

complaint

Mr A complains that Cash On Go Limited trading as Peachy.co.uk was irresponsible when it provided loans to him in December 2018. He's also unhappy at the way in which it dealt with him when he tried to withdraw from the loan and later, when it pursued him for the outstanding balance.

background

Mr A took two advances from Peachy. It says that the second was a "top-up" to the first - though for reasons I explain below I think the two advances were in effect two separate loans.

On 1 December 2018 Mr A took a loan of £100 from Peachy to be repaid over six months. On 9 December he took the second advance which meant that the capital he had now borrowed amounted to £550. This was also repayable over six months. On 22 December Mr A told Peachy he wanted to withdraw from the agreement made on 9 December and asked it confirm the sum which he would have to repay to allow him to withdraw. It said he was too late to withdraw.

Mr A complained to Peachy. It didn't agree it had done anything wrong and so he brought his complaint to this Service. As well as the issues around irresponsible lending and withdrawal from the loan Mr A also complained that Peachy was wrong to take payments from his account. And he was unhappy that it continued to pursue him for the balance on the loan after it had told him it had been placed on hold whilst the complaint was being dealt with.

One of our adjudicators considered Mr A's complaint and in summary he concluded that Peachy hadn't been irresponsible to provide the loans. But he did think that Mr A should've been allowed to withdraw and that Peachy's service after that – in pursuing the debt as it did – was unfair. He proposed a way forward which Peachy accepted. Mr A agreed with some of what the adjudicator concluded but wasn't happy with how it was proposed that Peachy should put things right. As the matter wasn't resolved informally, it came to me for a decision.

A few weeks ago, I issued a provisional decision in which I explained why I was minded to conclude that whilst Peachy hadn't been irresponsible when it provided the loans to Mr A, it had later treated him unfairly. I also explained how I thought things should be put right. I invited the parties to let me have anything else they wanted me to think about before I issued this final decision.

Mr A has said he accepts my provisional decision. I haven't heard anything back from Peachy.

my findings

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

the loans – were they responsibly lent?

This is what I said in my provisional decision as regards whether Peachy had been irresponsible when it provided the credit to Mr A:

Mr A accepts what our adjudicator says about the first loan being responsibly lent but he's unhappy that Peachy provided the "top-up" which was for significantly more money within 9 days and without doing more checks. He says that if Peachy had asked to see his bank statements it would've seen he couldn't afford the "top-up".

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Peachy provided the loans in question while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The Consumer Credit sourcebook ("CONC") set out the rules and guidance which apply to credit providers like Peachy when providing loans. CONC 5 sets out a firm's obligations in relation to responsible lending.

These meant that Peachy needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr A could repay his loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr A's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Peachy should fairly and reasonably have done more to establish that any lending was sustainable for Mr A. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

Mr A took only two advances from Peachy and they were within a very short time – so at the point of the "top-up" there wasn't really any sort of history that might have led Peachy to conclude that it needed to do more at that time. I accept that it had declined two loan applications from Mr A over a year before but I don't think those were something it needed to consider, given the gap. And Mr A declared a relatively high monthly income of £2,581.

Peachy asked Mr A about his expenses and he'd declared that his housing was zero because he lived with parents. He said he paid £200 towards utilities, £180 towards food, £100 towards transport, £200 towards "other" and £600 towards credit. This meant that Mr A would've been left with a disposable income of around £1,300 per month.

As a result of the agreement made on 9 December 2018 Mr A was due to make six repayments. For ease of reference I've rounded the figures. The first repayment was to be due to be £87. After that they were going to be between £177 and £185 over the following five months. In other words, on the basis of the information Mr A provided, the highest amount the was going to have to find out of his £1,300 disposable income in any one month was around £185.

Peachy had to do proportionate checks: it didn't have to look at everything unless circumstances dictated that it should do more. In this case I'm not persuaded that Peachy acted irresponsibly when it provided the "top-up" to Mr A on 9 December 2018. So, I'm not planning to uphold his complaint about irresponsible lending.

As I've said, Mr A accepts my provisional decision and hasn't added anything more about Peachy providing the loans to him. As such, I see no reason to change my provisional conclusions. And I don't uphold Mr A's complaint that Peach was irresponsible when it provided the loans to him.

did Peachy act fairly when it wouldn't allow Mr A to withdraw from the "top-up" agreement?

This is what I said in my provisional decision about Mr A trying to withdraw from the second agreement:

Firstly, I think I need to clarify what happened when Mr A applied for the "top-up". By that point Loan 1 had been live for nine days. It had been for £100. When the "top-up" was agreed the credit agreement was for £550. Of this £100 effectively went towards repaying Loan 1 so only £450 was credited to Mr A's bank account. I've seen his bank statements and on 10 December 2018 a deposit was received from Peachy of £450. On the following day there was a payment to Peachy of £6.24. This amount was the interest payable on Loan 1 for the nine days it had been live. In other words, I'm satisfied that Loan 1 was to all intents and purposes repaid at the point the "top-up" was agreed. £100 was deducted from the "top-up" to settle the capital amount of Loan 1 and Mr A paid £6.24 in interest.

So, it seems to me that Mr A effectively had a new loan in the amount of £550 when he received this "top-up". From hereon I'm going to refer to this as Loan 2 as in practical terms, Loan 1 was finished.

From the documents provided by Peachy I'm satisfied that on 9 December Mr A was provided with new terms and in those it explained his right to withdraw and that he had fourteen days in which to do that. This is what it said:

You have the right to withdraw from this Agreement under s66A Consumer Credit Act 1974 within 14 (fourteen) days, without penalty and without having to give any reason. Your right to withdraw from this Agreement commences on the day after whichever is the later of (a) the date of the Agreement; and (b) the date You receive a notice from Us (that the agreement has been executed in identical terms to the copy already given to You and that You have the right to a copy of the executed agreement if You ask within 14 (fourteen) days to Your email address, and ends 14 (fourteen) days after that date. If You want to withdraw, You must notify Us of Your intention to do so, either in writing or orally. To withdraw in writing, You can either write to Cash On Go Ltd,; or email to; or fax Your withdrawal notice To withdraw orally, You must telephone and speak with a Customer Service Representative.

If You withdraw from this Agreement, You must repay any credit already provided under this Agreement as well as any interest accrued on the credit (calculated from the date the advance was provided until the date it is repaid) without delay and no later than 30 (thirty) calendar days after giving notice of withdrawal. The accrued interest will be £3.91 per day calculated at the contractual rate set out in Your Loan Statement (Key Financial Information) up to a maximum of 0.8% per day. The credit owed can be paid via bank transfer to Our account (the details of which can be obtained by emailing Customer Service Team on info@peachy.co.uk) but must include reference to Your Agreement number (so We can identify the payment).

[I have removed the contact details from these paragraphs].

In light of what was stated in the terms, I'm satisfied that Mr A he had until 23 December 2018 to withdraw. If he opted to do so he had to contact Peachy in the ways outlined and to repay the capital amount borrowed together with accrued interest.

Mr A emailed Peachy on 22 December 2018 as follows:

*Hi Peachy
I am writing to withdraw from my loan agreement.
It was taken on the 9th meaning it has been exactly 13 days since taking the loan when I write this email.
Please confirm for me the amount that is required to pay,
Thanks [Mr A]*

From what I can see Peachy replied to Mr A the next day:

Dear [Mr A]

Thank you for contacting Peachy.

Please be advised that the credit agreement was signed on 1/12/2018 when you took out the loan and you did top up the loan on 9/12/2018. Please note that from the 01/12/2018, when you took out the loan. The 14 days time period has passed and we are unable to cancel the credit agreement. From the period you took out the loan till today, daily interest has been added to the loan as well.

In this case you are welcome to make us an early full payment to clear off the loan. Please note that as of today the amount payable in full to pay off the loan would be £604.67

It went on to explain how payment could be made.

Mr A replied by quoting the "withdrawal paragraph" I've outlined above. But Peachy still declined to give him a figure for withdrawal and settlement and somewhat confusing wrote to him as follows:

Please be advised that Peachy Loans offers only one loan at a time. Therefore, when the top up is issued as the payment schedule is rearranged and top up credit is added to already outstanding credit on the account you are provided with a new Credit Agreement for the top up that was issued.

The Credit Agreement that was signed on the 01/12/2018 for the initial loan, therefore, the 14 days cooling off period has ended on the 15/12/2018. Therefore, you are unable to withdraw from the initial Credit Agreement for the loan that was issued on the 01/12/2018 in the amount of £100.00.

On the 9/12/2018 you have topped up your loan by £450.00 and were provided with the Credit Agreement for the top up. So you had a 14 day cooling off period to withdraw from the top up by repaying the issued top up with the daily interest.

As I've already explained Loan 1 had in effect been settled on 9 December. But I note that there is reference to there being a 14 day window in which to withdraw from the "top-up" with daily interest.

Peachy has told us that "*In regards to the fact that [Mr A] was not able to cancel his top-up, we would like to take this time to explain that there seems to have been a miscommunication*

as it seems that the customer service agent who had replied to [Mr A] inquiry regarding the cancellation was under the impression that [Mr A] wished to withdraw from the loan in full. As more than 14 days of the initial agreement had passed, then [Mr A] was advised that the loan agreement could not be cancelled, however, we offered an early repayment option."

I accept that Mr A had telephoned Peachy on 4 December – after he took Loan 1 – to explain he wanted to withdraw from that. I've listened to that call. During it Mr A had been told that he would need to repay £102.34. But his card on record wasn't the one he wished to use so he was told he had to update his card details on-line (for security reasons). Once that was done he should then call Peachy again to authorise the payment. It seems he didn't ever do this.

But I don't accept that the call on 4 December was sufficient to confuse the Peachy agent who responded to Mr A's request about settling the "top-up". I think Mr A was clear in his email of 22 December and I'm unclear why there should then have been any "miscommunication".

A withdrawal figure was not provided to Mr A for Loan 2. I think it should have been and that Peachy failed to treat Mr A fairly in December 2018. As a result I don't think that Mr A should be required to repay any more than the amount of the capital advanced to him (£550 in total) plus daily accrued interest to the point he said he wanted to settle – 22 December. I'll explain further how I think things should be put right below.

In the absence of anything further from the parties – again – I see no reason to depart from my provisional decision. I remain satisfied that Peachy treated Mr A unfairly when it didn't provide him with a withdrawal figure so he could withdraw from the agreement made on 9 December.

going forward, did Peachy treat Mr A fairly as regards repayment of the loan?

The third part of Mr A's complaint is that Peachy treated him unfairly when it took repayments for the loans. This is what I said in my provisional decision:

As no agreement for withdrawal was reached I understand why Peachy continued to treat the loan as though it hadn't been withdrawn. And as such it took payments on the loan. From what I've seen it seems Mr A accepted that payments had to be made. This is because when a payment on 25 January 2019 failed he called Peachy to make that payment of £181.26. Again I've listened to that call. He didn't mention to this agent that there was an on-going issue with withdrawal and given his willingness to make the monthly repayment it's unclear whether he still wanted to withdraw or had the means to do so.

So, on the one hand I think that Peachy failed to act fairly in December but I'm not persuaded that it was wholly wrong to continue to try to take repayments on the loan afterwards: after all it was still outstanding. I don't agree with Mr A that Peachy "stole" money from his account and as I've explained he seemed to accept that it was within its rights to seek some repayments.

Mr A made three repayments of £105.85, £181.26 and £185.80: a total of £472.91. This means that he has almost repaid all the capital amount he borrowed in the first place. Again, I'll refer to this in the section below headed "*putting things right*"

As Mr A accepts my provisional decision, I'm not changing my mind on this part of his complaint. In other words, I'm not persuaded Peachy acted unfairly when it began to take repayments from his account.

did Peachy treat Mr A fairly when it pursued him for the outstanding balance after he brought his complaint to this Service?

The final part of Mr A's complaint is that Peachy acted unfairly when it tried to enforce the terms of the second loan agreement even though it told him it would put his account on hold whilst he was pursuing his complaint. This is what I said in my provisional decision:

I've seen some email correspondence between Mr A and Peachy about the account going on hold. He understood that interest had been frozen but Peachy explained that the account would be put on hold pending an outcome in his complaint. But despite these reassurances Peachy continued to contact him and warn him of the consequences of non-payment.

For example on 23 July 2019 Peachy wrote to Mr A saying his account was "seriously overdue" with a balance of £620.85. He emailed back a few minutes later saying that the complaint was with this Service and suggested they freeze his account pending the outcome. A few hours later Peachy responded saying that his account had been placed on hold for the duration of the investigation and as soon as there was an outcome it would make the required changes. It added that it would cease recovery activity for 60 days whilst his complaint was investigated. Two days later it sent Mr A another demand telling him again his account was overdue.

A week after that (on 1 August 2019) Peachy sent Mr A another email along the same lines to which he replied to the effect that this Service was looking into his complaint and that Peachy should stop contacting him.

On 2 August Peachy again emailed Mr A telling him he was severely overdue. But this time it said that it was willing to accept £496.68 in settlement. Later in the day it emailed Mr A apologising for the inconvenience and that that this Service had been in touch and the account placed on hold. It told Mr A to "kindly disregard" any overdue reminders he may have received.

On 3 September 2019 Peachy emailed Mr A to say that his loan was about to be handed over to a debt collection agency. Two days after that it again reminded him his account was severely overdue. Mr A responded the effect that this was harassment. He also suggested that his message be passed to someone senior.

I've outlined the correspondence in some detail. This is because I want to make clear how often Peachy contacted Mr A about his arrears - and in what terms - despite having agreed to put collection on hold pending the outcome of his complaint. I find some of the correspondence to be quite threatening - especially in the context of what I've outlined above. Mr A says that he's felt threatened and harassed and I don't find this surprising. But I'm not persuaded that an award of £500 (the sum he says he wants) for his trouble and upset is warranted here for the reasons I'll explain below.

In the circumstances I remain of the view that Peachy acted unfairly in the way it continued to correspond with Mr A after it had told him that his account was being put on hold.

putting things right

I'm satisfied that Peachy failed to treat Mr A fairly when it didn't give him a withdrawal figure in December 2018. Had it done so I think he would've repaid the capital and a small amount of daily interest. The payments he's already made towards that balance amount to around £472.

I think Mr A was caused trouble and upset when Peachy failed to give him a withdrawal figure: it seems to me that everything that followed, flowed from Peachy's failings in December 2018. Not only was Mr A unable to settle the loan, he was pursued regularly and to some degree aggressively for sums much higher than he would've repaid had Peachy done things correctly. And this was despite him having raised his complaint with this Service and Peachy having assured him that collections had been put on hold.

I've thought very carefully about what would be a fair and reasonable outcome in this case and so this is how I require Peachy to put things right. It should:

- a) assess what the correct withdrawal figure should've been on 22 December 2018 for Loan 2. To be clear there was no outstanding balance on Loan 1 for the reasons I explained in my provisional decision. This figure should take account of a total capital advance of £550 plus daily accrued interest between 9 and 22 December.
- b) apply the payments already made by Mr A (£472.91) towards the balance calculated at a)
- c) write-off the remaining balance. Some of this will be made up of a small amount of capital and some will be the daily accrued interest but overall I think that this sum, together with the amount I refer to in d) below is a fair amount to reflect the impact Peachy's failings had on Mr A
- d) pay Mr A an additional £200 for his trouble and upset
- e) remove all adverse information in Mr A's credit file which relates to the second advance made on 9 December 2018

In effect this means that Mr A's debt to Peachy is cleared, that he receives an additional £200 and that his credit file is amended.

my final decision

For the reasons outlined above and in my provisional decision I uphold Mr A's complaint in part, and I require Cash on Go Limited to put things right in the way I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 March 2020.

EJ Forbes
ombudsman