

## **complaint**

Mr N complains that Cfo Lending Limited used his debit card details to take the full outstanding balance of an overdue payday loan from his bank account. He says he had already arranged a payment plan with Cfo Lending and the withdrawal caused difficulties with his other debts and creditors.

## **background**

Mr N took out a payday loan, due to be repaid in August 2011. He did not repay on the due date. Cfo Lending tried unsuccessfully to take the payment from his account using the details he had given. It also says it called, wrote and sent text messages to Mr N.

In November 2011 Cfo Lending obtained details of a different debit card from Mr N after he applied online for more credit. It took the full outstanding balance of the loan (plus interest and charges) from his account.

Mr N complained to Cfo Lending. He said he had already agreed a £5 per month repayment plan with Cfo Lending (or with its collections agents) and the unexpected withdrawal of the full outstanding amount from his account left him in considerable difficulties paying priority debts elsewhere. He asked Cfo Lending to put the money back in his account and reinstate the payment arrangement.

On review, our adjudicator recommended the complaint be upheld. He did not think Cfo Lending had acted fairly – or in accordance with good industry practice – by removing the entire outstanding balance from Mr N's account after he inadvertently gave Cfo Lending his new debit card details. The adjudicator recommended that Cfo Lending return the money to Mr N (reinstating the debt) and come to a mutually acceptable repayment plan with him.

Cfo Lending disagreed with the adjudicator's findings. It says it never agreed a payment arrangement with Mr N and did not hear from him, or receive even token payments. It says it adhered to the correct collection procedures and argues that giving Mr N the money back would mean he would have held this payday loan for 'an extortionate amount of time'.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Clearly Mr N did not repay his loan on the due date and I acknowledge that Cfo Lending seems to have had some trouble getting in touch with him to discuss his account, or to collect the payment due. I think the fact that Cfo Lending tried, and failed, to collect the payment from Mr N's account on a daily basis should reasonably have put it on notice that he might be in financial difficulties. However, I also take Cfo Lending's point that there was some onus on Mr N to make it aware of his circumstances.

Mr N is adamant that he did subsequently get in contact with Cfo Lending and that it agreed to accept a £5 per month payment arrangement. Cfo Lending has provided its contact notes, which do not show any calls to or from Mr N between late August and late November.

However, Mr N has provided what I consider to be good evidence of several calls he made to Cfo Lending in October, November and December. These calls are not shown on Cfo Lending's notes, so I am doubtful that the notes are a full and accurate picture of the contact that took place.

The telephone calls Mr N had with Cfo Lending were for the most part quite lengthy. I think it is entirely possible that Mr N told Cfo Lending about his financial difficulties during those calls. It is also possible that he did propose a payment arrangement – although it is less clear whether Cfo Lending agreed to accept such an arrangement. On balance, though, I think it is likely that Cfo Lending was aware of Mr N's financial difficulties by October 2011 at the latest; *before* it took the payment from his account.

Mr N has explained that he got into financial difficulties after his circumstances changed and his income fell. He has provided information about his income and expenditure in November 2011, as well as his other debts. Those included priority debts like rent arrears and council tax. By taking the full outstanding balance from Mr N's account without notice, Cfo Lending effectively made itself Mr N's priority creditor. I do not consider that to be appropriate, or to reflect good industry practice. Nor is it treating Mr N positively and sympathetically. In these particular circumstances, I therefore think Cfo Lending should now return the money to Mr N.

I believe Mr N understands that his payday loan is currently repaid and he owes Cfo Lending nothing. Directing Cfo Lending to now return the money to him means his outstanding debt to Cfo Lending will be reinstated. Mr N will still have to repay that debt. However, Cfo Lending and Mr N should now communicate to agree an acceptable repayment plan, based on what Mr N can reasonably afford given his financial circumstances.

Finally, as I think Cfo Lending's overall handling of this matter will have caused Mr N some distress and inconvenience, I consider it appropriate to direct Cfo Lending to reduce the overall debt by £50.

### **my final decision**

My final decision is that I uphold this complaint and I direct Cfo Lending Limited to:

- return £684.25 to Mr N (thereby reinstating his previous outstanding debt) and
- reduce the outstanding debt by £50

Mr N and Cfo Lending will now have to negotiate to come to a mutually acceptable payment arrangement, based on what Mr N can reasonably afford and taking into account his overall financial circumstances.

I remind Cfo Lending that if Mr N is still in financial difficulties it is required to treat him positively and sympathetically. If Mr N feels Cfo Lending does not treat him positively and sympathetically in negotiating the payment arrangement, he may be able to bring a new complaint about that to Cfo Lending and ultimately to this service.

Dawn Griffiths  
**Ombudsman**