complaint

Mr B complains that CFO Lending Limited ("CFO") gave him loans he couldn't afford to pay back.

background

I issued a provisional decision in February 2017 where I explained why I planned to uphold most of Mr B's complaint. An extract from this is attached and forms part of my final decision.

I invited both parties to send any additional comments or evidence they wished to make.

Both Mr B and CFO accepted my provisional decision.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As both Mr B and CFO have told us they accept my provisional decision, I see no reason to change what I said. So I still think Mr B's complaint should be upheld in part and for the same reasons.

my final decision

My final decision is that I uphold Mr B's complaint. To put things right CFO Lending Limited should:

- refund any interest and charges applied to the loans taken from (and including) 17 August 2012;
- 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 B's credit file in relation to the loans I am asking to be refunded.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 April 2017.

Michael Ball
ombudsman

Extract of provisional decision

background

Mr B took out 14 loans with CFO over 17 months. Mr B deferred repayment of some of the loans, refinanced some of them for larger amounts and agreed a partial settlement on one of them.

Our adjudicator thought that Mr B's complaint should be upheld in part. He said that CFO didn't carry out appropriate affordability checks from the fifth loan onwards. And he said that if it had done this, it wouldn't have lent to Mr B as it would've seen the loans weren't affordable for him. He asked CFO to refund interest and charges on all of the loans he didn't think it should've agreed to and to remove any adverse information about them from Mr B's credit file.

CFO didn't agree with the adjudicator. It says, in summary:

- Mr B applied for the loans of his own free will and gave the impression the loans were affordable so he should bear some of the responsibility for taking them out.
- There were some behavioural traits which may have indicated Mr B was struggling but these were countered by a good repayment history. Mr B paid off his loans on time so CFO continued to lend to him on this basis.

CFO offered to repay half of the interest and charges that Mr B paid on all loans.

Mr B didn't agree to this offer so CFO asked for the complaint to be passed to an ombudsman.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before agreeing to lend to Mr B, CFO had to check each time that he could afford to repay the loan. There is no set list of checks that CFO had to carry out. But the checks had to be proportionate to things like – but not limited to – the size of the loan, the repayments and what CFO knew about Mr B.

CFO says that it carried out individual affordability assessments each time Mr B asked to borrow from it. It says these checks were based on Mr B's credit score and information it got from him over the telephone. It's given us copies of the telephone notes it made when it did this.

The first time Mr B borrowed from CFO it says it asked Mr B about his monthly income and expenditure. It's recorded figures of £1,800 for income and £1,000 for expenses.

I've thought about whether these checks were proportionate. It was the first time Mr B borrowed from CFO so there was no lending history and no evidence of a possible dependency on payday lending for example. But the loan repayment did take up a fairly sizeable chunk of Mr B's income. So I think a basic check of Mr B's income and regular living expenses (such as rent, food, travel costs, insurances etc.) wouldn't have been disproportionate.

I don't know what items of expenditure CFO asked Mr B to include within the £1,000 figure. The evidence it's given us is just a call note which says *'£1,000 outgoings'.* However, Mr B has given us his own break down of his normal living expenses and they look broadly consistent with this figure. And based on this information, the loan repayment would've looked affordable to CFO. So overall I think CFO did enough to check the first loan was affordable for Mr B.

Mr B deferred repayment of the first loan until the following month and paid just the interest. Then before the deferred repayment was due Mr B refinanced the loan and borrowed another £125 – leaving a total repayment due of £782.25.

It looks like CFO asked Mr B for the same information before agreeing to this loan. He told it again that his monthly income was £1,800 and his monthly expenses were £1,000. That means the repayment on the loan took up virtually all of what Mr B said his monthly disposable income was and left him with just £17.75 to get through the month with. I don't think that was enough and I think it made it increasingly likely that Mr B would have to borrow again in the following month. So although Mr B could've met the repayment from his income, it wasn't sustainable for him. Based on the information CFO got from Mr B, I don't think it should've lent to him on this occasion.

Mr B asked for the third loan – £350 – on the same day he repaid the second. The only evidence I've seen of affordability checks on this loan is a call note which says *'confirmed all information, scores as above'.* Presumably this means the same information was gathered as it was for the first and second loans i.e. Mr B's income and living expenses of £1,800 and £1,000 respectively.

So this time, although CFO had some information from Mr B that suggested the loan repayment was affordable, there were also signs that Mr B might have been becoming dependant on its loans – which isn't a sustainable way of getting by. He'd had to defer and then refinance his previous loan and he was asking for this loan on the same day he'd repaid it.

There may have been a good reason for this. But I can't see from the evidence that CFO asked Mr B why. So, I think it would've been proportionate for CFO to ask Mr B for a little bit more information this time to make sure he could afford to repay the loan. For example CFO could've asked Mr B if he had any other payday loans he needed to pay the following month in addition to his normal living expenses. It doesn't look like CFO did this. So I'm not persuaded its affordability checks were proportionate.

If CFO had got more information I think it would've seen that Mr B had to repay around £600 of other payday and short term borrowing from his September pay. So, although the loan repayment was a lesser amount this time, Mr B's monthly living expenses and payday loan repayments came to £1,600 and that didn't leave him with enough to repay a £350 loan. CFO shouldn't therefore have agreed to lend on this occasion either.

Mr B refinanced the third loan and borrowed another £170. By now if CFO had done what I think it should've, it would've known that Mr B was regularly borrowing from other payday lenders. So I think it would've been proportionate to get a full understanding of Mr B's financial picture before lending him any more money. There's no evidence that CFO checked anything different this time. So again, I don't think it had enough information to assess whether the loan repayment was affordable for Mr B.

CFO could've got a full understanding of Mr B's finances in a number of ways. It could've asked for copies of Mr B's wage slips or evidence of his expenses. Or it could've looked at his bank statements. These show that Mr B was regularly spending amounts on gambling which were close to or more than his income. And it looks like he was taking out more payday loans to fund this.

For example in the month before he took this loan Mr B's statements show he'd spent around £1,600 on gambling. I haven't included Mr B's winnings as income as there was no guarantee that he would win anything the following month – but his previous statements suggest that he was likely to still gamble a similar amount so wouldn't have enough left to repay the loan. I don't think CFO would've agreed to lend to Mr B if it had seen this information.

From the fifth loan onwards there are some quite obvious reasons to suggest that CFO shouldn't have been lending to Mr B. The repayments on whatever he borrowed were more than what he told CFO he had left over each month. He'd previously said his disposable income was £800-£900 yet the repayment on each loan was at least £950. I've not seen anything to suggest CFO had new information from Mr B – showing significantly increased income or reduced outgoings for example. The call notes it's given us say things like *'all information the same'* and *'existing customer same info'.* So it looks like CFO was still relying on the same information from Mr B. And it should've been clear from this information that Mr B couldn't sustainably afford to repay the loans it was giving him.

CFO says Mr B had a good repayment history and this countered the other information it had about him. But even that doesn't look to have been the case. For example Mr B was unable to repay the fifth loan and had to agree a short settlement where he paid £350 to settle a debt of £1,020. That is hardly evidence of a good repayment history. CFO agreed to lend Mr B another £420 just three weeks after this too, commenting specifically on his *'good repayment history'* in the affordability notes it's given us for that particular loan.

I've also thought about what CFO said about Mr B bearing some responsibility for these loans. But it was CFO's responsibility to get enough information from Mr B to make sure he could sustainably afford to repay them and to act appropriately on that information. And it failed with those responsibilities. So all in all, I think it's fair that it refunds all interest and charges on the second loan onwards.