

complaint

Mr Y complains about payday loans taken with Apfin LTD (trading as cashasap) which he says were unaffordable, so the loans shouldn't have been given to him.

background

A summary of Mr Y's borrowing history can be found in the appendix at the end of this decision.

Our adjudicator reviewed Mr Y's complaint and didn't think any of the checks carried out by Apfin went far enough. But he thought that had Apfin carried out proportionate checks on the first 4 loans it would've seen that Mr Y could afford the repayments and it still would've given him these loans.

But had Apfin carried out further checks into Mr Y's finances it would've found out that he was spending significant amounts of money each month gambling and with his living costs and other financial commitments Mr Y wouldn't have had enough disposable income to be able to afford any of his remaining loans. The adjudicator recommended all loans from loan 5 be upheld.

Apfin disagreed with the adjudicator's recommendation. In response, it made a number of points, including;

- Mr Y was a low cost user of Apfin's loans,
- The guidance in use at the time the loans were approved didn't refer to frequency of borrowing as a reason to carry out further checks,
- The adjudicator recommended further checks from loan 4 – but Mr Y only paid 64 pence interest on this loan – which isn't enough to have prompted Apfin to carry out further checks, and
- Mr Y paid less than £2 to use Apfin's loans on 23 occasions and as such Apfin says that wouldn't have triggered any further affordability checks.

But Apfin did make an offer to refund £177.20 (which represented 50% of all the interest and charges) paid by Mr Y. Mr Y didn't accept this offer. So the case has been passed to me.

But as neither party has disagreed with the adjudicator's assessment about the first four loans, so I won't be looking at those in this decision. Instead, I'll start my review from loan 5.

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 carefully thought about everything I've been given and having done so, I'm partly upholding Mr Y's complaint and I'll explain why below.

Apfin had to gather enough information to be able to make an informed decision as to whether it was going to lend. The guidance and rules don't set out what checks must be done before lending is approved. However, Apfin needed to conduct enough checks to make sure the loans were affordable for Mr Y. And these checks needed to be proportionate to a number of things such as the size of the loan and when the loans were due to be repaid.

But even if the checks Apfin carried out weren't proportionate, that alone doesn't mean Mr Y's complaint should be upheld. I say this because, it's possible, that had further checks been carried out by Apfin they could've shown Mr Y was able to afford his loans. So Apfin wouldn't have been wrong to lend him the money.

Apfin says for each of the loans it took details of Mr Y's income and expenditure as well as carrying out credit checks – and from loan 32 Apfin had the facility to work out what percentage of Mr Y's declared income was spent on debt repayments. And based on the information Apfin gathered it says that these loans were affordable for Mr Y. But I've thought about what Apfin says and Mr Y's circumstances at the time each loan was approved. And having done so, I don't think Apfin should've given Mr Y any of the loans that I'm looking at.

I've considered what Apfin says about the interest charged on loan 4 – but had this loan run to term Mr Y would've ended up paying £12.18 in interest. Although that didn't happen, I don't think, by this point that Apfin could solely rely on what Mr Y was telling it.

This was now his fifth loan taken out in a little under 2 months and it was also taken out on the same day as his fourth loan was repaid. I think this was enough for Apfin to have concerns about the information Mr Y had provided. So Apfin's checks needed to go further – by this point, I think it should've been verifying the information Mr Y was providing.

Apfin could've verified the information Mr Y had provided a number of ways – for example, it could've asked to see evidence of Mr Y's income and expenditure, or as I've done here, it could've reviewed Mr Y's bank statements.

Having looked at Mr Y's bank statements, I don't think he had the ability to repay this loan. While the monthly income Apfin has recorded is broadly correct it's clear from the statements that Mr Y was spending significant amounts each month gambling. When this loan was approved he had spent over £900 on betting websites. And Mr Y still had his regular living costs, regular financial commitments as well as a number of outstanding short term loans to repay. So had Apfin carried out proportionate checks – which it was required to do, it would've seen that Mr Y didn't have any disposable income in which to repay this loan – and as a responsible lender, Apfin wouldn't have lent to Mr Y.

I've considered what Apfin says about the regulations - that frequency of borrowing isn't a reason to carry out further, more in – depth checks. But CONC 5.2.4 says;

CONC 5.2.4

(3) A firm should consider the types and sources of information to use in its creditworthiness assessment and assessment required by CONC 5.2.2R (1), which may, depending on the circumstances, include some or all of the following:

(a) its record of previous dealings;

So I think that - Apfin's previous dealings with Mr Y – a number of loans in a short space of time, should've given it some cause for concern about the information Mr Y was providing it and I think that it needed to carry out further checks. And I think that these further checks would've shown it that Mr Y wasn't in a position to take on his fifth loan.

For all remaining loans I still think Apfin should've had a thorough understanding of Mr Y's financial position. Mr Y continued to borrow and although, the amounts he took fluctuated I don't think that would've been enough to make Apfin think that Mr Y wasn't becoming dependant on these loans. Indeed, there are times such as November 2014 and February 2015 when Mr Y is borrowing from Apfin several times a month and this may have been sign that he was struggling.

I've again reviewed Mr Y's bank statements throughout the remaining period of his borrowing. And having done so I can see, his financial position doesn't change. Mr Y's income remains broadly in line with what he declared to Apfin. But he is still taking on a number of other payday loans each month, he was also incurring additional bank charges and there appears to have been an increase in the number of credit card and loan repayments.

In addition, Mr Y was at times, still spending a significant amounts each month gambling. Which when added to Mr Y's living costs didn't leave him with any disposable income to be able to afford these loans. And I think that had Apfin been aware of this it, would've thought Mr Y wasn't able to repay his loans in a sustainable manner – and so Apfin wouldn't have given Mr Y the remaining loans.

There is a gap between loans 52 and 53, and the adjudicator thought that taking into account what Apfin saw on Mr Y's credit file it should've carried out further checks – and had it done so it wouldn't have given him this loan. I've reviewed this loan, and I can see that the loan was taken and repaid on the same day – so Mr Y hasn't incurred any interest or charges. So whether I think proportionate checks were carried out on this loan – or not, makes no difference to the outcome, because even if I thought Apfin needed to carry out further checks there wouldn't be any interest to refund to Mr Y. So I won't be looking at this loan in this decision.

what Apfin should do to put things right

To put things right for Mr Y, Apfin should:

- refund all the interest and charges paid by Mr Y on loans 5 - 52,
- 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 Y's credit file about these loans.

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

my final decision

For the reasons given above, I partly uphold Mr Y's complaint.

Apfin LTD should put things right for Mr Y as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 1 December 2017.

Robert Walker
ombudsman

Appendix

loan number	loan amount	received date	actual repayment date
1	£60.00	08/07/2014	18/07/2014
2	£100.00	23/07/2014	25/07/2014
3	£125.00	27/07/2014	07/08/2014
4	£65.00	01/09/2014	02/09/2014
5	£80.00	02/09/2014	03/09/2014
6	£80.00	05/09/2014	19/09/2014
7	£50.00	22/09/2014	23/09/2014
8	£20.00	01/10/2014	02/10/2014
9	£50.00	03/10/2014	06/10/2014
10	£160.00	06/10/2014	07/10/2014
11	£291.00	09/10/2014	20/10/2014
12	£100.00	22/10/2014	23/10/2014
13	£300.00	23/10/2014	03/11/2014
14	£290.00	05/11/2014	07/11/2014
15	£60.00	08/11/2014	10/11/2014
16	£50.00	10/11/2014	11/11/2014
17	£110.00	11/11/2014	14/11/2014
18	£50.00	15/11/2014	18/11/2014
19	£250.00	22/12/2014	23/12/2014
20	£205.00	09/01/2015	20/01/2015
21	£100.00	20/01/2015	22/01/2015
22	£247.00	24/01/2015	26/01/2015
23	£120.00	01/02/2015	07/02/2015
24	£250.00	08/02/2015	09/02/2015
25	£200.00	14/02/2015	16/02/2015
26	£30.00	17/02/2015	18/02/2015
27	£200.00	18/02/2015	20/02/2015
28	£100.00	23/02/2015	25/02/2015
29	£150.00	01/03/2015	02/03/2015
30	£110.00	04/03/2015	08/03/2015
31	£250.00	09/03/2015	17/03/2015
32	£270.00	25/03/2015	26/03/2015
33	£50.00	02/04/2015	07/04/2015
34	£130.00	13/04/2015	17/04/2015
35	£130.00	17/04/2015	20/04/2015
36	£115.00	09/05/2015	11/05/2015
37	£115.00	12/05/2015	18/05/2015
38	£250.00	18/05/2015	22/05/2015
39	£250.00	25/05/2015	27/05/2015
40	£150.00	27/05/2015	29/05/2015
41	£30.00	06/06/2015	07/06/2015
42	£100.00	07/06/2015	08/06/2015
43	£150.00	08/06/2015	10/06/2015
44	£300.00	10/06/2015	19/06/2015
45	£100.00	21/06/2015	22/06/2015

46	£300.00	27/06/2015	29/06/2015
47	£265.00	04/07/2015	14/07/2015
48	£200.00	24/07/2015	29/07/2015
49	£40.00	02/08/2015	03/08/2015
50	£300.00	31/08/2015	18/09/2015
51	£350.00	04/10/2015	06/10/2015
52	£350.00	17/10/2015	13/11/2015
53	£100.00	26/07/2016	26/07/2016