

complaint

Mr R complains that WDFC UK Limited (trading as Wonga) gave him loans that he couldn't afford to repay.

background

Mr R was given 48 loans by Wonga between January 2013 and March 2017. Some of those loans were instalment loans, but most were payday loans repayable within a month. All of Mr R's loans have been repaid. A summary of his borrowing is shown in an appendix to this decision.

When Mr R first complained to Wonga, it offered to refund the interest and charges he'd paid on two of the loans. And it also pointed out that it had previously written off the interest and charges from another of the loans. But it didn't think it had done anything wrong in giving Mr R the remaining loans. Mr R didn't accept that offer so brought his complaint to this Service.

Mr R's complaint has been assessed by one of our adjudicators. He thought that the checks Wonga had done on two of the loans had been proportionate. But he thought Wonga should have done more checks on the remaining loans. And he thought that better checks would have shown Wonga that Mr R couldn't afford to repay all except for eight of them. So he asked Wonga to pay some compensation to Mr R.

Disappointingly Wonga hasn't responded to that assessment. So, since the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr R accepts my decision it is legally binding on both parties.

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.

Wonga was required to lend responsibly. It needed to make checks to see whether Mr R could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr R was borrowing, and his lending history, but there was no set list of checks Wonga had to do.

The first 32 loans were given when Wonga was regulated by The Office of Fair Trading (OFT). Its guidance was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The OFT's Irresponsible Lending Guidance states "*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 goes on to say that repaying credit in a sustainable manner means being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty.*" And it defines "*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*"

The Financial Conduct Authority was the regulator at the time Mr R took the rest of his loans from Wonga. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These regulations – in CONC 5.3.1(2) - require lenders to take "*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.*" CONC 5.3.1(7) defines 'sustainable' as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the repayments might have been low in comparison with Mr R's income, or that he managed to repay them in full and on time, doesn't necessarily mean the loans were affordable for him and that he managed to repay them in *a sustainable manner*. In other words I can't assume that because Mr R managed to repay his loans that he was able to do so out of his normal means without having to borrow further.

Wonga has shown us the checks that it did before lending to Mr R. Wonga checked Mr R's income before giving him the loans and did a credit check before the first 35 loans. I've not seen anything on the results of those credit checks that I think should have caused Wonga additional concerns about Mr R's financial situation. And Wonga asked Mr R for details of his normal expenditure before the last 12 loans.

Mr R borrowed from Wonga in two distinct chains. His first 36 loans were taken over a period of around 19 months between January 2013 and September 2014. I have considered that there were a couple of larger gaps in that chain – of around two and three months respectively – but since by that time Mr R had already taken over 30 loans in less than a year I don't think they were long enough to give Wonga any confidence that Mr R's finances were back on track.

There was then a gap of 19 months before Mr R asked for loan 37. I think that would have been long enough for Wonga to reasonably think that any financial problems Mr R had previously faced had now been resolved, and to treat his application as like that of a new customer. But this was the start of a second chain of borrowing, with Mr R taking another 12 loans between May 2016 and March 2017.

I think that the checks Wonga did before giving Mr R the first loan were sufficient. It was the first loan he'd taken from Wonga, and the amount he needed to repay was relatively modest compared to the income he'd declared.

But I don't think that is the case for the remaining 35 loans in this chain. The second loan that Mr R asked for was significantly larger. And then he asked for most of his remaining loans in this chain within a few days of repaying some previous borrowing. I think this should have suggested to Wonga that Mr R was struggling financially and that it needed more information to assess whether he could afford to sustainably repay the loans.

I think for loans 2 to 4 it would have been proportionate for Wonga to have asked Mr R about his normal expenditure, so it could calculate how much income he had left over each month that he could use to repay the loans. But after that, I don't think it was reasonable for Wonga to rely at all on the information Mr R was providing. I think it needed to take steps to independently verify that information.

As I said earlier, I think it was reasonable for Wonga to treat Mr R as a new borrower when he asked for loan 37. So given he said his income was much higher by then, I don't think the amount he needed to repay on that loan, should have prompted Wonga to do more checks.

When Mr R asked for loan 38, his original request was relatively modest. But over the following two weeks, and before he'd made any repayments on the loan, he topped it up three times. So by the end the amount he needed to repay formed a reasonable portion of his normal income. And the amount he needed to repay on loan 39 was similar. So for both those loans I think it would have been proportionate for Wonga to gather some additional information about Mr R's financial situation – and in particular to establish whether he was borrowing from other short term lenders at the same time.

From that point, the amount that Mr R borrowed remained consistent at £659. This was a significant portion of his declared income. So I think Wonga should have made sure that this was affordable for Mr R by once again seeking independent verification of his financial situation.

But although I don't think the checks Wonga did on most of Mr R's loans were sufficient, that in itself doesn't mean that his complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Wonga that Mr R couldn't sustainably afford the loans. So I've looked at Mr R's bank statements, and what he's told us about his financial situation, to see what better checks would have shown Wonga.

For loans 2 to 4 I think it would have been proportionate for Wonga to have asked Mr R about his normal expenditure. Looking at his bank statements I think the information he'd have given would have suggested he did have some disposable income each month. And although Mr R wouldn't have been able to sustainably afford loan 2, he might have afforded the smaller repayments of loans 3 and 4.

But by loan 5, when I think Wonga should have been independently verifying the state of Mr R's finances, his true situation would have become clear. Mr R was spending a significant and increasing amount each month on what appear to be gambling transactions. And he was funding these through the loans he was taking from Wonga. I think it would have been clear to Wonga that Mr R couldn't sustainably afford to repay any borrowing. And having reviewed Mr R's bank statements that remained the case throughout the rest of this chain of loans.

Looking now at the second chain of loans. As I said earlier, I think that Wonga needed to do some additional checks on loans 38 and 39. I think it would have still been reasonable for Wonga to rely on the information Mr R had provided about his normal income and expenditure. But I think it needed to ask Mr R some more questions about whether he was taking any other short term loans.

But it doesn't appear that Mr R was borrowing from anyone else at that time. So I don't think it would have made any difference if Wonga had done that additional check – it would have still concluded that loans 38 and 39 were affordable for Mr R.

But by loan 40, when I think Wonga needed to once more independently verify Mr R's financial situation, it would have seen that Mr R was still making significant payments to what appear to be gambling websites. So once more I think it would have been clear to Wonga that Mr R couldn't sustainably afford to repay any borrowing. And having reviewed Mr R's bank statements that remained the case throughout the rest of this chain of loans too.

So what I consider to be proportionate checks would have shown Wonga that Mr R couldn't sustainably afford to repay loan 2, loans 6 to 36 and loans 40 to 48. So Wonga needs to pay Mr R some compensation.

putting things right

I don't think Wonga should have agreed to give Mr R loan 2, loans 6 to 36 and loans 40 to 48. So for each of those loans Wonga should;

- Refund any interest and charges paid by Mr R on the loans (except for those already written off in respect of loan 36).
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr R's credit file in relation to the loans.

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

my final decision

My final decision is that I largely uphold Mr R's complaint and direct WDFC UK Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 January 2018.

Paul Reilly
ombudsman

Appendix – Summary of Mr R's Borrowing from Wonga

Loan Number	Borrowing Date	Repayment Date	Loan Amount (inc Top ups)
1	19/01/2013	24/01/2013	£ 60
2	31/01/2013	07/02/2013	£ 188
3	09/02/2013	14/02/2013	£ 60
4	14/02/2013	21/02/2013	£ 81
5	25/02/2013	28/02/2013	£ 85
6	28/02/2013	07/03/2013	£ 131
7	07/03/2013	14/03/2013	£ 148
8	14/03/2013	21/03/2013	£ 186
9	25/03/2013	28/03/2013	£ 201
10	31/03/2013	05/04/2013	£ 90
11	05/04/2013	11/04/2013	£ 190
12	14/04/2013	18/04/2013	£ 99
13	27/04/2013	03/05/2013	£ 90
14	03/05/2013	10/05/2013	£ 130
15	11/05/2013	16/05/2013	£ 200
16	17/05/2013	20/05/2013	£ 90
17	23/05/2013	24/05/2013	£ 120
18	25/05/2013	31/05/2013	£ 300
19	31/05/2013	14/06/2013	£ 200
20	22/06/2013	04/07/2013	£ 300
21	24/07/2013	01/08/2013	£ 149
22	01/08/2013	08/08/2013	£ 180
23	10/08/2013	15/08/2013	£ 178
24	19/08/2013	22/08/2013	£ 50
25	24/08/2013	05/09/2013	£ 345
26	05/09/2013	19/09/2013	£ 340
27	21/09/2013	03/10/2013	£ 350
28	03/10/2013	17/10/2013	£ 350
29	17/10/2013	24/10/2013	£ 130
30	28/10/2013	14/11/2013	£ 348
31	14/11/2013	05/12/2013	£ 461
32	19/12/2013	09/01/2014	£ 500
33	25/04/2014	28/04/2014	£ 300

Loan Number	Borrowing Date	Repayment Date	Loan Amount (inc Top ups)
34	30/04/2014	06/06/2014	£ 370
35	08/08/2014	03/09/2014	£ 250
36	06/09/2014	03/10/2014	£ 563
37	20/05/2016	25/05/2016	£ 140
38	06/06/2016	25/06/2016	£ 513
39	25/06/2016	25/07/2016	£ 469
40	25/07/2016	25/08/2016	£ 659
41	25/08/2016	22/09/2016	£ 659
42	23/09/2016	24/10/2016	£ 659
43	29/10/2016	25/11/2016	£ 659
44	25/11/2016	23/12/2016	£ 659
45	23/12/2016	25/01/2017	£ 659
46	28/01/2017	24/02/2017	£ 659
47	25/02/2017	24/03/2017	£ 659
48	25/03/2017	25/04/2017	£ 659