Financial Ombudsman Service

complaint

Mr R has complained about loans he took out with CashEuroNet UK LLC trading as Quick Quid ("Quick Quid"). He says the loans were unaffordable.

background

The background to the complaint was set out in my provisional decision dated 7 July 2017, a copy of which is attached and forms part of this final decision.

In summary, Quick Quid agreed eight short term loans for Mr R between January 2012 and April 2013. Around the same time Mr R repaid the last short term loan, Quick Quid then agreed a running credit agreement called a 'flex credit' account, which still has an outstanding balance.

In my provisional decision I set out why I was not minded to uphold Mr R's complaint about his first four loans but was minded to uphold his complaint about loans five to eight and his flex credit account. I asked both parties to let me have any further comments or information.

Quick Quid had already offered to refund interest and charges for Mr R's seventh and eight loans. It also offered to refund the interest and charges Mr R paid on his flex credit account from April 2014. But it didn't offer any further refund and responded to my provisional decision to say that:

- It wouldn't be proportionate for Quick Quid to take the same measures that would be completed for a bank loan which is backed by collateral the customer has available.
- Neither the OFT (Office of Fair Trading) nor the FCA (Financial Conduct Authority) says a lender must request the consumer's bank statements in order to determine affordability. It would also not be proportionate for Quick Quid to request a bank statement to determine approval of a loan which equated to a small percentage of the customer's income.
- For example loan five was £150 or 9% of Mr R's stated monthly income. Also, whilst Mr R's income might have decreased prior to the funding of loan five, this appears to be a one-off situation and was not predictable. Mr R had previous borrowed this amount from Quick Quid and repaid within the guidelines of the contractual agreement.
- At the time of loan five there was mention made that Mr R borrowed from other lenders, but did not have anything outstanding at the time this loan was funded. So this wouldn't be relevant to its decision to lend Mr R this loan.
- Quick Quid did request information regarding the consumer's expenditure prior to lending to them. However, under the guidance of the OFT, it wasn't required to retain this information. Quick Quid also reviewed the details of Mr R's credit file prior to lending to determine what financial commitments he might have.
- Loan six was requested 17 days after the successful repayment of the previous loan. The principal amount again was very low in comparison Mr R's stated earnings at a total of 11% to repay the interest and principal.

- Whilst there were no guidelines in place at the time to determine dependency, the FCA has a current stature which they've advised Quick Quid is currently in compliance.

- Mr R started his Flex Credit account in September of 2013. Had he taken the highest amount of principal agreed to him, at minimum, he would have been required to pay 10% of the principal amount borrowed plus the interest accrued each month.

- Mr R didn't initially request all the principal he had available as he was fully aware of his required expenses and what he was able to afford. He only requested what was needed to get him to his next payday. In fact, he didn't request a new drawdown for 98 days after he successfully repaid the first principal amount he received.

- The first withdrawal was repaid successfully within less than a month (24 days) when Mr R had 10 months in which to make the payments.

- Mr R's repayment to another payday lender prior to taking out this loan would not have affected Quick Quid's decision as he would not have any future obligations to this debt.

- Quick Quid made an offer from April 2014 when Mr R's behaviours with borrowing and repaying changed which Quick Quid should have noticed and taken greater consideration prior to continuing to allow him to utilise his line of credit.

Mr R responded:

- He asked for more time to repay the loan and Quick Quid refused. He therefore had to cancel the direct debit as he had no money left to pay it.

- He doesn't agree with the outstanding balance and feels it should be less. It also has the interest on the final balance of £200 and he feels this should be taken off.

- Quick Quid haven't allowed him to see his account since this complaint so he doesn't have the full figures and he feels they have done this so he can't see the total owed.

- He is now paying really high interest rate on a mortgage and had to borrow a significant amount of money from his parents in order to secure this. It's left a long standing foot print on his credit file.

my findings

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

Neither party has commented on my conclusions regarding loans one to four and seven and eight. I've therefore reviewed the comments about loans five, six and the flex credit account.

The guidance in place at the time was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The Office of Fair Trading (OFT) 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 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.* Whilst Mr R managed to repay most of his loans - that doesn't necessarily mean he was able to do so out of his normal means without having to borrow further.

Looking at Mr R's pattern of borrowing, loan five represented Mr R's fifth loan in nine months; with little, if any, gaps between loans. Quick Quid has pointed out that there was a 17 day gap in Mr R's lending between loans five and six. But I don't think this was long enough to consider that Mr R had got his finances back on track and was no longer dependent on short term lending.

As I said in my provisional decision, by loan five and six, Quick Quid ought to have satisfied itself of Mr R's full financial situation. Not just comparing his stated earnings to the amount of lending. I accept that the regulations don't specifically refer to bank statements, but these are an example of one way of verifying the information Mr R provided. This would then have enabled Quick Quid to see that Mr R's income had decreased prior to agreeing this loan.

I think Quick Quid would also have seen that Mr R's finances wouldn't have left him with a sufficient margin to meet any unexpected costs. And I think Quick Quid should have been concerned that Mr R might have difficulty making his repayments for loans five and six, as well as seven and eight.

I appreciate that Mr R didn't initially request the entire principal on the flex credit account but Quick Quid needed to carry out proportionate checks to understand whether Mr R would be able to afford the highest repayment had he drawn down the full credit limit of £1,000. According to the hypothetical schedule this was £340.

At the time of the flex credit account Mr R's income was around £1,545 and his regular expenditure was around £1,330. In addition he had £250 outstanding to another short term lender. He therefore had no disposable income. If Quick Quid had done sufficient checks, it would have realised that the facility was not affordable or sustainable. In fact Mr R's income and regular expenditure alone made the repayments unaffordable.

So the fact that Mr R went on to successfully repay the withdrawals he made, does not mean he was able to do so from his normal income or without borrowing further.

Whilst the repayment to another payday lender prior to taking out the flex credit account may not have affected Quick Quid's decision to lend, Mr R's lack of disposable income ought to have done.

To answer Mr R's comments – the redress I've proposed directs Quick Quid to remove any interest and charges that are part of the outstanding balance so only the capital remains.

And Quick Quid needs to explain its calculations so he can be clear how the refund has been calculated.

Mr R mentioned that he now has a mortgage with a higher interest rate and for which he had to pay a higher deposit (borrowing money off his parents to do so). I've carefully thought about what Mr R has told us and can understand why he is unhappy at any adverse information Quick Quid recorded as a result of these loans. But having looked at everything provided, it's clear that Mr R borrowed from other short term lenders. There were also a number of other factors in circumstances which all contributed to Mr R's overall financial position. Equally a mortgage lender's decision on whether or not to grant a mortgage (and on what terms) is based on a number of factors set by the provider concerned.

So having thought about all of this, I don't think it's possible for me to safely say that Mr R was only able to obtain the mortgage he did *solely* because of the defaults Quick Quid reported. And, in these circumstances, I simply don't have enough to be able to say that Quick Quid should pay Mr R any additional compensation for this.

putting things right

To put things right for Mr R, Quick Quid should:

- Refund all interest and charges applied to Mr R's loans account from 1 September 2012 onwards; and

- Add simple interest at the rate of 8% per year on the above interest and charges from the date they were paid to the date of settlement †;

- Reconstruct Mr R's flex credit account to take account of the capital that he has borrowed and the repayments he has made but excluding any interest and charges that were added to the loan; and

- For those periods where the reconstructed loan had a credit balance, add simple interest at a rate of 8% per annum †.

- Should an outstanding capital balance remain on the loan it is reasonable to deduct these arrears from the compensation payable to Mr R. But if Quick Quid no longer owns this debt, it needs to buy it back. If it doesn't then it isn't entitled to make any deductions for it from the amount it needs to pay Mr R and

- Remove any negative information about these loans and flex credit account from Mr R's credit file from 1 September 2012 onwards.

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

Just to be clear, if the amount of any interest refund due is less than any amount outstanding on the flex credit account (once the interest and charges have been removed) this will mean that Mr R is due no compensation. I'd also remind Quick Quid of the need to treat Mr R positively and sympathetically should it be the case that he's experiencing financial difficulty.

Quick Quid should clearly set out its calculations so Mr R can understand how they have been reached. If there is any dispute about redress between the parties, it can be referred back to me.

my final decision

My final decision is that I partially uphold Mr R's complaint as I've explained above and in my provisional decision. I require CashEuroNet UK LLC trading as Quick Quid to pay Mr R compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 November 2017.

Kathryn Milne
Ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr R has complained about loans he took out with CashEuroNet UK LLC trading as Quick Quid ("Quick Quid"). He says the loans were unaffordable.

background

Quick Quid agreed eight short term loans for Mr R between January 2012 and April 2013. Around the same time Mr R repaid the last short term loan, Quick Quid then agreed a running credit agreement called a 'flex credit' account, which still has an outstanding balance. I've summarised some of the information Quick Quid provided below:

Loan number	Date started	Date repaid	Loan amount
1	6/1/12	29/2/12	£200
2	7/3/12	30/3/12	£150
3	24/4/12	29/6/12	£150
4	7/7/12	31/8/12	£150
5	1/9/12	31/10/12	£150
6	17/11/12	31/1/13	£150
7	31/1/13	28/2/13	£200
8	23/4/13	2/9/13	£150
flex credit	7/9/13		£1,000

Our adjudicator recommended Mr R's complaint be upheld in part. He felt that Quick Quid did enough when checking whether it should lend to Mr R on the first two loans. However, he felt that, Quick Quid should have done more checks before agreeing the third and fourth loans, and if it had done, the checks would've shown the loans were not affordable.

The adjudicator also felt that Quick Quid should have done more when the fifth and subsequent loans (including the flex account) were agreed. He concluded that if these checks had been done, they would've also shown the loans weren't affordable. The adjudicator recommended Quick Quid refund the interest and charges that Mr R paid.

Quick Quid didn't agree, but it did agree to uphold the complaint for the seventh and eighth loan and from April 2014 onwards on the flex credit account.

Mr R did not accept Quick Quid's offer, so the complaint has come to me for 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.

We've explained how we handle complaints about short term lending on our website and I've used this approach to help me decide Mr R's complaint. Having done so, I'm intending to partly uphold Mr R's complaint slightly departing from the adjudicator's findings.

did Quick Quid carry out proportionate checks?

When lending money to a consumer a lender should take proportionate steps to ensure a consumer will be able to repay what they're borrowing in a sustainable manner without it negatively impacting on their financial situation. A lender should gather enough information so that it can make an informed decision on the lending.

The guidance and rules don't set out compulsory checks but they do list a number of things a lender might wish to take into account before agreeing a loan. Any checks should be proportionate and take into account a number of things, such as how much is being lent, how long the borrowing is for and what the lender knows or is told about the borrower's circumstances.

Quick Quid says it ran affordability and credit checks at the time to determine whether each loan was affordable and reviewed Mr R's financial commitments. Quick Quid provided records to show that it checked Mr R's credit file before each loan and it also recorded details of his income as £1,600. It also provided the result of his most recent credit report.

On the first loan, Mr R needed to make two repayments – the second of which was around £240. It was Mr R's first loan with Quick Quid and, in my view, the highest repayment was relatively small in proportion to Mr R's stated income of £1,600. So I think the checks Quick Quid carried out were reasonable.

The second loan was taken a week after the first loan finished but for a slightly lower amount, meaning that the larger of the two repayments Mr R had to make was around £188. So again I think the checks were reasonable.

The third loan was for the same amount as the second loan and was taken out a few weeks after the second loan was repaid. This was Mr R's third loan in four months, so I think reasonable checks should've included his regular living costs and credit commitments.

Although Quick Quid sent us the result of one of the credit checks it completed. This doesn't show much about what Mr R's monthly commitments were or what the status of his repayments was. I don't think this is enough information to show that the loan was affordable for him. I would've also expected Quick Quid to have asked Mr R what his regular monthly living expenses were. Quick Quid didn't gather information about Mr R's expenditure and so it didn't know what his monthly disposable income was.

I can see the fourth loan was also for the same amount as the previous two loans. It was taken very quickly after loan three was repaid. I think Quick Quid's checks should again have gone further than just Mr R's income. At this stage, I think Quick Quid should've been asking Mr R about, not only his regular living costs and credit commitments, but also any other short term credit commitments.

The fifth loan was taken immediately after loan four was repaid and whilst the largest repayment was still around £188, I think Quick Quid should have extended its checks to an assessment to satisfy itself of Mr R's full financial situation, for example asking for bank statements. And I would've expected this to continue for the remaining short term loans Quick Quid agreed for Mr R.

The flex credit account was taken almost immediately after the eighth loan was repaid. The terms and conditions of Mr R's flex credit facility said that he needed to pay 10% of the outstanding capital as well as the total interest due each month. So given the terms and conditions of the facility, I think that Quick Quid had to carry out proportionate checks to understand whether Mr R would be able to pay the amount of capital and interest that would have been owing had he drawn down the full credit limit of £1,000. According to the hypothetical repayment schedule – based upon Mr R drawing down the maximum amount of credit at the start (and not drawing down any more money) - the highest repayment was due to be over £340.

As with the later loans, I think Quick Quid needed to do even more here to check if Mr R could sustainably make his repayments for his flex credit loan. I don't think it did enough.

I've thought about what Quick Quid has said. But overall, given everything I think Quick Quid most likely knew about Mr R at the time, I think that it would've been proportionate to carry out further checks before agreeing to lend to Mr R on all, but the first two loans.

what would proportionate checks most likely have shown?

Even though I don't think that the checks Quick Quid carried out were proportionate from the third loan onwards, this doesn't, on its own, mean that Mr R's complaint should be upheld. I need to establish if those checks had been done, what they would've shown Quick Quid about Mr R's ability to sustainably repay the loans.

Quick Quid says the principal amount of the loans remained significantly low and fluctuated throughout Mr R's borrowing history. Mr R took breaks between the successful repayments for four out of the eight loans. There were no signs of financial difficulty or dependency. With the flex credit account, Quick Quid says the highest interest fee would never have exceeded 15% of Mr R's stated monthly income. So it felt that all of this meant that the facilities were affordable and it was lending to Mr R in a responsible manner.

I don't know what proportionate checks would have shown or what Mr R would have declared at the time. But Mr R has provided us with some information and evidence of his financial circumstances from the time he applied for the loans. And I think this information is the best indication I have of what Mr R's financial circumstances were like when he took out the loans.

During the course of his complaint, Mr R told us what he thought his regular outgoings and credit commitments were. Mr R didn't differentiate any changes during the course of his borrowing history with Quick Quid, so I've also looked at Mr R's bank statements at the relevant points during this history.

For the third loan, Mr R's reported income was £1,600. Looking at his statements around the same time, his normal living costs and regular financial commitments, totalled around £1,200
The loan was repayable over two monthly instalments with the highest payment around £188. I think this would have left Mr R with enough of a margin to meet any unexpected costs. Based on this – had Quick Quid enquired further into Mr R's circumstances, I think it would have concluded that he could afford to repay the third loan.

The fourth loan was taken shortly after loan three was repaid and it was for the same amount. I think it would have been prudent to check at this stage whether Mr R had any other short term commitments as well as his normal living costs and regular financial commitments. That said, from what I have seen, Mr R had no other short term lending at the point he took out this loan. The loan was payable over two monthly instalments with the larger of the two repayments around £188. So if Quick Quid had asked Mr R about his normal living costs and regular financial commitments, which totalled about £1,100, it would've concluded Mr R could afford to repay this loan (also payable over two instalments) as well.

The fifth loan was taken out on the back of the fourth loan. At this point I think Quick Quid should have been fully reviewing Mr R's financial commitments and verifying the information he was providing, for example asking for bank statements. This would likely have shown:

- Mr R's income had dropped to £1,495
- Mr R's regular expenditure was around £1,350
- Mr R was also borrowing from another other short term lender; although he had nothing outstanding at the time of the fifth loan
- Mr R spent some time overdrawn but staying within his overdraft limit

Based on this, I think Quick Quid should have been concerned about Mr R's ability to repay this loan. I've taken into account the loan was payable over two monthly instalments of around £38 and £188, but I think Quick Quid would have seen that Mr R's finances wouldn't have left him with a sufficient margin to meet any unexpected costs. And I think Quick Quid should have been concerned that Mr R might have difficulty making his repayments for this loan.

Loan six was for the same amount again and taken after a short gap of two and a half weeks. If Quick Quid has fully reviewed Mr R's financial position it would likely have seen:

- Mr R's income in the previous month was £1,350
- Mr R's normal living and financial expenses came to around £1,400
- Mr R was mainly overdrawn but staying within his overdraft limit.
- Mr R had paid a significant sum towards his credit card debts

I've seen nothing to suggest that Mr R's situation had improved from the previous loan. In fact his salary had reduced. So I also think Quick Quid would've realised again that Mr R's finances left him with very little to meet any unexpected costs. And I think Quick Quid should have been concerned that Mr R might have difficulty making his repayments for this loan. Indeed this transpired to be the case.

Quick Quid has acknowledged that it shouldn't have agreed to the seventh and eighth loans – so I haven't considered these any further.

Almost immediately after Mr R repaid the eighth loan, Quick Quid agreed a flex credit account for Mr R on 7 September 2013. Quick Quid should've carried out proportionate checks to understand whether Mr R would be able to pay the amount of capital and interest that would have owed had he drawn down the full credit limit of £1,000. If Quick Quid had fully reviewed Mr R's financial commitments and verified the information he was providing, for example asking for bank statements, this would likely have shown:

- Mr R's income was around £1,545
- His regular expenditure was around £1,330
- He had £250 plus interest outstanding with another short term lender
- He had also borrowed from and repaid around £293 to another short term lender only a few days before the flex credit was agreed
- His account was mainly overdrawn and he was going over his overdraft limit
- He had an unpaid transaction fee due to insufficient funds to pay his usual direct debits

Taking all of this into account, and considering the maximum payment of over £340 outlined in the agreement, I don't think the initial setting up of the flex credit was affordable to Mr R. I also think all of this would have indicated to Quick Quid that Mr R had become reliant on its loans and wasn't managing to repay them out of his normal means.

putting things right

To put things right for Mr R, Quick Quid should:

- Refund all interest and charges applied to Mr R's loans account from 1 September 2012 onwards; and

- Add simple interest at the rate of 8% per year on the above interest and charges from the date they were paid to the date of settlement †;

- Reconstruct Mr R's flex credit account to take account of the capital that he has borrowed and the repayments he has made but excluding any interest and charges that were added to the loan; and

- For those periods where the reconstructed loan had a credit balance, add simple interest at a rate of 8% per annum †.

- Should an outstanding capital balance remain on the loan (after the removal of all interest and charges) it is reasonable to deduct these arrears from the compensation payable to Mr R. But if Quick Quid no longer owns this debt, it needs to buy it back. If it doesn't then it isn't entitled to make any deductions for it from the amount it needs to pay Mr R; and

- Remove any negative information about these loans and flex credit account from Mr R's credit file from 1 September 2012 onwards.

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

my provisional decision

For the reasons set out above, and subject to both parties' responses, I am currently intending to partially uphold Mr R's complaint.

If either party has anything further to add they should ensure it reaches me by 4 September 2017.

Kathryn Milne
Ombudsman