Financial Ombudsman Service

complaint

Miss G complains about the short term loans she took out with Casheuronet UK LLC (CEN) trading as Pounds to Pocket. Miss G says that Pounds to Pocket lent irresponsibly.

background

Our adjudicator thought the complaint should be partially upheld. Pounds to Pocket disagreed with the adjudicator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Miss G's complaint should also be partially upheld. A copy of the background to the complaint and my provisional findings are attached and form part of this final decision.

Pounds to Pocket, and Miss G confirmed that they had received my provisional decision.

Pounds to Pocket, didn't agree with my provisional decision. It said:

- the information it had provided showed it had made reasonable checks before lending to Miss G
- it did not have any reason to make additional checks before loans 2 to 6. And as gambling is not a matter of public record it wouldn't have found out about this
- the amounts I had used in respect of the interest Miss G had paid was incorrect. This was nearer £3,000 than £3,500

my findings

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

In response to my provisional decision Pounds to Pocket provided much of the information it had already shown me about its lending decisions. But I have already considered this and the reasons why I don't think it's checks went far enough are in my provisional decision. So I won't repeat them here.

In my provisional decision I said that Miss G repaid interest of nearly £3,500 over the four years she borrowed, but as Pounds to Pocket have said this was the amount she was charged. Pounds to Pocket says she repaid £3,150. This is still a high amount, and it doesn't change my findings.

Pounds to Pocket has said that it didn't need to make further checks and so it wouldn't have found out about Miss G's gambling. But, as I said earlier, and for the same reasons, I don't agree with this. I think Pounds to Pocket should've made a full review of Miss G's finances from loan 2 onwards and I don't think it did this. And if it had made better checks, I think it's reasonable to say that it would've found out Miss G was spending significant sums on gambling. As I said earlier I don't think Pounds to Pocket would've thought that it was reasonable to lend to her in these circumstances.

what Pounds to Pocket should do to put things right

To put things right for Miss G, Pounds to Pocket should:

- refund all the interest and charges applied as a result of loans 2 to 6; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid, if they were, to the date of settlement†; and
- remove any adverse information recorded on Miss G's credit file about loan 2; and
- remove all entries about loans 3 to 6 from Miss G's credit file. This is because the number of loans taken from loan 3 means any information recorded about them is adverse

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

my final decision

For the reasons I've explained, I partly uphold Miss G's complaint.

Casheuronet UK LLC should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss G to accept or reject my decision before 8 April 2019.

Andy Burlinson
ombudsman

extract from my provisional decision

Miss G took out six instalment loans between December 2012 and December 2016. Some of the information Pounds to Pocket has given us is shown in the table below:

loan number	date started	amount borrowed	term (days)	ended	monthly payments
1	28/12/2012	£300.00	361	10/06/2014	£48.00
1a	03/05/2013	£300.00	362		£85.00
1b	23/10/2013	£250.00	336		£99.00
1c	28/11/2013	£330.00	363		£142.00
2	18/06/2014	£550.00	343	27/05/2015	£94.00
top up to loan 2	22/06/2014	£390.00	339		£160.00
3	09/06/2015	£200.00	204	19/11/2015	£49.00
3a	15/10/2015	£300.00	195		£98.00
4	20/11/2015	£600.00	341	06/01/2016	£102.00
5	09/01/2016	£650.00	354	19/12/2016	£99.00
5a	14/03/2016	£300.00	345		£135.00
6	19/12/2016	£1,100.00	345	23/12/2016	£161.00

The loans labelled a, b and c are all refinances to the initial loan. This means a further amount was borrowed and both the term and the repayment changed. For example in loan 1 Miss G borrowed £300 and she was due to make 12 monthly repayments of £48. She borrowed a further £300 just under six months later (loan 1a) and she was then due to make a further 12 monthly repayments of £85 as part of the same loan.

Pounds to Pocket has looked at Miss G's complaint and said that it shouldn't be upheld. It said that it did appropriate checks for all of the lending. It said these checks showed that the loans were affordable and that Miss G wasn't dependent on short term credit.

But it did say that loan 6 was approved despite the credit model score not meeting a minimum threshold. So it offered to pay £100 compensation in respect of this.

One of our adjudicators looked at what Miss G and Pounds to Pocket said. They thought Miss G's complaint should be partially upheld. She thought that it had made proportionate checks for loan 1 and the first refinance to this which is 1a on my table. So she thought that Pounds to Pocket's decisions to approve these loans was reasonable.

Our adjudicator didn't think that Pounds to Pocket had made proportionate checks for loans 1b to loan 6. She thought if it had then it wouldn't have agreed to lend Miss G money for loan 2 and loans 4 to 6. This is because she didn't think that Miss G could afford the repayments. And Pounds to Pocket would've seen this had it completed better checks.

She thought that Miss G could afford the repayments for loans 1b, 1c and loan 3. So she also thought that Pounds to Pocket's decisions to lend were reasonable for these.

Miss G has accepted our adjudicator's opinion about loan 1. Because of this I don't think there is any ongoing disagreement about this loan. So I won't be making a decision about this lending. But it was part of the borrowing relationship Miss G had with Pounds to Pocket. As such it's something I will take into account when considering the other loans she took.

Pounds to Pocket didn't entirely agree with our adjudicator and it provided its detailed reasons why which I will consider below. But it did make an offer of compensation for loan 2. Miss G didn't accept this offer. So as no agreements been reached the complaint's been passed to me to me to issue a decision.

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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

what rules and regulations were in place when Pounds to Pocket approved loans 2 to 6

The Financial Conduct Authority (FCA) was the regulator when Pounds to Pocket lent to Miss G after April 2014. The FCA's Principles for Business ("PRIN") set out the high level standards which all authorised firms are required to comply with. PRIN 2.1.1 R (6) says "*A firm must pay due regard to the interests of its customers and treat them fairly."*

The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities. It sets out the rules and guidance specific to consumer credit providers, such as Pounds to Pocket. At the time these required Pounds to Pockets 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 5.3.1G(2).

CONC 5.3.1G(6) defined '*sustainable'* as being able to make repayments without undue difficulty. It went on to explain that this means *"the customer should be able to make repayments on time, while meeting other reasonable commitments; and without having to borrow to meet the repayments".*

So – treating customers fairly in the context of providing credit meant assessing their ability to repay the credit in a sustainable way. And how should Pounds to Pockets have gone about making these assessments?

CONC 5.2.3 G said that

"The extent and scope of the creditworthiness assessment or the assessment required … in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

- *(1) the type of credit;*
- *(2) the amount of the credit;*
- *(3) the cost of the credit;*
- *(4) the financial position of the customer at the time of seeking the credit;*
- *(5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;*
- *(6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*
- *(7) any future financial commitments of the customer;*
- *(8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- *(9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation."*

CONC 5.2.4G(2) said that

"*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."*

And CONC 5.2.4G(3) said that

"A firm should consider the types and sources of information to use in its … assessment … which may, depending on the circumstances, include some or all of the following:

(a) its record of previous dealings;

(b) evidence of income;

(c) evidence of expenditure;

(d) a credit score;

(e) a credit reference agency report; and

(f) information provided by the customer."

It is important to note here that the FCA didn't, and doesn't, specify exactly how the assessment is to be carried out but the *"extent and scope"* and the *"types and sources of information to use"* needed to be enough to be able to reasonably assess the sustainability of the arrangement **for the consumer.** In other words the assessment needs to be consumer-focussed. It is not an assessment of the risk to the Pounds to Pocket of not recovering the credit to its satisfaction, but of the risk to the consumer of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.

As set out in CONC, the risk to the consumer directly relates to the particulars of the lending and the circumstances of the consumer. Therefore, Pounds to Pocket's assessment of creditworthiness would likely need to be flexible – what is sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one circumstance might not be so for the same consumer in other circumstances.

what should have happened when Miss G applied for credit and did Pounds to Pocket get this right?

Bearing the above in mind, I would expect an assessment of creditworthiness to vary with circumstance. In general, I'd expect Pounds to Pocket to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect Pounds to Pocket to seek more assurance by carrying carry out more detailed checks

- the higher the loan amount; or
- the lower the consumer's income; or
- the longer the lending relationship

In coming to a decision on Miss G's case, where Pounds to Pocket agreed six loans, which were also refinanced a number of times, I have considered the following questions:

- did Pounds to Pocket complete reasonable and proportionate checks when assessing Miss G's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way? (And if not, would those checks have shown that she would have been able to do so?)
- did the overall pattern of lending increase Miss G's indebtedness in a way that was unsustainable or otherwise harmful?
- did Pounds to Pocket act unfairly or unreasonably in some other way?

Having done so, I've concluded that Pounds to Pocket was irresponsible to lend to Miss G over loans 2 to 6. I don't think it made proportionate checks for this lending. And if it had it would've seen that Miss G couldn't sustainably afford to make the repayments.

So I plan to uphold Miss G's complaint about loans 2 to 6 and ask Pounds to Pocket to refund the interest and charges she paid for these loans. I'll explain why.

did Pounds to Pocket carry out proportionate checks when assessing Miss G's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?

Pounds to Pocket has explained in some detail how it carried out its assessment of Miss G's loans applications. In response to the adjudicator's opinion Pounds to Pocket provided a document called CEU Lending Criteria and Proportionate Checks. This outlined in detail the checks it provided as a business. It concentrated on the time after April 2014 when the Financial Conduct Authority (FCA) took over regulation of this type of lending.

For loans 1 and 2 it said that it requested from Miss G information about her income and expenditure. It also did credit reference agency searches. It used both of these pieces of information to assess if the loans were affordable for her. It said that for these loans the checks showed that Miss G had enough disposable income to comfortably make the monthly repayments.

For loan 3 it said that by the 1 March 2015 it had *"implemented* [an] *affordability review that is consistent with the FCA Handbook."*

Pounds to Pocket says that it *"began implementing changes to its affordability and rate cap rules in June 2014, and as such many loans funded between June 2014 and February 2015 were funded under the new rules and guidance. However, in our discussions with the FOS, we have chosen to use March 1, 2015 as the date of demarcation for "Post-2015 loan," as the FCA-mandated pre-authorisation redress period ended as of February 28, 2015 and all changes were fully implemented by that point."* And that *"all loan offers now meet the FCA rate cap and affordability rules".*

And it said in response to our adjudication *"In response to FOS' assessment which recommends Pounds to Pocket uphold loans which were funded after March 2015, we regret to inform you that we cannot agree to FOS' recommendations*."

Pounds to Pocket seems to be saying that because it reviewed its processes and incorporated regulatory changes as it was required to, all loans for all customers granted from 1 March 2015 onwards were granted responsibly.

I don't agree with this argument. It doesn't follow that a firm cannot have treated any consumer unfairly simply because it has been authorised and is regulated by the FCA. This assumes that an authorised firm's regulated activities are always implemented in a way that results in fair outcomes for all consumers. This is not the case, as the experience of this Service bears out.[1]

Pounds to Pocket says that the checks it conducts at the time of lending are proportionate in every circumstance. And it considers these checks to have been enhanced through its review. But, as I've explained above, the FCA is not prescriptive about how the relevant rules and guidance set out in CONC should be implemented; specifically CONC does not set out *how* Pounds to Pocket ought to go about its affordability assessments. The CONC guidance does say that the assessment that should be carried out is dependent on what is appropriate for both the consumer's circumstances and the particulars of the loan in question. So it doesn't follow that a standard way of assessing loan applications, whatever the *"extent and scope"* of it or whatever the *"type and source of information"* it uses is automatically the right thing to do for *all* consumers in *all* circumstances. And so I cannot pre-judge Miss G's complaint about irresponsible lending on the basis that the affordability check Pounds

[1] http://www.ombudsman-complaints-data.org.uk

to Pocket carried out was the right thing to do in her case. And I am not planning to automatically reject her complaint on this basis.

Further to this point, as I've mentioned, there are also other considerations which this Service is required to take into account when making determinations on complaints. As the FCA Handbook sets out in the rules and guidance relevant to dispute handing

"The Ombudsman will determine a complaint by *reference to what is, in his opinion, fair and reasonable in all the circumstances of the case." (*DISP 3.6.1R)

And DISP 3.6.4R goes on to explain that

"In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time."

So, I am required to consider more than the rules and guidance set out by the regulators in making my determination on a complaint. And so I would not be acting in accordance with my statutory role if I *only* considered the extent to which Pounds to Pocket complied with rules and guidance set out by the FCA in my determination.

why I don't think Pounds to Pocket's checks were proportionate

Moving on to the specifics of this complaint I've carefully thought about what Pounds to Pocket and Miss G have provided and what both sides have said.

By the time Miss G took loan 2 she'd had a relationship with Pounds to Pocket for over a year and a half. And Miss G had refinanced loan 1 three times. Borrowing for this length of time, and being unable to fully repay her first loan in this way, seems to me to indicate Miss G may be having some financial difficulties. I note that she asked for her second loan about a week after finally repaying her first. And so I think Pounds to Pocket should've become concerned about whether it knew enough about Miss G's true financial situation.

So from loan 2 onwards I think that it would've been proportionate to find out about Miss G's normal monthly living costs and regular financial commitments including any existing short-term lending. And I think that Pounds to Pocket needed to verify this information to get an accurate picture of Miss G's finances, in order to make sure she was in position to make the repayments sustainably.

Pounds to Pocket has said that it gathered the following information from Miss G:

It recorded Miss G's monthly income as being £1,250 for loans 1 and 2 and £1,300 before approving loan 3. It recorded her monthly expenses as being £560 before loans 2 and 3.

Pounds to Pocket goes on to say that for loans 3 to 6 *"Broadly, the assessment considers a customer's income and expense data for the following six categories: housing, utilities, food, transport, other credit commitments, and other recurring expenses. We validate the figures provided by the customer using the customer's credit report; of note, we examine the customer's other credit commitments, and utilise the Income Confidence Factor (ICF), which gauges the accuracy of the customer's reported income. We further compare the expense figures to average expense data published by the Office of National Statistics (ONS). Where material discrepancies are found, we request the customer's bank statement to further evaluate their incomings and outgoings. We also instituted a mandatory cool off period of 15 days when a customer borrows two loans in quick succession to better allow customers to assess their financial situation.*

Pounds to Pocket uses validated data in order to determine the customer's estimated disposable income (EDI). Pounds to Pocket only makes loans where total payments are less than 80% of the customer's total EDI for the term of the loan. This assessment, including the validation of expenses and income is conducted on each loan application.

In the case of Miss G, these loans were evaluated with the above mentioned assessment.

Pounds to Pocket has provided the following information about these loan 3 to 6. It's not clear how it calculated the EDI figure as it's not provided the information it used to make this calculation.

loan number	reported Income	reported expenditure	monthly EDI	total cost of loan	% of EDI for loan term
3	£1,300.00	£560.00	£355.00	£280.65	12%
4	£1,300.00	£560.00	£655.00	£523.51	7%
5	£1,800.00	£925.00	£843.00	£760.55	8%
6	£1,900.00	£1,075.00	£456.00	£834.99	16%

It's not entirely clear, but the 'total cost of loan' column seems to only refer to the interest payable. It doesn't take account of the capital that Miss G also needed to repay.

And based on what it saw from this it thought it reasonable to lend to Miss G.

However looking at how it assessed this case, and the detailed information provided in the CEU Lending Criteria and Proportionate Checks document, I don't think Pounds to Pocket did enough here for loans 2 to 6. And I can't put much weight on the numbers Pounds to Pocket has provided as it hasn't provided enough information for me to understand how it calculated them. And having looked for myself at what I think proportionate checks would've shown I'm not persuaded they are accurate.

Whilst I can see it obtained information from Miss G and looked at credit reference data, as I've explained, I think it ought to have done more than it did when Miss G applied for her second loan. And I can't see that it did anything differently here. Given the circumstances, I think it should have gathered a more comprehensive picture of Miss G's financial affairs, including taking steps to independently verify the information it received from her about her financial situation. I don't think it did this. Miss G went on to borrow four more loans from Pounds to Pocket in quick succession. I can't see that her situation changed over this time and so I think the lender ought to have continued to gather a more comprehensive picture of her finances each time.

So I need to think about what Pounds to Pocket would've seen if it had carried out proportionate checks.

what I think proportionate checks would most likely have shown

Miss G has provided some information about her financial circumstances including her bank statements. I accept that this might not be exactly what Pounds to Pocket would've seen at the time. But I think it would've found out similar information if it had made proportionate checks. And it said in its final response that it could request bank statements and similar information at some times, although I can't see that it did this here. So I think it's reasonable to rely on this information

Looking at Miss G's bank statements I can see that there was a small amount of variation from the income and expenditure that Pounds to Pocket recorded about Miss G. But I won't provide full details here as there are more significant factors to consider.

But at the time Pounds to Pocket approved loans 2 to 6 Miss G's bank account shows she was experiencing financial difficulty. This is firstly because over this time she borrowed and repaid amounts other short term lenders. Although this wasn't always regular or for large amounts.

And by loan 2, I think it's likely that proportionate checks would've also shown Pounds to Pocket that a substantial portion of Miss G's income was going on gambling. For example, as our adjudicator outlined, Miss G spent not far short of £4,000 in the month on what appears to be gambling transactions before loan 2 was approved. And around £1,000 before it approved loan 4.

I think that Pounds to Pocket would've found out this information if it had made proportionate checks. And I think Pounds to Pocket would've seen Miss G wouldn't have been able repay the loans in a sustainable way. So I think that Pounds to Pocket shouldn't have given loans 2 to 6 to Miss G and I think she's lost out as a result of this.

did the overall pattern of lending increase Miss G's indebtedness in a way that was unsustainable or otherwise harmful?

I've also looked at the overall pattern of lending. I've looked to see if there was a point at which Pounds to Pocket should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Pounds to Pocket should have realised that it shouldn't have provided any further lending. Given the particular circumstances of Miss G's case, I think that this point was reached by loan 3.

I say this because the amounts Miss G was borrowing were generally increasing. Miss G had been repaying loans to Pounds to Pocket almost constantly for over two and a half years. And these were multiple instalment loans which are, by definition, taken over a longer term than a typical payday loan, but they were still high-interest products intended to be taken over the short-term only. Pounds to Pocket's decision to continually and repeatedly lend to her meant that she was in effect paying large amounts of interest to service this debt over an extended period.

I think that Miss G also lost out because Pounds to Pocket continued to provide borrowing from loan 3 onwards because:

- these loans had the effect of unfairly prolonging Miss G's indebtedness by allowing her to take expensive credit over a period of time that was much greater than the initial agreements. Miss G borrowed just over £5,250 over a four year period. But she paid just under £3,500 in interest to access this credit; and
- the loans, and refinances, were likely to have had negative implications on Miss G's ability to access mainstream credit and so kept her in the market for these high-cost loans

So I'm also upholding Miss G's complaint about loans 3 to 6 because the overall pattern of lending increased her indebtedness in a way that was unsustainable or otherwise harmful and she's lost out as a result.

did Pounds to Pocket 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 Pounds to Pocket acted unfairly or unreasonably towards Miss G in some other way.