Financial Ombudsman Service

complaint

Mr P complains about the loans he took out with Curo Transatlantic Limited trading as Wage Day Advance. Mr P says he repeatedly borrowed large amounts. This ought to have placed Wage Day on notice he was a poor candidate for credit and prompt it to carry out further checks. Mr P says Wage Day didn't do this. If it had it would've seen that he couldn't sustainably repay the loans and he ended up in a 'debt spiral'.

background

Mr P took out 21 loans with Wage Day over the period from March 2012 to August 2014. Some of the information it has given us about these loans is in the appendix. This shows that loans 1 to 20 were payday loans and loan 21 was an instalment loan.

Wage Day looked at Mr P's complaint and didn't uphold it. It said that it relied on the information he provided which showed that the loans were affordable. It said Mr P confirmed the information was correct by digitally signing each credit agreement.

Wage Day said it didn't use credit reference agencies. And so it couldn't have been aware of any financial problems Mr P may've been having, or that he was using loans from other providers. But it said that at no point did it become concerned that Mr P couldn't afford the loans.

Our adjudicator thought that Mr P's complaint should be partially upheld. He said it was reasonable to rely on the income and expenditure information Mr P had provided for the first two loans. So he thought that Wage Day had made proportionate checks for these.

Going forward there were only small gaps between lending, and Mr P borrowed larger amounts. This should've led Wage Day to request further information. But it didn't verify any of the information that Mr P had provided, or request any further information about his financial situation. So our adjudicator didn't think that Wage Day had made proportionate checks from loan 3 onwards.

Our adjudicator didn't think that Mr P could afford the repayments for these loans. He was borrowing large amounts from other short term lenders and his bank account showed gambling transactions. And this would've been apparent to Wage Day if it had made better checks. So he thought Wage Day wouldn't have agreed to lend Mr P money for loans 3 to 21.

Wage Day didn't agree with our adjudicator. It said that:

- The checks it made were proportionate. It was within the regulations to rely on what Mr P had provided and its own credit scoring logic.
- The regulations say that using all sources of information to assess affordability would've been disproportionate in this case.
- Mr P didn't disclose the details of his other short term loans. So it wasn't responsible for not considering this information.
- Our adjudicator was retrospectively assessing affordability in a specific and disproportionate way.

But Wage Day did agree that loans 6 to 13 and loan 19 shouldn't have been started. It offered to refund the interest and fees Mr P had paid on these loans.

Mr P didn't accept this offer. As no agreement was reached the complaint's been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided to partially uphold Mr P's complaint, as our adjudicator did. I'll explain why.

At the time Mr P took out most of his loans - until April 2014 - Wage Day was regulated by the Office of Fair Trading (OFT). The OFT guidance says that *'assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties.'* The guidance goes on say that repaying credit in a sustainable manner means being able to repay credit *'out of income and/or available savings.'*

It then says *'the purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.'* And finally it says that *'the creditor should take a view on what is appropriate in any particular circumstance dependent on, for example, the type and amount of the credit being sought and the potential risks to the borrower.'*

The Financial Conduct Authority (FCA) regulations, which apply to the later part of the lending, were similar.

So there wasn't set list of checks Wage Day needed to do. However, the checks should've been proportionate to the circumstances of each loan. This might include considerations about the amount borrowed, the associated cost and risk to Mr P, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

Wage Day says that the checks it made were proportionate. It says that it didn't use credit reference agencies. It says this was reasonable at the time as short term lending didn't often appear on credit reports. But it relied on the information provided by Mr P about his income and expenditure and worked out from this if the loans were affordable. It says it didn't use bank accounts to assess affordability as it thought this would be disproportionate.

Wage Day recorded Mr P's net monthly income as being £2,200 throughout the lending. The application form also asked Mr P about his expenditure. It asked that Mr P provide information about his mortgage or rent, utilities and other regular costs. The most recent information Wage day has provided shows that Mr P's recorded expenditure was £1,400 at the start of the lending, and then £500 from November 2013. And Wage Day spoke to Mr P to check if he was employed before it lent.

loans 1 and 2

The repayment for loan 1 was just under £200. So I don't think this loan was large compared to Mr P's declared income.

For loan 2 Mr P needed to repay just under £400. This was a higher amount than loan 1 and it was started very shortly after the earlier loan was repaid. So I think Wage Day should've checked if Mr P had enough disposable income to repay the loan. To do this I think it should've looked at things like Mr P's income, his normal living costs and outgoings including any regular financial commitments he may've had.

Wage Day did look at Mr P's income and normal expenditure for these loans. So I think it made proportionate checks.

I haven't seen any further information that shows its likely Wage Day was made aware of any financial problems Mr P might've been having. Or anything that would've prompted it to investigate Mr P circumstances further. So given the information it had, I think its decisions to lend for loans 1 and 2 were reasonable. I'm not upholding Mr P's complaint about loans 1 and 2.

loans 3 to 21

From loan 3 onwards Mr P typically borrowed larger amounts – other than loan 4 where he borrowed £180. The remaining loans were around £400 to £500. The repayments for these were around £550 to £650 up to loan 21. The repayments for loan 21 were lower at around £190 each month. But this was a longer term loan. This borrowing continued with very little break in between.

I think by loan 3 Wage Day could've realised that Mr P was potentially starting to become dependent on short term lending and might not be using it to assist with temporary cash flow problems. It should've also become concerned about whether it knew enough about Mr P's true financial situation.

So I think Wage Day should've checked if Mr P had enough disposable income to repay loans 3 and 4. It should've looked at his regular income and expenditure but it should've also found out about any other short term lending he may've had

And from loan 5 onwards Wage Day should've made a full review of Mr P finances to check if any further short term lending was affordable. There are many ways it could've done this, such as by asking for payslips and/or bank statements, to verify the information Mr P was providing.

I don't think Wage Day did these checks. The information it's provided shows that it would've asked Mr P to confirm his income and expenditure. But I can't see that it asked Mr P about any short term lending he may've had. And it didn't fully review or verify his finances at any point. So I don't think Wage Day did enough for these loans.

So I've looked to see if these loans were affordable for Mr P. I've looked at the information provided by him about his financial circumstances which includes his bank statements and what he's said about his income and expenditure. I've also looked at the information Wage Day has provided about the loans and what it recorded about Mr P.

Mr P's expenditure is different to that recorded by Wage Day. Throughout 2012 to 2014 he spent around £1,000 each month, although there is some variation in this. This is split between payments he makes to another person for joint bills such as housing and utilities, and payments to financial providers such as credit cards and personal loans.

And Mr P’s income varies between £1,800 and £2,200 each month. So he looks to have a disposable of around £1,000 each month.

But Mr P’s bank account shows that he was borrowing from other short term lenders. He had over £2,000 in short term lending outstanding when he started loan 3. And he had over £3,000 in outstanding short term loans when he started loan 4.

I can’t be certain when Mr P would be due to repay these loans so I’ve also looked at how much he borrowed and repaid each month. The month before loan 3, Mr P repaid over £3,000 to other short term lenders and borrowed over £3,000. And the month before loan 4, May 2012, Mr P repaid over £2,500 to other short term lenders and borrowed over £2,000.

This pattern continued throughout the time Mr P borrowed from Wage Day i.e. into 2013 and 2014. For example, Mr P had over £3,000 of short term lending outstanding when he started loans 11 (May 2013) and 21 (September 2014). Mr P repaid over £4,500 to short term lenders before loan 11 and over £3,000 before starting loan 21.

And I can see what look to be payments related to gambling on Mr P’s bank account statement. Before loan 5, taken out in August 2012, Mr P had spent £2,430. And before loan 11 Mr P spent close to £4,000, and before loan 21 he spent over £3,500. The amounts varied, and there were some winnings at times. But these winnings can’t be guaranteed and there was always a significant monthly expenditure on this.

Mr P’s bank statement shows that he was overdrawn, sometimes significantly, for almost all of the period of borrowing. He does receive some financial help, from what I understand are family members, at times. And the amounts he received can be large. But these lead to a very short improvement in his financial situation. Within a few weeks at most Mr P is overdrawn again.

So for all of loans 3 to 21 the amount of short term lending, and Mr P’s spending on gambling, meant that he couldn’t afford the repayments to the loans. These two expenditures alone were often much higher than his income. I think if Wage Day had carried out the appropriate checks it would’ve likely have seen enough of this to show that there was a high risk that Mr P would not be able to repay his loans without further borrowing. I don’t think it would have lent to him under these circumstances.

And so I’m upholding Mr P’s complaint about loans 3 to 21.

putting things right

As I’ve explained, Wage Day shouldn’t have lent to Mr P from May 2012 onwards. So for loans 3 to 21 Wage Day should:

- Refund any interest and charges applied to those loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr P’s credit file in relation to those loans.

*HM Revenue & Customs requires Wage Day to take off tax from this interest. Wage Day must give Mr P a certificate showing how much tax it’s taken off if he asks for one.

Form the information provided it looks like Wage Day has already refunded some of the interest and charges it applied to loan 21. Wage day can use the amounts it has already refunded to reduce the total amount payable above.

my final decision

For the reasons I've explained, I uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 26 March 2018.

Andy Burlinson
ombudsman

Appendix – some information about Mr P's loans

Number	Start date	Amount	Repaid
1	13/03/2012	150	13/04/2012
2	16/04/2012	300	15/05/2012
3	19/05/2012	300	15/06/2012
4	21/07/2012	180	21/07/2012
5	21/08/2012	400	14/09/2012
6	31/10/2012	400	15/11/2012
7	16/11/2012	500	14/12/2012
8	02/01/2013	500	15/01/2013
9	16/01/2013	400	15/02/2013
10	18/02/2013	500	15/03/2013
11	11/05/2013	400	14/06/2013
12	17/06/2013	500	15/07/2013
13	12/10/2013	400	15/11/2013
14	29/11/2013	500	13/12/2013
15	16/12/2013	500	16/01/2014
16	17/02/2014	500	14/03/2014
17	19/03/2014	400	16/06/2014
18	30/05/2014	300	13/06/2014
19	16/06/2014	500	15/08/2014
20	30/08/2014	430	16/09/2014
21 – instalment loan	17/09/2014	650	17 payments of £189.50. 1 of £191.