

complaint

Miss N has complained about payday loans she took out with Casheuronet UK LLC (trading as "Quick Quid"). She's said Quick Quid gave her numerous loans when they were unaffordable for her as she was already deep in debt.

background

I attach my provisional decision of 22 February 2019, which forms part of this final decision. In my provisional decision I set out why I was intending to uphold Miss N's complaint. I invited both parties to make any further comments before I reached a final decision.

Following this, Miss N responded to confirm that she accepted my provisional decision. Quick Quid also responded to say that it had nothing further to add to my provisional decision and that it would await my final decision.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In the absence of anything further for me to think about, I see no reason to alter the conclusions I reached in my provisional decision.

my final decision

For the reasons set out above and in my provisional decision of 22 February 2019, I'm upholding Miss N's complaint. Casheuronet UK LLC (trading as "Quick Quid") should put things right in the way set out in my provisional decision of 22 February 2019.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss N to accept or reject my decision before 11 April 2019.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss N has complained about payday loans she took out with Casheuronet UK LLC (trading as "Quick Quid"). She's said Quick Quid gave her numerous loans when they were unaffordable for her as she was already deep in debt.

background

Miss N has complained about three loans. Her borrowing history is as follows:

Loan	Date taken	Total	Payments	Total cost	Max repayment	Date repaid
1	01/09/2014	£400.00	3	£640.00	£480.00	28/11/2014
2 top-up	16/03/2015	£300.00	3	£544.80	£369.60	26/06/2015
	20/03/2015	£100.00	3	£723.20	£492.80	26/06/2015
top-up	21/03/2015	£100.00	3	£891.20	£616.00	26/06/2015
	22/03/2015	£100.00	3	£1,064.80	£739.20	26/06/2015
3	20/07/2015	£350.00	3	£616.00	£429.80	Outstanding

One of our adjudicators looked at what Quick Quid and Miss N said. She eventually concluded Quick Quid's checks before providing loan one were proportionate. But she also thought Quick Quid's checks from the second top-up to loan two onwards weren't proportionate and such checks would've shown Quick Quid it shouldn't have provided the second and third top-ups to loan two and loan three to Miss N.

So our adjudicator partially upheld Miss N's complaint. Quick Quid disagreed and asked for an ombudsman to review the complaint. And the case has now been passed to me.

the legal and regulatory framework

regulation by the Financial Conduct Authority ("FCA")

Quick Quid gave Miss N her loans after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. Quick Quid 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. Quick Quid'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 Quick Quid. 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 rules set out in CONC 5 and CONC 6 and the Irresponsible Lending Guidance ("ILG") published by the former regulator of Consumer Credit providers the Office of Fair Trading ("OFT") in March 2010. 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]

CONC 5.3.1G(6) goes on to say:

For the purposes 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; and*
- (c) *out of income and savings without having to realise security or assets; and*
“unsustainable” has the opposite meaning.

[Note: paragraph 4.3 and 4.4 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:

- (a) *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 Quick Quid.

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.*

Section 140 of the Consumer Credit Act 1974

All of Miss N's loans were given to her 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

(1) *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.*

the law

I've also taken account of the Consumer Credit Act (including the provisions I haven't set out above), and other relevant legislation, including the law relating to negligence, misrepresentation and contract; as well as the law relating to causation and remoteness.

other relevant publications and good industry practice

The ILG and CONC set out the regulatory framework that authorised consumer credit providers have to adhere to. But they represent a minimum standard for firms. And 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.

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.

the Consumer Finance Association Lending Code for Small Cash Advances

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 Quick Quid wasn't a member of the CFA at the time – although I understand that it is now. 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 Quick Quid 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.

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.

I) 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.*

my provisional findings

I have read and considered all the evidence and arguments available to me from the outset, in order to provisionally decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think the three overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint are:

- Did Quick Quid, for each loan, complete reasonable and proportionate checks to satisfy itself that Miss N would be able to repay the loan in a sustainable way?
 - If not, would those checks have shown that Miss N 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 Miss N's indebtedness in a way that was unsustainable or otherwise harmful?
- Did Quick Quid act unfairly or unreasonably in some other way?

If I determine that Quick Quid did not act fairly and reasonably in its dealings with Miss N and that she has lost out as a result, I will go on to consider what is fair compensation.

I've carefully considered these questions.

Did Quick Quid, for each loan, complete reasonable and proportionate checks to satisfy itself that Miss N would be able to repay the loans in a sustainable way?

A lender will determine its own risk appetite when providing short-term loans. In other words, it'll decide how much risk – in relation to not getting its money back – it is prepared to accept when deciding to lend to a consumer. But the rules – throughout the time Miss N was borrowing from Quick

Quid – also require a lender to carry out a reasonable assessment of whether the borrower can afford to meet the repayment (or repayments) in a sustainable manner.

This is commonly referred to or called an “affordability assessment” or “affordability check”. And a lender is required to carry out any such affordability assessment in addition to any creditworthiness assessment to assess the level of its risk. Affordability checks should be both “borrower-focused” and “proportionate”. It’s whether Quick Quid fulfilled this obligation to *Miss N* that is what I’m concerned about and is the first key question I have to determine in order to decide this case.

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 (such as 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 think 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);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); 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).

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. I’ve thought about all the relevant factors in this case.

- loan one

It’s important to note that loan one was Miss N’s first with Quick Quid. So there can’t have been any established pattern in Miss N’s borrowing needs at this stage. Quick Quid says that before it provided loan one, it asked Miss N to confirm her monthly income and her monthly expenditure. It also says that it ran credit and employment checks to verify the reasonableness of the information Miss N provided.

In my view, the amount Miss N was lent did represent a significant proportion of her stated monthly income. But I’m also mindful that Miss N did have three pay periods before she was required to make her largest repayment. And the first two monthly payments were for significantly lower amounts.

So taking all of these factors together, I think that Quick Quid’s checks before providing loan one to Miss N were reasonable and proportionate. And I’m not intending to uphold the complaint about this loan.

- loans two and three

Before I look in detail at the checks Quick Quid carried out for these particular loans, I have a few general observations about the arguments Quick Quid has made about its overall process at the time.

Quick Quid says it “*started implementing changes to its affordability assessment in June 2014 and all the changes were completed by Feb 28th 2015. Starting 1st March , 2015 before Miss N borrowed her second loan, Quick Quid had implemented an affordability review that is consistent with the FCA Handbook and that was in place at the time we received authorisation by the FCA. We confirm that this assessment was conducted properly and individually for each of these last five loans*”.

Quick Quid seems to be saying that because it reviewed its processes and incorporated regulatory changes all loans for all customers granted from 1 March 2015 onwards can't have been provided irresponsibly. Although in its response to our adjudicator's assessment, it does row back on this a little by saying that being granted FCA authorisation didn't grant it immunity to lend and that there may be cases where a loan is determined to be unaffordable even after Quick Quid was granted FCA authorisation.

To be clear, I don't agree with what Quick Quid has said. It doesn't follow that a firm cannot have acted unfairly or unreasonably (which above all is what I'm considering here) simply because it has been authorised and is regulated by the FCA. This assumes that an authorised firm's regulated activities will always produce a fair and reasonable outcome for all consumers.

I also want to make it clear that my decision here is limited to the facts of this case. What I am deciding, in this case, is whether Quick Quid met its obligations to Miss N when it lent to her – not whether Quick Quid's lending model is compliant or what outcomes this might produce for other consumers.

When it was informed that the complaint was being passed to an ombudsman, Quick Quid also provided a further 13 page document which contained a high level overview of its lending process.

The final page of this document says that Quick Quid considers the checks it carried (and still carries) out will be proportionate in every circumstance.

Indeed the response says that Quick Quid “*strongly believes that the procedures in place are solid and appropriate for any application*”. It goes on to say that it considers each application for a loan as if it was a first time application. And it's unfair to say that its checks weren't proportionate simply because it didn't ask for bank statements as a matter of course.

But I can't see how doing the same thing over and over again, irrespective of the circumstances, can always be proportionate. In my view, the use of the word proportionate – in the regulations and guidance - means there should always be a direct relationship between the circumstances of a *particular* loan application and the degree of information a lender will need to gather in order to make an informed decision. After all, an assessment of affordability is a borrower rather than lender focused test.

So I won't simply take it as read that Quick Quid's process will have provided a fair outcome because its checks are always proportionate in every circumstance and I have no intention of automatically rejecting Miss N's complaint on this basis.

Quick Quid's 13 page document also says that it considers each loan application as if it's a consumer's first. But I'm not necessarily persuaded by this argument either. I say this because Quick Quid's document appears to suggest that it regards paid off loans, in themselves, as an indicator of better creditworthiness, rather than as an indicator further information should be obtained from the borrower. This to me suggests that Quick Quid believes a repeat borrower is more likely to find a later loan affordable simply because they might've paid off previous ones.

I now turn to what Quick Quid says it did before providing Miss N with loans two (including the top ups) and three.

Quick Quid says that it asked Miss N for her monthly income and expenditure information when she applied for these loans. In addition, it says it used a third-party credit reference agency to validate the reasonableness of Miss N's stated income. It then used a combination of the credit report data it obtained and Office of National Statistics ("ONS") data to determine the reasonableness of Miss N's stated expenditure.

I've considered what these checks showed and whether what was done was reasonable and proportionate.

- loan two and first top-up

For loan two, Quick Quid's checks resulted in Miss N's declared monthly disposable income of £825 being substituted for an estimated monthly disposable income of £543.22 per month. Miss N was given an initial £300 – which required her to pay £544.80 in total (not £464.80 as argued by Quick Quid). She had to make one payment of £103.20 in April 2015, one of £72 in May 2015 and a final payment of £369.60 in June 2015.

So it seems to me that irrespective of whether Quick Quid relied on Miss N's declared monthly disposable income, or its own enhanced check Miss N appears to have been able to sustainably make the repayment to the initial loan deposit for loan two.

As this is the case and bearing in mind it was approaching almost four months since Miss N repaid her first loan, I think that Quick Quid's checks before providing the initial amount for loan two were reasonable and proportionate.

Equally given the initial top-up to loan two didn't make too much of a difference to the headline figures that needed to be repaid each month, and it's entirely possible Miss N needed a first top-up because she simply underestimated how much she needed when she made her initial loan application, I'm prepared to accept that these funds weren't unfairly or irresponsibly provided as the checks carried out were reasonable and proportionate too.

So I'm not intending to uphold Miss N's compliant about the initial advance and first top-up for loan two.

- loan two second and third top-ups

While I'm prepared to accept that the checks carried out before the initial loan amount and first top-up for loan two were provided were reasonable and proportionate, I don't think that I can fairly and reasonably reach that conclusion for the second and third top-ups to loan two.

I say this for a number of reasons. Firstly, the second and third top-ups for loan two took Miss N's maximum repayment significantly over her what Quick Quid had determined was her monthly disposable income. I accept that Miss N had lower repayments for the first two repayments. And I'm aware that Quick Quid's process, at this particular time, would also have required a digital signature from Miss N confirming that she understood the maximum repayment amount was higher than her monthly disposable income and that she'd have to carry over a portion of her disposable income from the first two months, when her payments were substantially lower, in order to make the final payment.

But as Miss N was already coming back for further funds (on a second and third occasion), I don't think it was reasonable or proportionate for Quick Quid to proceed on the basis Miss N would be able to carry forward disposable income from months one and two to month three. Miss N's request for further funds through the top-ups strongly indicated that she wouldn't have been able to do this. After all why would she have needed to borrow further, if she had been carrying forward these funds?

I want to make it clear that, in reaching this conclusion, I have seen Quick Quid's arguments about the appropriateness of providing these deferred principle or balloon payment loans. And while I don't think that comparing this loan to interest only mortgages and personal contract purchase loans, where the consumer an asset is involved, provides a fair like for like comparison, I'm not saying that it is unfair for Quick Quid to offer this type of loan per se.

What I'm saying here is that given what had happened during the course of its lending history with Miss N – her taking top-ups on loan two, Quick Quid ought to have realised that it was unlikely Miss N would carry over disposable income into months two and three. By the time of the borrowing in question, Miss N's actions up to that point suggested it was unlikely that she'd be able to do this, even though she might've been aware that's what she needed to do so.

In these circumstances, I don't think it was reasonable and proportionate for Quick Quid to have ignored the reality of what Miss N's borrowing history was demonstrating in favour of any declaration she may have signed.

So given the particular circumstances of Miss N's borrowing for loan two, I'm inclined to say that Quick Quid needed to do more before giving Miss N the second and third top-ups on loan two. I think that it would've been reasonable and proportionate for it to have taken steps to verify Miss N's actual financial position, in order to fairly and reasonably determine whether she would be able to sustainably make the payments on the revised schedule.

And as Quick Quid didn't do this, I'm inclined to say that Quick Quid's checks before the second and third top-ups on loan two weren't reasonable and proportionate.

- loan three

Miss N approached Quick Quid for loan three less than a month after having managed to repay loan two. And this time she was seeking an initial amount that was more than the initial amount for loan two. Quick Quid says that Miss N monthly disposable income was worked out to be £201.22. Miss N was once again given a three payment loan. The payment schedule set out that Miss N had to make a first payment of £103.74 in August 2015, a second payment of £82.46 in September 2015 and a final payment of £429.80 in October 2015.

So Miss N was once again given a loan where the final payment was more than her ascertained monthly disposable income. Only this time the final payment was for more than double what Quick Quid worked out was her monthly disposable income.

As I've explained, loan three was provided less than a month after loan two was repaid. So I think that Quick Quid ought fairly and reasonably to have been alert to the possibility Miss N might've been seeking further funds to cover the hole left in her finances by the repayment of loan two. Once again, I do accept that Miss N is likely to have electronically signed a declaration confirming that she knew she had to carry forward disposable income from months one and two in order to make her final payment. But, in my view, it wasn't fair and reasonable for Quick Quid to simply accept that Miss N would do this given the circumstances.

Miss N approaching Quick Quid for loan three so soon after loan two was repaid suggested that there was a very real possibility Miss N would be unable to carry forward disposable income in the way necessary to make the October 2015 repayment. This is especially the case as the October 2015 repayment was more than double what Quick Quid had worked out Miss N's monthly disposable income as being. And in circumstances where Quick Quid's checks suggested Miss N's monthly disposable income had reduced by around two thirds in the four month period between the applications for loan two and loan three.

Given Quick Quid's lending history with Miss N and the information Quick Quid had itself gathered during the application, I think that it would've been reasonable and proportionate for it to have taken steps to verify Miss N's actual financial position, in order to fairly and reasonably determine whether she would be able to sustainably make the payments on the schedule.

It could have done this by asking for information such as bank statements, copies of bills, or even proof of Miss N's income. But the crux of what Quick Quid needed to do was confirm that Miss N could make the contractual payments, even though its lending history with her was suggesting otherwise, before it provided the loan.

Would reasonable and proportionate checks on the second and third top-ups to loan two and loan three indicated to Quick Quid that Miss N would have been unable to sustainably repay these loans?

Even though I don't think the checks Quick Quid carried out were proportionate this doesn't, on its own, mean that Miss N's complaint should be upheld. After all if further checks would've simply shown Quick Quid that these loans weren't unsustainable for Miss N (and so there was no reason why Quick Quid shouldn't have lent to Miss N), then further checks wouldn't have made a difference. This is because Miss N won't have lost out as a result of Quick Quid's failure to carry out proportionate and sufficient checks and there'd be no reason for me to uphold the complaint.

But if further checks would most likely have shown Quick Quid that Miss N wouldn't have been able to sustainably repay these loans then this would mean Miss N lost out because of Quick Quid's failure to carry out proportionate and sufficient checks. And there'd be grounds to uphold Miss N's complaint. As proportionate checks weren't carried out I can't say for sure what these checks would have shown. But Miss N has provided us with some limited information on her financial circumstances at the time she applied for the second and third top-ups to loan two and loan three. And I've been able to get an idea of what her financial circumstances were like.

Of course I accept this isn't perfect as different checks show different things. And just because something shows up in the information Miss N has provided it doesn't mean it would've shown up in any checks Quick Quid might've carried out. But the information Miss N has provided is the best indication I have of what his financial circumstances were like at the time. And in the absence of anything else I think it's perfectly reasonable to rely on it.

It's interesting to note that, in its response to our adjudicator's view, Quick Quid set out the definition of sustainable. It focused on section (c) of CONC 5.3.1G(6) and referred to any loan payments having to be made out of income and savings without having to realise security or assets. But the definition of sustainable is wider than this and Quick Quid didn't refer to the detail behind section (a) (as well as section (b)) which focuses on sustainable meaning without undue difficulties, in particular making repayments on time while meeting other commitments and crucially without having to borrow to meet the payments.

So, in my view, a lender needs to do more than simply establish whether loan payments are affordable on a strict pounds and pence calculation, in order to satisfy itself that a consumer can repay a loan sustainably. Of course, any loans payments being affordable on this basis might be a good indication of a consumer being able to sustainably make their repayments. But it doesn't automatically follow this is the case. And, in my view, if a lender realises, or it ought fairly and reasonably to realise, that a consumer won't be able to make, or they are unlikely to be able to make, their repayments without borrowing further then it follows that it out to realise a consumer won't be able to sustainably repay a loan.

I've thought about all of the information I've been provided with in this context.

I've carefully looked through everything Miss N's provided. The information I've been provided with shows Miss N had an overdraft which she was in continually in throughout the period she was borrowing from Quick Quid. And Miss N was nowhere near seeing a credit balance even when she received her monthly salary. Miss N was also paying a significant amount of overdraft interest each

month. Indeed she was struggling to make ends meet to such an extent that she appears to have been making reduced (or minimum) payments to her existing creditors and she was supplementing her overdraft by borrowing from other short-term lenders too.

So I think that proportionate checks would more likely than not have shown Quick Quid that Miss N wouldn't have been able to make the payments for the second and third top-ups to loan two and loan three without borrowing further (most likely from unsustainable sources) and so she wouldn't have been able to sustainably make these payments.

In these circumstances, I think that reasonable and proportionate checks would have alerted Quick Quid to the fact that Miss N would not have been able to sustainably make the repayments to these loans.

As this is the case, I minded to say that not only did Quick Quid fail to carry out reasonable and proportionate checks before giving the second and third top-ups to loan two and loan three, but that proportionate checks would've shown Miss N wouldn't have been able to sustainably make her payments to these loans.

Taking into account the short-term purpose of the payday loans provided, did the overall pattern of lending increase Miss N's indebtedness in a way that was unsustainable or otherwise harmful?

In addition to assessing the affordability of each *individual* loan provided to Miss N by Quick Quid, I also think it's fair and reasonable to look at the *overall pattern* of lending. I'm mindful here of the short-term purpose of this type of credit and of the relevant rules, guidance and good industry practice at the time – as summarised in the earlier part of this decision.

Bearing in mind the short-term purpose of this type of credit and the relevant rules, guidance and good industry practice at the time (as summarised in the earlier part of this decision), it seems to me there may be circumstances where offering a loan of this type to a customer who appears to be becoming reliant upon short-term lending would be unsustainable or otherwise harmful. This is irrespective of the fact that the loans, on the face of things, may appear to be affordable.

So I've carefully thought about whether it was fair and reasonable for Quick Quid to have offered Miss N his loans in the circumstances which it did.

Quick Quid gave Miss N three loans over a ten month period. And despite warning signs being present – Miss N taking three top-ups on loan two and then taking loan three shortly afterwards – I don't think that there is enough here to say it ought fairly and reasonably to have regarded the emerging pattern, of Miss N's loans perhaps becoming unsustainable and otherwise harmful, as having become established.

So I'm not inclined to uphold Miss N's complaint on this basis.

Did Quick Quid act unfairly or unreasonably in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Quick Quid acted unfairly or unreasonably towards Miss N in some other way.

Overall and having carefully thought about the three overarching questions, set out on pages 8 and 9 of this provisional decision, I'm inclined to say that Quick Quid unfairly and unreasonably provided Miss N with the second and third top-ups to loan two and loan three.

As Miss N had to pay interest and charges – as a result of being given these advances when she shouldn't have been, I also think that Miss N lost out because of what Quick Quid did wrong. So I think that Quick Quid should fairly and reasonably put things right.

putting things right - what I'm intending to tell Quick Quid it needs to do to put things right for Miss N.

In order to put things right for Miss N, Quick Quid should:

- refund all the interest and charges Miss N paid on the second and third top-ups to loan two; and
- 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 and all interest and charges added to loan three from the outset;
- remove any adverse information recorded on Miss N's credit file as a result of the interest and charges on these loans;

†HM Revenue & Customs requires Quick Quid to take off tax from this interest. Quick Quid must give Miss N a certificate showing how much tax it's taken off if she asks for one.

I understand there was an outstanding balance on loan three when Quick Quid provided its file on Miss N's complaint to us. If an outstanding balance remains then Quick Quid can deduct this from the compensation it now needs to pay Miss N for the second and third top-ups to loan two.

I'd like to remind Quick Quid of its obligation to treat Miss N positively and sympathetically should she be experiencing financial difficulty – if an outstanding balance remains on loan three even after all interest and charges refunds have been applied and it wishes to collect this debt.

my provisional decision

For the reasons I've explained, I'm intending to partially uphold Miss N's complaint and tell Casheuronet UK LLC (trading as Quick Quid) to pay redress as set out above.

So unless the comments and evidence I get by 8 March 2019 changes my mind, that's what I'll tell Quick Quid to do in my final decision.

Jeshen Narayanan
ombudsman