerned about Mr P's ability to repay the loans over the term.

Mr P has said TCL didn't request his bank statements or payslips and that he was gambling during the time he took these loans. And TCL would have known this had it carried out sufficient checks. But the fact that Mr P was gambling wasn't something he told TCL at the time he applied for the loans. And I don't think it's something TCL would have discovered from what I consider to be proportionate checks. I understand that Mr P feels strongly about these issues but there's no requirement on a lender to request bank statements or payslips before lending and in the particular circumstances of these loans, TCL was entitled to rely on the information Mr P provided when making its decision to lend.

So I can't say TCL lent irresponsibly here because it didn't request Mr P's bank statements or payslips.

did TCL misuse its payment authority?

Turning to the issue of TCL taking more than the agreed repayment amount from Mr P's bank account in June 2018, Mr P has said it was wrong for TCL to do this. I can see that Mr P's second loan was structured in a way that required him to make six monthly payments.

On 25 May 2018, Mr P was due to repay £172.25. As the direct debit failed, a charge of £15 was applied to Mr P's account and as the payment still didn't go through on 6 June 2018, £400.85 was collected on 25 June 2018. This amount included the outstanding payment from the previous month, the £15 charge and the payment of £146.82 due in June.

From the information provided, TCL sent Mr P an email in May 2018 stating that his payment for that month was now overdue and the rejected direct debit will lead to one off charge of £15. On the same day Mr P responded by saying he will make the payment on 6 June 2018 as he was getting paid slightly later that month. Following this TCL sent Mr P a reminder on 3 June 2018 that it would be taking payment on 6 June 2018. The payment again failed to take on that date and TCL got in contact with Mr P about this – telling him the payment failed and there was still money due.

From this, I'm satisfied that Mr P was aware he'd missed a payment and that he needed to bring his account up to date. Also the credit agreement Mr P signed stated that: *"If the Direct Debit in respect of any repayment on the Due Date fails then we will attempt to apply for the Minimum Payment using CPA on the third working day after the Due Date. If this attempt fails then we will attempt to collect the payment on the next Due Date by Direct Debit together with the minimum payment due that month including accrued fees and charges that remain unpaid. If the failed payment relates to the final Due Date under the Agreement then we will attempt to collect the amount owing by Direct Debit either four weeks or one calendar month later, depending on the agreed payment cycle. We will again make reasonable attempts to contact you throughout this period as in 2.3 above".*

Given the above, I don't think TCL acted unfairly by taking the outstanding payment - the overdue payment at the same time. It only charged one fee for the declined direct debit, although Mr P's payment failed to go through on more than one occasion. And it followed its process which it notified Mr P about from the outset.

I realise this will be a disappointing outcome for Mr P, for the reasons I've given above, I'm not upholding his complaint.

my final decision

I do not uphold this complaint against Trusted Cash Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 April 2019.

Oyetola Oduola
ombudsman