complaint

Mr M has complained about a number of payday loans he took out with WDFC UK Limited (trading as "Wonga".com) between March 2010 and July 2014. He's said these loans trapped him in a debt spiral and there was no way he could afford them.

background

Mr M took thirty eight loans, in total, with Wonga. His borrowing history is as follows:

Loan	Date	Initial amount	Top ups	Total borrowed
1	May 2010	£250	0	£250
2	June 2010	£120	0	£120
3	June 2010	£200	0	£200
4	July 2010	£200	0	£200
5	August 2010	£200	0	£200
6	October 2010	£450	0	£450
7	November 2010	£450	0	£450
8	November 2010	£250	0	£250
9	December 2010	£200	0	£200
10	January 2011	£240	0	£240
11	February 2011	£300	0	£300
12	March 2011	£300	0	£300
13	April 2011	£375	0	£375
14	July 2011	£250	0	£250
15	August 2011	£300	0	£300
16	September 2011	£200	0	£200
17	October 2011	£200	0	£200
18	November 2011	£200	0	£200
19	April 2012	£200	0	£200
20	May 2012	£200	0	£200
21	June 2012	£200	0	£200
22	September 2012	£200	0	£200
23	October 2012	£300	0	£300
24	November 2012	£200	0	£200
25	December 2012	£300	0	£300
26	December 2012	£300	0	£300
27	February 2013	£300	1	£500
28	March 2013	£300	3	£800
29	March 2013	£600	1	£800
30	May 2013	£500	2	£870
31	August 2013	£200	0	£200
32	September 2013	£200	0	£200
33	October 2013	£300	0	£300

34	November 2013	£420	0	£420
35	December 2013	£450	0	£450
36	May 2014	£200	0	£200
37	June 2014	£200	2	£300
38	July 2014	£400	1	£650

One of our adjudicators has looked at what Wonga and Mr M said. He didn't see enough to say that proportionate checks would've stopped Wonga from giving Mr M loans one to five. But he did think that proportionate checks would've shown Wonga that it shouldn't have given loans six to thirty eight to Mr M.

Mr M didn't disagree. But Wonga didn't accept our adjudicator's findings in full and asked for ombudsman to review the complaint. As Mr M hasn't disagreed with our adjudicator, this decision is only looking at whether Wonga should've given Mr M loans six to thirty eight.

my 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 M's complaint.

Having carefully thought about everything I've been provided with, I'm upholding Mr M's complaint. I'd like to explain why in a little more detail.

the relevant rules and guidance in place at the time of the loans

Wonga gave Mr M loans one to thirty five during the period it held a standard licence from the Office of Fair Trading ("OFT"), which allowed it to carry out consumer credit activities. And the OFT guidance in place at the time clearly set out the responsibility of a lender to take reasonable steps to ensure a borrower could *sustainably* repay their loan or loans before agreeing to any borrowing.

The OFT guidance specifically 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 say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings."*

It then goes onto to say *"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."* And finally it says that *"The creditor should take a view on what is appropriate in any particular circumstance dependent on, for example, the type and amount of the credit being sought and the potential risks to the borrower."*

Mr M was given loans thirty six to thirty eight while Wonga was regulated by the Financial Conduct Authority ("FCA"). The relevant regulatory rules in place at the time were set out in the Consumer Credit Sourcebook ("CONC") section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. And it says a firm had to consider *"the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation"* as well as *"the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement."*

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says *"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 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *"In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.".*

CONC 5.3.1(2) then says *"The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking 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.".*

In practice all of this meant that a lender had to take proportionate steps to ensure a consumer would've been able to repay what they were borrowing in a sustainable manner without it adversely impacting on their financial situation. Put simply the lender had to gather enough information so that it could make an informed decision on the lending.

Although the guidance and rules themselves in place at the relevant times didn't set out compulsory checks, they did list a number of things (in Section 5.2.4 of CONC and in the OFT guidance) a lender could take into account before agreeing to lend. The key thing was that the rules required a lender's checks to be proportionate. And any checks had to take into account a number of different things, such as how much was being lent and when what was being borrowed was due to be repaid.

I've kept all of this in mind when thinking about whether Wonga did what it needed to before agreeing to Mr M's loans. It's my understanding that Mr M was given loans where the capital borrowed plus the interest due was to be repaid in a single payment. So overall I think that this means the checks Wonga carried out had to provide enough for it to be able to understand whether Mr M would be able to make these payments, in full, when they fell due.

Wonga says Mr M was asked to confirm his monthly income and that it carried out credit checks before, at least some of, the applications. And while it has referred to these credit checks, it hasn't provided the details of what these showed in an understandable format.

why I don't think Wonga's checks were proportionate

I've thought about what Wonga has provided and what it has said. But overall given everything Wonga knew about Mr M when he applied for these loans, I think it would've been proportionate to carry out further checks before it agreed to give them to him.

To explain, as Wonga has said it carried out credit checks before it agreed to these loans, I don't think that it would be fair for me to ignore this. So I've looked at the information Mr M's provided us with, to get an idea of what the credit checks Wonga carried out are likely to have shown. I accept the information provided might not exactly replicate what Wonga would've seen. But in the absence of anything else and as Wonga hasn't provided the results of what its own searches showed – it has only been able to show that searches were requested, it remains the best indication I have of what Wonga is likely to have seen. So I think it's perfectly reasonable to rely on this information.

Having looked at this information, I can see that that Mr M had a substantial amount of outstanding credit commitments. And it looks like he'd been having difficulty meeting them. Mr M also took substantial amounts of short term lending with a number of other providers throughout the time he was borrowing with Wonga. Given what the information Mr M's provided shows and Wonga hasn't really said or provided anything to suggest its information showed something else, I don't think it's unreasonable to conclude any searches from before the time these loans were taken out might well have shown similar information.

So I think that Wonga's credit check would also most likely shown that Mr M had been having difficulty maintaining payments to his mainstream financial commitments and that he was also borrowing from other short-term lenders during the period I'm looking at. And Wonga would also have realised Mr M's overall financial position was worsening throughout the period he was borrowing from it too.

I accept there are lots of reasons why a consumer may wish to take out short-term lending. And a consumer taking out more than one short term loan doesn't mean that a borrower won't be able to repay a later one. But where a lender is aware of such things, I don't think it's unreasonable or disproportionate to expect it to carry out further, more rigorous, enquiries in order to find out whether the consumer is using this type of borrowing in the way it's supposed to be (i.e. as a short term solution to a temporary cash flow problem rather than as a means of supplementing their income). This is especially the case where the consumer is continually borrowing from it too.

I'm also mindful that Mr M took out thirty eight loans in total with Wonga. Yet it looks like the level of checks Wonga carried out stayed the same, or it, at least, can't evidence it did more, even though Mr M was borrowing more and more. I want to make it clear that I'm not saying the number of loans Mr M took or his existing commitments, in themselves, meant Wonga should've automatically refused to lend to Mr M. What I'm saying is that all of this means that I think it would've been proportionate for Wonga to have carried out further checks to verify whether Mr M would be able to repay what he borrowed.

Overall having carefully thought about everything, I think that Wonga failed to carry out proportionate and sufficient checks before agreeing to give loans six to thirty eight to Mr M.

what I think proportionate checks would most likely have shown

Even though I don't think the checks Wonga carried out were proportionate and sufficient, this doesn't, on its own, mean that Mr M's complaint should be upheld.

After all if further checks would've simply shown Wonga that Mr M would most likely have been able to make his payments to these loans when they became due (and so there was no reason why Wonga shouldn't have lent to Mr M), then further checks wouldn't have made a difference. This is because Mr M won't have lost out as a result of Wonga's failure to carry out proportionate and sufficient checks and there'd be no reason for me to uphold the complaint.

But if further checks would most likely have shown Mr M was unlikely to have been able to make his payments then Wonga would've seen it shouldn't have lent to him. And this would mean Mr M lost out because of Wonga's failure to carry out proportionate and sufficient checks. So there'd be grounds to uphold Mr M's complaint. As proportionate checks weren't carried out I can't say for sure what these checks would have shown. But Mr M has provided us with evidence of his financial circumstances at the time he applied for these loans. And I've been able to get a picture of what his financial circumstances were like.

Of course I accept this isn't perfect as different checks show different things. And just because something shows up in the information Mr M has provided it doesn't mean it would've shown up in any checks Wonga might've carried out. But the information Mr M has provided is the best indication I have of what his financial circumstances were like at the time. And in the absence of anything else I think it's perfectly reasonable to rely on it.

I've carefully looked through everything Mr M has provided and I've also thought about everything both parties have said. Having done so, I don't think Mr M had the capacity to take on this borrowing. As I've previously explained, I think Wonga needed to find out more about Mr M's monthly outgoings. And I think that if Wonga had done this it would've seen that Mr M was substantially overdrawn and paying a significant amount in charges each month. Mr M was also heavily reliant on short term lending and other forms of unsustainable borrowing to meet his day to day commitments as well as repay similar loans with other lenders.

Put simply, I think that proportionate checks would've shown Mr M had to pay far in excess of his monthly income in order to service existing credit commitments because he was borrowing from multiple lenders just to be able to repay previous loans. And this continued for pretty much the whole period I've looked at.

All of this leads me to think that if Wonga had taken a reasonable look into Mr M's overall financial circumstances, as it should've done given what it had and what it ended up knowing during the course of his lending history, it would've seen Mr M was simply unable to make the payments he was being asked to commit to for loans six to thirty eight without it adversely affecting his financial position. And so he wasn't in any sort of position to be able to take on these loans. So overall I think that not only did Wonga fail to carry out proportionate checks before giving loans six to thirty eight to Mr M, but that he also lost out as a result of this.

putting things right - what Wonga needs to do

In order to put things right for Mr M, Wonga should:

- refund all the interest and charges for loans six to thirty eight; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid, if they were paid, to the date of settlement†;
- remove any adverse information recorded on Mr M's credit file as a result of the interest and charges on these loans;

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

I understand that Wonga wrote off some of what Mr M owed on loan thirty eight. As it did this, it can deduct what it has already written off from what it now owes Mr M.

my final decision

For the reasons given above, I'm upholding Mr M's complaint WDFC UK Limited (trading as "Wonga".com) should pay Mr M compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 June 2017.

Jeshen Narayanan
ombudsman