complaint

Mr N complains that WDFC UK Limited, trading as Wonga, lent to him irresponsibly. He says he was in a debt spiral and had to keep borrowing to make the repayments. Mr N also says his credit report should've shown he was in a debt plan and had other problems with defaults, late payments and the amount of credit he already had outstanding.

background

This complaint is about 32 loans Mr N had with Wonga over 33 months, between August 2014 and May 2017. Wonga says there were nine top-ups to these loans but from the information I've seen I think there were 18. I've set out some of the information Wonga's given us about these loans and the top-ups in an appendix attached to this decision.

Our adjudicator looked at this complaint and considered whether Wonga had carried out proportionate affordability checks – and what such checks would've likely shown. He didn't think Wonga had carried out proportionate affordability checks on any of the loans and that none of them would've looked affordable had Wonga carried out better checks.

Wonga didn't fully agree with the adjudicator. As it didn't have any expenditure information from Mr N for loan 1-13, it agreed to settle the complaint in relation to these loans. But in relation to loans 14 onwards, it didn't agree to the settlement proposed by the adjudicator. In summary, it said:

- Mr N misrepresented his financial situation when compared to the data this service held
- Had Mr N disclosed the details of his gambling, his loan applications most likely wouldn't have been approved
- The Office of Fair Trading's ("OFT") guidance wouldn't hold Wonga fully responsible for misrepresentations by Mr N
- There wasn't enough information about wins and losses to say whether gambling made the loans unsustainable and unaffordable.

Mr N didn't accept the offer made by Wonga – and so the case has come to me to decide. As Wonga has already agreed to settle in relation to loans 1-13, I'll only look at the decision to lend from loan 14 onwards. Loans 1-13 will however still be relevant in the context of Mr N's ongoing borrowing.

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 regulations and good industry practice at the time.

Mr N's loans were all taken after the Financial Conduct Authority ("FCA") became Wonga's regulator, so relevant regulations include the FCA's Consumer Credit sourcebook ("CONC").

the lending from loan 14 onwards

By the time Mr N applied for loan 14, he'd been borrowing from Wonga for about 14 months – meaning he'd been taking out one short-term loan a month, on average, for over a year.

The pattern of Mr N's borrowing typically shows that he would repay one loan, then borrow again shortly after – with usually less than two weeks between loans.

I think this sort of pattern is indicative of financial difficulty. It suggests Mr N was repaying loans, then running out of money before the end of the month and having to borrow again. In other words, it makes it look like Mr N was dependent on credit and that the borrowing had become unsustainable, within the meaning of CONC 5.3.1 (6). So Wonga should've considered Mr N's application for new loans very carefully, to make sure new lending was not likely to be unsustainable.

I think it's also worth noting that the OFT's guidance made it clear that payday loans were not appropriate for borrowing over the long term – the FCA's guidance on unsustainable lending (see CONC 6.7.21) refers back to paragraph 6.25 of the OFT guidance. CONC 6.7.21 says, *"A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful."* And paragraph 6.25 of the OFT's guidance, under the heading 'Deceptive and/or unfair practices', says such practices include:

> *"Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.*
>
> *The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.*
>
> *The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable."*

Bearing in mind the above, I don't think Wonga carried out proportionate affordability checks before lending to Mr N again.

It seems Mr N's most recent declared monthly income figure was £3,000. The expenditure information recorded by Wonga was: £250 for credit commitments, £150 for food, £450 for mortgage/rent, £80 for travel, £150 for utilities and £50 for other – for a total of £1,130.

But given Mr N's borrowing history, I think it was no longer reasonable for Wonga to rely on self-declared income and expenditure figures. CONC 5.3.1 (4) says:

> *"If a firm takes income or expenditure into account in its creditworthiness assessment… (b) 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…"*

Taking this into account, as well as Mr N's borrowing history, I think at some point – and certainly before loan 14 – Wonga should've been taking steps to independently verify Mr N's income and expenditure. One way it could've done this is by looking at payslips and bank statements. I've looked at Mr N's bank statements to give me a fair idea of what proportionate checks are likely to have shown.

I think if Wonga had carried out proportionate affordability checks, it would've immediately had some concerns about the appropriateness of lending to Mr N. I say this because I think it's likely Wonga would've established that Mr N was spending a significant amount of money on gambling. To give some examples, I can see that:

- In October 2015, Mr N's bank statements show over 70 outgoing gambling transactions, totalling approximately £2,100
- In November 2015, there are over 30 outgoing gambling transactions, totalling about £1,300
- In December 2015, there are around 50 outgoing gambling transactions, totalling approximately £1,100

Mr N's pay seems to vary within this period and he receives £2,200-£2,900 a month between October and December.

So Mr N's bank statements show that in at least one month he spent almost his entire salary on gambling. The figure is still substantial in other months, even if only taking into account the partial unverified expenditure information held by Wonga of £1,130 a month.

And if Wonga had been verifying Mr N's expenditure at this time, I think it would've seen Mr N's actual monthly expenditure was more than £1,130. Looking at Mr N's usual living costs and regular financial commitments, he was regularly spending more than £2,000 a month on these. When adding Mr N's other regular expenditure to this, including gambling, I think Wonga would've seen that continuing to lend to Mr N would be unsustainable and would likely worsen his financial situation.

Given what I think it's likely Wonga would have seen, I think don't it would (or should) have lent to Mr N in the circumstances I've described.

I should make it clear that I'm not saying gambling is by itself a reason Wonga shouldn't have lent. What's important in Mr N's case is that I think his gambling is regular expenditure which was likely to continue, and so something that needed to be taken into account as part of a proportionate affordability assessment. In Mr N's case, his overall regular expenditure meant he couldn't afford to sustainably repay the loans I'm looking at.

I also note that Wonga has said itself that, *"…had [Mr N] disclosed details of his gambling, his loan applications would most likely not have been approved."*

I agree the loans would most likely not have been approved. But as I've explained above, I don't think by this stage in the lending that Wonga was still entitled to rely on Mr N's declared expenditure. I also can't see that Wonga asked Mr N any questions specifically about gambling, or that he was given a clear opportunity to declare it.

I've also considered what Wonga has said about needing more information about gambling 'wins' and 'losses' – I don't agree that this is an important factor in Mr N's case. I think when gambling is clearly an ongoing part of someone's expenditure, then it's reasonable to take it into account as regular spending, whereas 'wins' are unknowable and may never materialise.

I’ve looked at Mr N’s bank statements from loan 14 onwards and am satisfied that they show the lending during this period was unlikely to be sustainable. It looks like Mr N was using short-term credit to meet day-to-day expenditure because he was running out of money shortly after being paid – and so, as his borrowing history clearly shows, was borrowing from month to month without any real break. As I’ve explained above, think this was an unsustainable situation.

conclusions

I don’t think Wonga’s affordability checks were proportionate for loans 14 onwards, taking into account what it knew about Mr N’s borrowing history. I don’t think Wonga properly took account of the information it had. It should’ve realised that the type of credit Mr N was using was no longer appropriate for his circumstances from loan 14 onwards – if not before.

If Wonga had carried out proportionate affordability checks, it would’ve seen that it wasn’t appropriate to keep lending to Mr N because he was unlikely to be able to repay the loans in a way which was sustainable.

what Wonga needs to do to put things right

- refund all the interest and fees paid by Mr N on loans 1-13, as it has already offered to do
- refund all the interest and fees paid by Mr N on loans 14-32
- add 8% per year simple interest on the above, from the date they were paid by Mr N to the date of settlement†
- remove any adverse information recorded on Mr N’s credit file about the above loans

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

my final decision

For the reasons given above, I’m upholding Mr N’s complaint. WDFC UK Limited must put things right by doing what I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 16 May 2018.

Matthew Bradford
ombudsman

Appendix

Loan no.	Start Date	End Date	Loan Amount (GBP)	Top-up(s) (GBP)
1	06/08/2014	04/09/2014	210	-
2	09/09/2014	16/09/2014	400	-
3	17/09/2014	15/10/2014	400	-
4	09/11/2014	13/11/2014	400	-
5	27/11/2014	04/12/2014	400	-
6	06/02/2015	12/02/2015	350	-
7	27/02/2015	03/03/2015	200	-
8	04/03/2015	13/03/2015	350	-
9	15/03/2015	14/04/2015	400	-
10	22/04/2015	30/04/2015	500	-
11	07/07/2015	15/07/2015	282	-
12	09/09/2015	22/09/2015	500	-
13	27/09/2015	12/10/2015	600	125
14	28/10/2015	30/10/2015	230	-
15	31/10/2015	12/11/2015	125	70 425
16	20/11/2015	16/12/2015	200	-
17	09/03/2016	02/04/2016	600	-
18	06/04/2016	15/07/2016	900	-
19	16/07/2016	09/08/2016	650	310
20	05/09/2016	14/09/2016	160	120
21	17/09/2016	12/10/2016	500	360
22	06/11/2016	15/11/2016	138	50 158 145
23	22/11/2016	05/12/2016	200	93 667
24	09/12/2016	14/12/2016	930	-
25	14/12/2016	14/01/2017	1,350	-
26	15/01/2017	17/01/2017	1,350	-
27	27/01/2017	15/02/2017	350	265 171 214
28	16/02/2017	14/03/2017	750	210
29	14/03/2017	27/03/2017	930	-
30	06/04/2017	14/04/2017	200	255 287 255
31	17/04/2017	23/04/2017	1,350	-
32	01/05/2017	19/05/2017	820	-