

complaint

Miss H complains that WDFC UK Limited (trading as Wonga) gave her loans she could not afford.

Miss H also complains that her personal details were taken when her account was accessed by an unauthorised user.

background

My provisional decision dated 20 July 2018 is attached and it forms part of this final determination. In it I have given details of some of the legislation and guidance applicable to the lending period.

I invited both parties to reply with any additional points or evidence they wished me to see and the reply date was set as 20 August 2018. Both parties have acknowledged receipt of my provisional decision – Wonga by telephone and Miss H by email.

I have created a table of approved loans which appears at the end of this decision. I have created this table to facilitate an easier way to write this decision by using the numberings to refer to the loans. The table is not to be used to calculate the redress due to Miss H as Wonga has the detailed records for each loan.

Wonga has not sent me anything further in submissions or for me to see. Miss H said that she had nothing further to add on the substantive points. Now I am ready to make my final decision.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, regulations and guidance applicable at the time, some of which I have set out in the provisional decision attached to this final determination below.

As neither party has sent me anything further then I see no reason to depart from the provisional findings and conclusions I made in July 2018. So I uphold Miss H's complaint in relation to Loans 5, 6 (including 6A), 7, 8 and 9 and Loans 10 to 68 inclusive, for the same reasons as outlined in my provisional decision.

putting things right

I uphold Miss H's complaint in relation to Loans 5, 6 (including 6A), 7, 8 and 9 and Loans 10 to 68 inclusive. To put things right for Miss H, WDFC UK Limited should:

1. refund all interest and charges paid by Miss H for Loans, 5, 6 (including 6A), 7, 8 and 9 and Loans 10 to 68 inclusive, and
- 2 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. *

An outstanding balance remains in relation to Loan 68 taken in 2017 and if some of that balance is outstanding capital, it is reasonable for WDFC UK Limited to deduct this from the compensation payable to Miss H.

In which case, WDFC UK Limited should remove all interest and charges that have not yet been paid in respect of this loan from the outstanding balance. Then it should apply any repayments made by Miss H as though they were repayments of the principal sum. If there is still a principal balance left owing WDFC UK Limited may apply the amount of the refund calculated above to reduce that principal amount and then refund the balance to Miss H.

But if WDFC UK Limited no longer owns the outstanding capital debt, it needs to buy the debt back. If WDFC UK Limited does not buy the debt back, then it is not entitled to make any deductions for it from the amount it needs to pay Miss H.

- 3 WDFC UK Limited is to remove all adverse information about these loans from Miss H's credit file for Loans, 5, 6 (6A), 7, 8 and 9. And in addition, in respect of Loans 10 to 68 the cumulative impact on Miss H of these numbers of loans on her credit file would have been – and continues to be - the adverse information. So I consider that removal of all reference to the Loans 10 to 68 is a fair and reasonable element of compensation in view of my provisional decision findings.

*HM Revenue & Customs requires WDFC UK Limited to take off tax from this interest and it must give Miss H a certificate showing how much tax it's taken off if she asks for one.

my final decision

My final decision is that I uphold Miss H's complaint in part and direct that WDFC UK Limited do as I have set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss H to accept or reject my decision before 22 September 2018.

Rachael Williams
ombudsman

Copy my provisional decision dated 20 July 2018.

complaint

Miss H complains that WDFC UK Limited (trading as Wonga) gave her loans she could not afford.

Miss H also complains that her personal details were taken when her account was accessed by an unauthorised user.

background

Miss H complains that Wonga gave her loans she could not afford. She has explained that she has been struggling to pay the loans back and as soon as one was paid back she has had to take another straight away. She could not see a way of not getting a Wonga loan because she was not able to afford to live for the month without one.

She says that she had bad credit and so does not think that Wonga had done proper credit checks on her - if Wonga had, it would have known this.

Miss H complains that she was subject to a data breach.

Wonga lent 64 loans to Miss H between December 2012 and June 2017. After Miss H had complained to Wonga on 7 July 2017, Miss H took a further four loans between 7 July and 29 September 2017. At first Wonga did not think it right for these last four loans to form part of the complaint. More recently Wonga has agreed to these last four loans being included.

I have created a table of approved loans which appears at the end of this decision. I have used those numberings to refer to the loans.

Our adjudicator looked at the information and submissions sent by Wonga as well as the financial details and bank statements from Miss H. His view was that many of the loans appeared affordable using Miss H's income and expenditure details she had given to us.

But after Loan 16 (January 2014) he considered that the sustained level of multiple lending to Miss H for over a year led him to think that this was irresponsible lending and cited the Office of Fair Trading (OFT) guide to irresponsible lending and in particular it's chapter 6, paragraph 25.

As the Financial Conduct Authority (FCA) rules came into existence during the course of the lending relationship between Wonga and Miss H, our adjudicator also made mention of those rules. I have expanded on these later in my provisional decision and so I do not set them out here.

Our adjudicator went on to say that he thought that Wonga should have stopped lending to Miss H after Loan 16 (January 2014) and it should put things right for Miss H from that point.

Wonga disagreed. It pointed out that the adjudicator's findings that Miss H had enough disposable income up to Loan 16 to be able to afford these loans, followed by findings that the loans became unsustainable after that date, were not logical and not an argument it agreed with. Wonga conceded that Miss H had borrowed extensively over the years, but it also pointed out other factors which suggested that Wonga would not have had any indication of Miss H experiencing financial strain up until Loan 68.

Wonga has said that *'there is no reason to suppose that the customer borrowed in a way that wasn't sustainable and there is no evidence to show it was harmful.'* Further Wonga said that Miss H's management of her repayments and the account in general suggested to its representative that Miss H was *'managing the borrowing'*.

On the part relating to the data breach, Wonga has accepted that a breach took place and that Miss H received one of its emails (9 April 2017) to highlight that she *may* have been affected. But Wonga also says that Miss H has not given any details of any impact that this breach may have had – financial or otherwise. Wonga says that it had never heard from Miss H about this until recently. And having not received anything from Miss H about any effect it may have had on her, Wonga says it cannot be expected to have done more.

Wonga has requested that this matter be passed to me, an ombudsman in the Financial Ombudsman Service, to resolve the complaint.

the legal and regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

Wonga gave Miss H her first 18 loans and 2 top-ups in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading (“OFT”), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—

- (a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
- (b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
- (c) practices and procedures that the applicant proposes to implement in connection with any such business;*
- (d) evidence of the kind mentioned in subsection (2A)*

(2A) That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—

- (a) committed any offence involving fraud or other dishonesty or violence;*
- (b) contravened any provision made by or under—*

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

- (c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
- (d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*
- (e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)*

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A) (e)) and said:

For the purposes of subsection (2A) (e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending.

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Miss H's case. The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says: *In general terms, creditors should:*

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*
- *treat borrowers fairly and with forbearance if they experience difficulties.*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, 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 and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
- *the borrower's financial situation at the time the credit is sought;*
- *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
- *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation.

Sections 4.18 to 4.33 of the ILG set out some examples of “specific irresponsible lending practices” relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action...when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a “deceptive and/or unfair practice” where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

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.

regulation by the Financial Conduct Authority (from 1 April 2014)

Wonga gave Miss H loans 19 to 68, plus 2 top-ups, after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority (“FCA”) on 1 April 2014. Wonga initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a high-cost short-term credit provider. Wonga’s interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

the FCA Principles for Business (“PRIN”)

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook (“CONC”)*

This sets out the rules which apply to providers of consumer credit like Wonga. CONC also replaced the requirements set out in Section 55B CONC 5 sets out a firm’s obligations in relation to responsible lending. And CONC 6 sets out a firm’s obligations after a consumer has entered into a regulated agreement.

It’s clear there is a high degree of alignment between the OFT’s Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA’s CONC rules specifically note and refer back to sections of the OFT’s *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

- (a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

[Note: paragraph 4.1 of ILG]

- (b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G (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.

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G (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.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G (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.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G (4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

- (a) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

[Note: paragraph 4.31 of ILG]

CONC 6.7 sets out a firm's obligations in relation to its post contract business practices. CONC 6.7.21G, CONC 6.7.22G and CONC 6.7.23R contained specific obligations for high-cost short-term credit providers like Wonga.

CONC 6.7.21G says:

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

[Note: paragraph 6.25 of ILG]

CONC 6.7.22G says:

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

[Note: paragraph 6.25 (box) of ILG]

Section 6.25 of the ILG is set out on pages four and five of this decision and is concerned with what the OFT referred to as 'deceptive and/or unfair practices'.

CONC 6.7.23R (which applied from 1 July 2014) says:

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

CONC 6.7.17R defines refinancing and says:

- (1) In CONC 6.7.18 R to CONC 6.7.23 R "refinance" means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:*
 - (a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;*
 - (b) exercising a contractual power contained in an existing regulated credit agreement; or*
 - (c) other means, for example, granting an indulgence or waiver to the customer.*
- (2) "Exercise forbearance" means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:*
 - (a) there is no charge in connection with the refinancing; or*
 - (b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.*
- (3) The term "refinance" within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.*

In addition to the regulations and rules, I am aware of the 'Pay Day and Short-term Loans Charter' (effective from November 2012) ("the Charter") which was a cross-trade association charter designed to add protection to consumers. One of the many Key Commitments was to tell the consumer that "...a payday or short term loan should be used for short term financial needs and is not appropriate for long term borrowing or if you are in financial difficulty."

The precursor to this Charter was the Consumer Finance Association ("CFA") Lending Code for Small Cash Advances ("the code") which was published in July 2012. Most of the relevant parts of the code went on to be included in the Charter in November 2012. Wonga wasn't a member of the CFA but it was a member of The Finance and Leasing Association (FLA) which was a signatory to this Charter at its launch. I think the code and the Charter are relevant as they give a good understanding of what the businesses had accepted as being the standards of good industry practice expected of lenders at the time.

Section 4 of the code sets out a lender's specific lending obligations. Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining....that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, regulations and guidance (some of which I've set out above) applicable at the time.

Taking into account the relevant rules, guidance, good industry practice and law, I think the questions I need to consider in deciding what is fair and reasonable in the circumstances of this complaint are:

1. did Wonga, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay in a sustainable way? And if not, would those checks have shown that Miss H would have been able to do so?
2. taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Miss H's indebtedness in a way that was unsustainable or otherwise harmful?
3. did Wonga act unfairly or unreasonably in some other way?

If my provisional decision is that Wonga did not act fairly and reasonably in its dealings with Miss H and that she has lost out as a result, I will go on to consider fair compensation.

did Wonga, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay in a sustainable way? And if not, would those checks have shown that Miss H would have been able to do so?

Loans before Loan 1

The records Wonga has sent to me show that Miss H applied for 41 loans *before* Loan 1 was approved in December 2012 - these were between 26 November 2011 and 27 August 2012. I have set out two columns here to give some information I have from Wonga. I asked Wonga for more details about Miss H's applications for these, but Wonga has not been able to supply them.

My understanding is that 'Cancelled' loans are ones where Miss H has chosen not to proceed, and 'Declined' refers to an application not being approved by Wonga. As this is a provisional decision, Wonga is invited to give additional details if it wishes to.

Two other loans appear to have been declined in October 2014 and these are set out in italics on the main table of approved loans which appears at the end of this decision.

Status of loan	Date applied for (reverse chronological order)	Amount applied for
Declined	27/08/2012	£265
Declined	27/08/2012	£265
Cancelled	23/08/2012	-
Cancelled	23/08/2012	-
Cancelled	22/08/2012	-
Cancelled	22/08/2012	-
Cancelled	22/08/2012	-
Cancelled	22/08/2012	-
Cancelled	22/08/2012	-
Cancelled	22/08/2012	-
Declined	22/08/2012	£200
Declined	23/07/2012	£210
Declined	23/07/2012	£210
Declined	23/07/2012	£211
Cancelled	30/06/2012	-
Cancelled	30/06/2012	-
Declined	30/06/2012	£400
Declined	29/06/2012	£350
Declined	29/06/2012	£350
Declined	29/06/2012	£350
Declined	22/01/2012	£300
Declined	20/01/2012	£310
Declined	20/01/2012	£300
Declined	20/01/2012	£300
Declined	05/01/2012	£200
Declined	05/01/2012	£300
Declined	05/01/2012	£300
Declined	04/01/2012	£280
Declined	04/01/2012	£300
Declined	21/12/2011	£145
Declined	26/11/2011	£201
Declined	26/11/2011	£280
Declined	26/11/2011	£250
Declined	26/11/2011	£320
Declined	26/11/2011	£310
Cancelled	26/11/2011	-
Declined	26/11/2011	£301

Declined	26/11/2011	£310
Declined	26/11/2011	£350
Declined	26/11/2011	£370
Declined	26/11/2011	£400

Miss H was not working at the time. She received child tax credit and child benefits each week and money from the Department of Work and Pensions (DWP) once a fortnight. These varied a little but usually added up individually to just over £1,328 each four weeks, so slightly less than a month.

When applying, Wonga has recorded that she earned a 'net monthly income' of £1,300 and Wonga has recorded that the 'household monthly income' was £1,200. Wonga had her details as a 'home-maker' and a council tenant and had no employer listed. So it knew that she was unemployed and reliant on benefits.

It also has her recorded in a different spreadsheet as having an annual income of £15,600 and a household annual income of £14,400. And that the 'calculated net monthly' was £1,027. It's unclear why there are so many variations to the figures. But this last figure is of particular interest to me as it suggests that Wonga has carried out its assessments on the basis that she received just over a £1,000 each month.

The credit bureau data it has for Loan 1 was in two sections – the 'derived attributes' and the 'raw attributes'. From the latter I can see that Wonga would have been aware that she had three accounts in default which were also classified as delinquent – the latest being just one month earlier. The value of all those defaults according to that search at the time was £457.

So I looked at the copy of Miss H's personal credit file which is dated September 2017 and goes back in its history to September 2011, which shows that she had three defaults in the previous 12 months before Loan 1 was approved.

In view of the list of declined loans, and this default history which showed itself to Wonga at the time of the first application then I think that a full review of Miss H's financial position would not have been disproportionate. The extent of the multiple applications which were cancelled or declined cannot be ignored and may have suggested at the time that Miss H was in real need for more cash. It's enough to have placed a professional lender such as Wonga on alert that additional checks likely were needed.

The fact that Miss H's default sums were for relatively small figures may suggest that she was not able to manage those relatively small sums and so to take on more debt may not have been manageable going forward.

I have said that I would have considered that a full review of Miss H's financial position would have been the proportionate checks to have made. By that I mean that Wonga ought to have verified her income, and her regular outgoings together with her financial commitments and any other short term loans she may have had. And essentially it ought to have carried out comprehensive checks to see that Miss H was in a position to repay these loans without undue difficulty, and without having to borrow further.

I cannot see that Wonga did this and so in answer to the first part of the question set out above, I do not think that Wonga carried out the checks I would have considered to have been proportionate for *any* of these loans.

So I have gone on to look at what such checks would have revealed.

What I have been able to work out by looking at these details, is that each month it was very tight for Miss H in relation to her income and her expenditure. Having spoken to Miss H I know that she has four children at the moment, the youngest being six years old now. Miss H has confirmed that her youngest was born in September 2012 just a few months before Miss H applied for Loan 1. I can see (labelled on a bank statement entry) that a one off DWP '*social fund*' payment was made to her in October 2012 which is likely to have been in relation to this. Her eldest child has a disability. The benefits payable to Miss H was the only source of income.

Miss H received child tax credit (about £217) and child benefit (about £60) each week and money from the Department of Work and Pensions (DWP) (£107) once a fortnight. These varied a little but were fairly consistent from late 2012 and all through 2013. If these sums are added up for a four week period, then they come to about £1,322. This is very close to her declared income to Wonga and I consider this to have been a reasonable figure for Miss H to have declared. It's often the case that individuals do the simple calculation of multiplying by four or by two (depending) to achieve a 'monthly' income figure.

In fact when calculated across the 52 weeks of the year it translates into being about £1,400 each month. I have kept this £100 difference in mind when considering the figures in this complaint.

But I have also taken into account that the loans taken were virtually all for periods of about 29 or 30 days and Miss H's income was not paid to her in that way. She received her benefit income weekly or at fortnightly intervals. Whereas the vast majority of these loan agreements were monthly ones. So there was not a like-for-like comparison. By using the 'monthly income figure' then that makes the comparison fairer but it does mean that it may be easy to forget that the dates and days she receives her benefit payments do not dovetail with the start and end of typical payday loan periods. This can mean that these often get 'out-of-step' with each other and can lead to repayment problems.

It is a feature which I consider a responsible lender ought to have been aware of and certainly where the lender ought to have been carrying out a full and comprehensive assessment of the potential borrower's financial situation – as it ought to have been doing with Miss H from Loan 1.

my view on Miss H's financial circumstances at the time of the applications

I note that Wonga has referred to the figures used in our adjudicator's view and I can understand why. I do not think that it was likely that Miss H had about £510 of disposable income each month. And I know that Miss H was asked to recall her typical expenditure for a date many years ago. Understandably, these are the figures used.

As I have Miss H's bank statements then I have looked again at the periods of time covering the early lending relationship between Miss H and Wonga. And as an ombudsman I am in a position to use my own experience and knowledge. At the time Miss H had a new-born child and three other young children.

So I have looked in detail at Miss H's bank statements and transaction lists from September 2012 (before Loan 1) through to the end of November 2013. And for the statements and bank transaction list I have for 2014. I have looked at her actual spending which was modest and carried out in the same shops virtually all the time save for a couple of variations at Christmas. I have discounted purchases from a couple of shop which I think may represent non-essential spend.

I am aware that Miss H paid for her rent and council tax by a payment card, and so these did not necessarily show on her statements. I accept the figures she has given me for rent and council tax - about £40 a week and £5 a week respectively - they seem likely and reasonable figures. I can see what she spent on insurance and petrol and other usual household expenditure.

For the period 20 November to 20 December 2013, just about the period leading up to Loan 1, I have calculated all the card purchases on supermarket shopping, including the other food shop spending. As often people purchase their petrol at supermarkets then I have included these figures too. It adds up to just over £850. This is a large sum and to be fair I have chosen to discount that figure by £200 as it's likely Miss H purchased her children's' clothes and school items at these shops. I realise that this is a big deduction. So I have chosen to proceed with £650 for all food, essentials and petrol purchases and in my own experience I would not consider this excessive for a family of five.

This plus the rent and council tax of £195 which is the monthly equivalent using the figures Miss H has given us add up to £845. Miss H had a mobile phone which for this period was £80 and car insurance of £54. She has told us that her utility bills were about £100 which is also a reasonable figure. The total came to £1,079. Miss H has told us she had about £30 at that time in other debt to pay. And with an income of say £1,400 (monthly equivalent as explained above) Miss H would have had about £291 left. Loan 1 was due to be a repayment of £199. So in principle it's likely Miss H could afford this loan repayment and if Wonga had carried out a comprehensive assessment from Miss H's perspective then it may have come to that conclusion. So I am not planning to uphold Miss H's complaint in relation to Loan 1.

Knowing as Wonga did that Miss H was reliant on income from benefits then it ought to have been aware that there was substantially less chance of those sums increasing, in the same way if she'd been in employment, for instance due to a promotion, or a modest bonus or a change of job leading to better pay. These were fixed sums and applied for, often at risk of being re-evaluated and possibly reduced.

So looking at the loans applied for, and having looked closely at her bank statements over a long period and having seen the pattern of Miss H's spending then I consider that I can apply some common sense to this picture of Miss H's situation.

Loan 2 was applied for the following February 2014 and for a lesser sum of £100. I am planning not to uphold Miss H's complaint in relation to Loan 2. I think it is likely Miss H may have been able to afford this and Wonga's comprehensive check, if carried out at that time, would have revealed this may have been the case.

Loan 3 was for £100 plus a £60 top-up three weeks later and so it's possible she may, in principle, have been able to stretch to this. Very quickly I can see that a pattern started to develop from about this point. And this is best demonstrated using the details of Loan 3 and I note that this is early on in the approved loan chain. Loan 3 taken 16 March 2013 was due to be repaid on 15 April 2013. She repaid £70 of Loan 3 with the Loan 3A (top-up sum of £60). On 12 April 2013 Miss H applied for and was approved for Loan 4 and on that day the balance of Loan 3 (including Loan 3A) was repaid early. This suggests to me that effectively she used the new loan money to repay the earlier loan. I mention this now as the pattern repeats as the months and years go by but commenced early on.

In relation to the sums involved for Loans 3 and Loan 3A on balance it's likely that Miss H may have been able to afford these repayments. So I am not planning to uphold Miss H's complaint in relation to Loan 3 and the top-up. But it's significant for the factual points I make above.

Loan 4 was for a lesser amount (£150) and so on balance I think that the same situation applied and so I am not planning to uphold Miss H's complaint in relation to Loan 4.

Loan 5 was for £300 and with a repayment figure of over £360. This is double what she had applied for since December 2012 and so a significant increase. If proportionate checks had been carried out for this loan application I do not think that Wonga would have concluded Miss H was able to repay this. And looking at the bank transaction list I have for 2013 I can see that on 22 June 2013 the Loan 6 top-up (6A) was paid into her account - £90 - and on the same day a £50 payment to Wonga was made to repay the first part of Loan 6 (£50). And Miss H had only paid off part of Loan 5 a few days before that.

In addition I can see that Miss H's insurance bill had increased to £70 each month and she was paying the father of her children about £100 a month. So these extra liabilities plus the larger sums required to be repaid to Wonga for Loan 5 and the overlap with Loan 6 and 6A leads me to think that Miss H was not able to afford Loan 6 or Loan 6A without borrowing again. I am planning to uphold Miss H's complaint in relation to Loans 5 and 6.

Loan 7 was for a greater sum of £200 and looking at the transaction list I think that on balance Miss H was likely not able to afford the repayment on Loan 7. I am planning to uphold Miss H's complaint in relation to Loan 7.

taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Miss H's indebtedness in a way that was unsustainable or otherwise harmful?

From loan 8 onwards Miss H's debts increased, her ability to meet the repayment for these loans reduced and so the amounts she was applying for increased. And in my view, at this stage Wonga ought to have realised the pattern of borrowing which I have previously said started emerging from loan 3, had by Loan 10 been established.

So in relation to my second question, *taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Miss H's indebtedness in a way that was unsustainable or otherwise harmful?* I think that the answer was 'yes' by the time of loan 10.

To explain and demonstrate why I say this, then I refer to the period in August 2013. Miss H took three loans in a short period all within that same month (Loans 8, 9 and 10). This meant that between 18 August and 25 August 2013 she had repaid just under £431, borrowed again for £200 (Loan 10) and so at the end of August 2013 Miss H still owed almost £260 (due the next month). So this strikes me as being large repayments for a single mother with no employment, and at the end of August 2013 she remained in debt to a fairly significant degree. I consider that Wonga ought to have recognised this when assessing Miss H's complete financial position. If it had I think that it would have realised that this lending was unsustainable.

I also consider that if Wonga had carried out the comprehensive assessment I think it ought to have been doing then it's likely it would have realised that after eight months of continuous lending and with the sums involved, that Miss H was not able to afford Loans 8 and 9. And this is somewhat borne out by the fact that she had to apply for two loans within the same month as outlined above. I am planning to uphold Miss H's complaint in relation to Loans 8, 9 and 10.

Another example of the pattern which had commenced at Loans 3 and 4 can be illustrated with Loan 11. It was approved on 21 September 2013 and due to be repaid on 21 October 2013. Loan 12 was applied for on 4 October 2013 and Loan 11 was repaid early on 4 October 2013. And on other occasions it appears that Miss H was taking loans out on the same day that the previous loan was due to be repaid. This pattern extends into 2014 as well. And I can see that this carries on, almost without exception, to the end of the loan chain.

In view of my earlier findings, and in view of the fact that Loan 64 was being applied for three and a half years after Loan 1 was approved, it seems to be that the ILG, Charter and CONC provisions were aimed at addressing situations such as this. Prolonged and high cost loans with large principal sums for Miss H had become unsustainable and harmful.

In many instances, I can see from Wonga's records that Miss H was repaying one loan and minutes later applying for the next. Essentially, and in practice, Miss H was ploughing back the capital on the next loan to repay all or part of the previous.

This is a clear example of borrowing to repay borrowing and I think that this started early in the chain, around Loan 4 and by Loan 10 I consider that this pattern had become established.

Overall I do consider that this series of lending decisions had become unsustainable and was harmful to Miss H for a number of reasons which I have expressed in my provisional decision. In summary the reasons are that Miss H was given loans which, in view of her circumstances were on the edges of affordability, and as the number of loans increased Miss H was caught in that she needed more lending in order to repay the borrowing.

The lending went on sequentially for many months and there does not appear to have been a space anywhere along that chain from Loan 10 where Miss H was able to pay off the latest loan and recover without any lending at all. To the extent that even after Miss H had complained to Wonga she had to apply for additional loans. These are addressed below.

This was an irresponsible series of lending decisions and I am planning to up uphold from Loan 10 to Loan 64 inclusive as well as those outlined above due to non-affordability.

Loans 65 to 68

I have decided to deal with Loans 65 to 68 separately as Miss H applied for them at the same time or after she had complained to Wonga. It raises some additional issues.

Wonga has said that Miss H had complained to it at the time she applied for these loans. And Wonga says that Miss H had made the case and held the view that Wonga ought not to have agreed to lend to her the previous 64 loans, and that Wonga had 'acted irresponsibly'. Wonga goes on to say that Miss H had applied afterwards to extend the lending relationship, knowing that the loans were not suitable for her. So Wonga has said that it ought not be held accountable and asked to recompense Miss H in relation to the loans applied for and approved after Miss H had complained – Loans 65 to 68 inclusive.

Miss H has said that she had to take the next loan in order to pay for things that coming month.

In view of the pattern of borrowing I have seen and I have demonstrated by my examples above and the approved loan table which gives the actual closure dates (not the agreed dates) then that pattern is fairly clear. By which I mean that Miss H had to take the next loan to cover the previous loan, or to cover essential expenses, the money for which had been used to repay the previous loan.

So at the time that Miss H complained to Wonga, I do not think that Miss H was in a position to be able to pay priority bills and care for her four children unless she continued to repeat the pattern of borrowing I have described. So I do not think that it was a deliberate act of applying to Wonga knowing the '*irresponsible lending*' concept. And in any event, the onus was on the lender to carry out the proportionate affordability checks before approving any loan application. I do not think that Wonga did this.

I think that Wonga providing loans 65 to 68 continued to prolong and increase Miss H's indebtedness in a way that was unsustainable and harmful. So I am planning to uphold Miss H's complaint in relation to Loans 65 to 68 as well.

data breach

Miss H received the notification from Wonga in April 2017 about the risk of potentially being affected by the breach. Miss H does not appear to have contacted Wonga at the time. And having raised this complaint now, I do not think that Miss H has shown that the Wonga data breach has affected her. The fact that she was informed it may affect her does not mean that the breach did affect her.

Without more on this part of Miss H's complaint, I am planning not to uphold it.

This is the end of the provisional decision duplicate as the redress section appears in the final determination above. The loan table appears below.

Loan table

Loan number	Start date	Amount	Total actually paid	Date actually closed
1	18/12/2012	£150.00	£199.98	16/01/2013
2	03/02/2013	£100.00	£130.47	27/2/2013
3 3A top up	16/03/2013	£100.00 £60.00	£195.23	12/04/2013
4	12/04/2013	£150.00	£188.62	9/05/2013
5	18/05/2013	£300.00	£361.21	14/06/2013
6 6A top up	16/06/2013	£50.00 £90.00	£167.29	11/07/2013
7	16/07/2013	£200.00	£248.92	9/08/2013
8	14/08/2013	£250.00	£273.50	23/8/2013
9	24/08/2013	£150.00	£157.06	25/8/2013
10	25/08/2013	£200.00	£258.93	20/09/2013
11	21/09/2013	£200.00	£232.22	4/10/2013
12	04/10/2013	£210.00	£245.67	18/10/2013
13	18/10/2013	£300.00	£356.04	15/11/2013
14	28/11/2013	£300.00	£344.29	13/12/2013
15	13/12/2013	£300.00	£391.04	10/01/2014
16	10/01/2014	£300.00	£386.54	07/02/2014
17	07/02/2014	£260.00	£331.74	07/03/2014
18	07/03/2014	£260.00	£328.14	04/04/2014
19	04/04/2014	£250.00	£327.04	02/05/2014
20	02/05/2014	£300.00	£387.04	30/5/2014
21	30/05/2014	£300.00	£348.27	13/06/2014
22	13/06/2014	£320.00	£406.21	11/07/2014
23 23A top up	11/07/2014	£210.00 £100.00	£400.71	8/08/2014
24	08/08/2014	£370.00	£473.64	5/09/2014
25	05/09/2014	£310.00	£359.67	19/9/2014
26	20/09/2014	£300.00	£387.99	17/10/2014
<i>declined</i>	<i>17/10/14</i>	<i>£400.00</i>	-	
<i>declined</i>	<i>17/10/14</i>	<i>£200.00</i>	-	
27	17/11/2014	£150.00	£190.88	12/12/2014
28	12/12/2014	£150.00	£186.60	1/01/2015
29	01/01/2015	£300.00	£364.00	30/01/2015
30	30/01/2015	£350.00	£416.80	27/2/2015
31	27/02/2015	£300.00	£345.60	19/03/2015
32	20/03/2015	£250.00	£306.00	17/04/2015
33	17/04/2015	£300.00	£364.80	15/05/2015
34	15/05/2015	£320.00	£381.12	9/06/2015
35	09/06/2015	£340.00	£386.24	26/6/2015
36	26/06/2015	£300.00	£367.20	24/7/2015

37	24/07/2015	£300.00	£331.28	7/08/2015
38	07/08/2015	£390.00	£471.76	04/09/2015
39	04/09/2015	£320.00	£386.08	02/10/2015
40	02/10/2015	£350.00	£421.20	30/10/2015
41	30/10/2015	£270.00	£322.88	27/11/2015
42	18/12/2015	£390.00	£455.52	8/01/2016
43	08/01/2016	£380.00	£453.28	04/02/2016
44	04/02/2016	£220.00	£271.04	04/03/2016
45	04/03/2016	£220.00	£268.08	01/04/2016
46	01/04/2016	£200.00	£242.88	29/4/2016
47	29/04/2016	£254.00	£305.29	27/05/2016
48	27/05/2016	£250.00	£304.32	24/06/2016
49	24/06/2016	£270.00	£325.76	22/07/2016
50	22/07/2016	£150.00	£156.40	29/7/2016
51	29/07/2016	£70.00	£73.68	5/08/2016
52	05/08/2016	£400.00	£473.60	02/09/2016
53	02/09/2016	£300.00	£362.40	30/9/2016
54 54A top up	30/09/2016	£250.00 £50.00	£348.40	21/10/2016
55	21/10/2016	£300.00	£362.40	18/11/2016
56	18/11/2016	£250.00	£280.00	3/12/2016
57	03/12/2016	£200.00	£243.20	30/12/2017
58	07/01/2017	£200.00	£239.60	02/02/2017
59	09/02/2017	£300.00	£369.60	10/03/2017
60	10/03/2017	£300.00	£350.40	31/3/2017
61	31/03/2017	£350.00	£386.40	13/04/2017
62	13/04/2017	£300.00	£368.00	12/05/2017
63	12/05/2017	£300.00	£367.20	9/06/2017
64	09/06/2017	£400.00	£489.04	07/07/2017
65	07/07/2017	£400.00	£489.60	04/08/2017
66	04/08/2017	£350.00	£425.20	01/09/2017
67	01/09/2017	£300.00	£367.20	29/9/2017
68	29/09/2017	£350.00	£0.00	open

'Total' figure removed