Financial Ombudsman Service

complaint

Miss M has complained about short-term loans granted to her by WDFC UK Limited trading as Wonga ("Wonga" or "the lender").

background

Wonga agreed 49 short-term loans for Miss M between October 2011 and July 2016. These ranged in value between £230 and £1,500, with an average value of over £800. Miss M borrowed continuously, taking out a new loan within a few days of repaying her previous one. There were some gaps of a few months in later years, including one of about nine months in 2015. I've included a table at the end of this decision document which sets out some of the information Wonga provided about Miss M's loans.

Miss M says that these loans were unaffordable for her and that she had to borrow to make her repayments. And that Wonga should have known that and not lent to her.

One of our adjudicators reviewed this complaint and recommended that Wonga refund the interest and charges Miss M paid for all of her loans. Wonga did not agree that it had lent irresponsibly and did not agree with the adjudicator's recommendation. And so the complaint has come to an ombudsman to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Wonga was required to lend responsibly. It needed to check that Miss M could afford to repay her loans sustainably. There was no set list of checks it needed to do, but the checks should have been proportionate to the circumstances of each loan which might include considerations about the amount borrowed, the associated cost and risk to Miss M, her borrowing history including any indications that she might be experiencing (or had experienced) financial difficulty, and so on.

In making this decision I have first considered whether Wonga did everything it should have when assessing Miss M's loan applications. And, following on from this, I have thought about whether or not any assessment failings resulted in Wonga agreeing to lend to Miss M when it should have known that it would be difficult for her to repay. Having done so, I am upholding her complaint and directing Wonga to refund the interest and charges for all of her loans for the same reasons as our adjudicator did. I appreciate that this will be a disappointing outcome for Wonga but I hope my explanation makes it clear why I have come to this conclusion.

did Wonga carry out proportionate checks?

Wonga says that it asked Miss M about her income and expenditure and checked her credit file each time she applied for a loan. It provided a record of her income for all loan applications, her expenditure for the last five and the results of most of the credit checks. Wonga says that, based on these checks amongst other information, Miss M achieved an acceptable underwriting score each time she applied for a loan. And that she repaid her loans in full and on time and didn't mention any financial difficulties. The lender also says it met its obligations under the relevant regulations each time and so its checks were proportionate.

As I noted above, the regulations at the time, and indeed currently, are not prescriptive about what checks a lender should carry out. However the regulations were, and are, very clear about the responsibility of the lender to take reasonable steps to ensure that a borrower can *sustainably* repay their loans. The guidance from the Office of Fair Trading (OFT) in place at the time 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 regulatory guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defines *"undue difficulty"* as being able to repay credit *"while also meeting other debt repayments and normal/reasonable outgoings"* and *"without having to borrow further to meet these repayments".* The fact Miss M managed to repay her loans on time doesn't necessarily mean the loans were affordable for her and that she managed to repay them in *a sustainable* manner*.* In other words Wonga can't assume that because Miss M managed to repay her loans that she was able to do so out of her normal means without having to borrow further.

Meeting obligations under the regulations doesn't simply mean carrying out checks. A lender should take account of the information gathered in these checks while making its lending decisions. The OFT guidance says that *not* taking proper account of relevant information contained in databases when these are referenced, e.g. information on credit reference files, may be considered to be irresponsible lending practice.

Bearing all this in mind, I think Wonga should have done more from the beginning to check if Miss M could sustainably repay her loans because of information contained in her credit file about her existing debt levels and how she was managing these. The credit check Wonga carried out when Miss M first asked for a loan in October 2011 shows that she had 15 delinquent accounts and 14 accounts in default. It also shows she had borrowed almost £29,000 in loans and instalment credit, all of which was in default, and the total value of all debt in default came to over £120,000. I think this information should have raised concerns with Wonga as to how Miss M could repay further credit, given the level of her existing debts and the status of these.

Miss M went on to apply for many loans, most of which were taken out consecutively. The OFT guidance says that *"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."* When Miss M asked for a third loan a couple of days after repaying her second, which she'd topped up, I think Wonga should been concerned that she was using its loans to meet her usual (ongoing) living expenses and so could not afford to repay them out of her normal means.

In summary, I think Wonga should have done more than ask Miss M for her income and expenditure when she first asked for a loan and certainly when her borrowing pattern became apparent. I think that it could generally rely on what Miss M told it, except where it had cause to be concerned about the veracity of this information. In this case the credit file results and later Miss M's repeated borrowing should have caused Wonga to question what she was telling it about her means. And I think in this case it would have been proportionate to inquire further into Miss M's normal living costs and all her regular expenditure to get a full picture of her financial circumstances before agreeing to lend to her.

I have considered that there was one instance where Miss M didn't borrow from Wonga for about nine months, before taking out a loan for £1,000 in December 2015. This happens to be the first loan for which Wonga has provided Miss M's expenditure figures – a total of just over £2,400. It has recorded Miss M's income as £3,800 leaving her £1,400 with which to make a repayment of £1,264. Even without considering whether or not the checks Wonga carried out for this loan were proportionate, I think the lender should have known this loan was unaffordable for Miss M because the size of the repayment relative to her stated available income left her with a slim margin to cover any unforeseen emergencies in that month.

what would further checks most likely have shown?

Miss M has provided copies of her bank statements which cover this period. I can see from these that her income varied from month to month and seems to have increased over the time, as Wonga has recorded. Miss M had a fairly consistent level of bills and long-term debts but her short-term debt increased steadily over this period from an average monthly amount of a few hundred pounds in 2012 and 2013 to £1,500 in 2014 and over £2,500 in 2016. Miss M's regular spend on gambling also increased from an average monthly amount of about £1,500 in 2012 and 2013 to £4,000 in 2015 and almost £5,000 in 2016. I note that this spend was an average of £2,700 a month in the period September to December 2011, when she first borrowed from Wonga.

I think had Wonga carried out proportionate checks when Miss M applied for her loans it would likely have learnt that she could not sustainably repay further credit and would not, as a responsible lender, have agreed to lend to her at any point. Wonga might not necessarily have asked Miss M for her bank statements, but had it done so it would have understood her level of existing short-term borrowing and seen evidence of her gambling in the form of direct payments to gambling websites or regular large payments to an e-wallet site in earlier years.

what Wonga should do to put things right

As I've explained above, Wonga needs to refund all of the interest and charges Miss M paid for her loans. Specifically, it should:

- refund all interest and charges for Miss M's loans agreed in the period October 2011 and July 2016.
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Miss M's credit file.

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

my final decision

For the above reasons, I uphold Miss M's complaint and direct WDFC UK Limited (trading as Wonga) to refund her as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 18 April 2017.

Michelle Boundy
ombudsman