

complaint

Mrs H has complained that Ausgroup Limited trading as Cash Converters ("Cash Converters or Ausgroup") provided several loans that were unaffordable for her.

background

I issued a provisional decision, in November 2017 explaining why I was intending to partially uphold Mrs H's complaint. I asked everyone to send me any further comments and information before I reached a final decision.

In response to my provisional decision I received contact from an insolvency administrator, informing our service that Ausgroup Limited (trading as Cash Converters) had entered into 'creditor's voluntary liquidation' on 21 June 2017. The insolvency administrator provided evidence of the liquidation, as well as a 'creditor's claim form' for Mrs H to fill out, so that she could be added to Ausgroup's list of creditors as part of the liquidation.

Mrs H responded to my provisional decision, and said she had nothing she wanted to add. And neither Ausgroup nor the insolvency administrator had any comments to add either.

I issued a second provisional decision in December 2017. In this decision I calculated how much redress Mrs H was due, based on the findings of my first provisional decision, so that she could properly complete the claim form. Again I asked everyone to send me any further comments and information before I reached a final decision.

None of the parties said they had any comments about my calculations. And the deadline to do so has now passed. So I'm now issuing my final decision.

An extract of my second provisional decision, which contains an extract of the first, is attached, and both form part of this final decision.

my findings

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable. And in the absence of any new arguments, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

I've recalculated the amount of simple interest Ausgroup needs to pay Mrs H to bring the compensation it owes up to date. At the date of my provisional decision it was £4,290.06 (before tax). It's now £4306.30. So the compensation Ausgroup needs to pay Mrs H has gone up by £16.24 before tax.

As Ausgroup Limited (trading as Cash Converters) is in liquidation it will add Mrs H to its list of creditors if and when she accepts my final decision. I should point out that Ausgroup is unlikely to be in a position to pay Mrs H the full amount she's owed as per my calculations. Any amount she receives will be based on a percentage of the final amount due under this decision at the time of settlement. It will be for Ausgroup's liquidator to work out what percentage of the amount owed to creditors (including Mrs H) will be paid to them in due course.

I've thought about whether this means no further interest should be paid to Mrs H if Ausgroup doesn't pay her what she's owed within 28 days of her accepting my decision. But having carefully thought about everything, if Mrs H isn't paid within 28 days of her accepting my decision, she'll be out of pocket. And I see no reason to depart from our usual approach of making sure that the interest part of any compensation award made is worked out to the date of settlement.

So after 28 days, Ausgroup should continue to add simple interest at 8% per year, for every extra day she continues to remain out of pocket for the interest and charges she paid, until the date it pays her what she's due.

my final decision

For the reasons I've explained, I uphold Mrs H's complaint in part.

Ausgroup Limited should pay Mrs H £4,306.30 before tax – as it stands at the date of this final decision. After tax, that means it should pay £4,042.38 to Mrs H and £263.92 to HM Revenue and Customs.

If Mrs H accepts my final decision, it will be legally binding on both sides. Ausgroup Limited must then pay Mrs H promptly and no later than 28 days after the date of this decision. After 28 days, Ausgroup Limited should continue to add simple interest at 8% per year for every extra day Mrs H continues to remain out of pocket for the interest and charges she paid. This will be £0.65 per day before tax – so £0.52 per day should be paid to Mrs H and £0.13 should be passed to HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 5 February 2018.

Adam Golding
ombudsman

extract of provisional decision

background

I issued my first provisional decision in November 2017. In it I explained why I was intending to partially uphold Mrs H's complaint. I said:

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.

Cash Converters was required to lend responsibly. It needed to check that Mrs H could afford to repay her loans sustainably. There was no set list of checks it needed to do, but 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 Mrs H, her borrowing history including any indications that she might be experiencing (or had experienced) financial difficulty, and so on.

At the time Mrs H took out her loans Cash Converters was regulated by the Office of Fair Trading (OFT). The OFT guidance specifically states "[a]ssessing 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 to say that repaying credit in a sustainable manner means being able to repay credit "out of income and/or available savings."

It then goes on to say: "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."

Cash Converters says it carried out proportionate affordability checks by completing an income and expenditure breakdown with Mrs H before approving each loan. It says it also verified the information provided using her bank statements covering the last 30 days. And it's provided evidence of the checks it completed for loans 24, 26, 27, 28 and 32.

This level of affordability checks goes beyond what I think would've been proportionate for some of the earlier loans. But as Cash Converters completed these checks, it couldn't ignore the information it would've seen. And because it hasn't been able to provide the evidence of the checks for the earlier loans, I've looked at Mrs H's statements to get an idea of what it would've seen when completing the checks.

Mrs H has explained that between April 2010 and September 2012 she had childcare costs of around £600 per month which aren't visible on her bank statements because she paid in cash. But she's provided a copy of her provisional tax credits from 2012 to 2013 which shows that a high proportion of her child tax credit was to cover childcare. And it appears that Mrs H had told HMRC that she was paying £119 per week (£515 per month) for this. I also note that the value of Mrs H's monthly cash withdrawals always exceeded that amount. So on balance I think it's likely that Mrs H did have significant childcare expenses as she's said.

Cash Converters says that it was for Mrs H to declare her childcare costs during the affordability assessments. But it says the evidence of the checks it completed for some later loans suggest that she didn't. And there are notes on some of the bank statements that indicate Mrs H had fairly detailed conversations with Cash Converters about her income and

expenses. So I do think she would've had the opportunity to tell it about her childcare costs. But I also need to consider whether she would've known she needed to.

The regulations at the time stated that affordability checks were a borrower-focused test involving a creditor assessing a borrower. So it was for Cash Converters to ask appropriate questions as part of the checks it completed. From what I've seen of the checks it carried out, in addition to requesting statements, Cash Converters asked Mrs H to confirm expenditure figures for mortgage, council tax, gas, TV licence, food/health/pets, loan repayments and other. So from what I've seen, it doesn't appear that Mrs H was asked about any childcare costs.

I don't think that Cash Converters necessarily had to ask specifically about childcare costs. I appreciate that Mrs H could've included her childcare in the section for other. But I don't think it's reasonable for Cash Converters to rely solely on her doing so without asking appropriate questions. And taking into account the information it had access to at the time (bank statements) it was clear that Mrs H was withdrawing large amounts of cash each month. So I think it would've been a reasonable for Cash Converters to ask some more questions of Mrs H. And if it had, I think it's more likely than not that it would've discovered Mrs H was paying around £515 per month in childcare expenses. So I've included this figure when looking at Mrs H's expenses between 2010 and 2012.

From what I've seen from Mrs H's statements her income and expenses varied significantly each month. For example her mortgage repayment varied from around £800 down to around £250, and some months it didn't appear at all. However Mrs H has explained that she fell into arrears with her mortgage, which could explain the months she paid nothing, or the smaller amounts. And she says she often had to make increased payments, which would explain the months where she paid the higher amounts.

Mrs H has told our service her mortgage was £650 per month. However I can see that when she applied for the later loans Cash Converters noted it as £574. So I think Cash Converters should've included the mortgage payments when assessing each loan, whether it appeared on the statements or not. As it did with the checks it completed for some of the later loans.

Taking into account Mrs H's varying income and expenses, I think Cash Converters should've been alerted fairly early on that the loans it was providing might not be sustainably affordable for her. However I don't think this would've become fully apparent until around loan 7. I say this because each of the first six loans would've appeared affordable based on the statements Cash Converters says it checked.

Mrs H's typical income, at the time of her first six loans, varied between £2,500 and £3,200. And her regular expenses were between £1,000 and £1,300. So I don't think Cash Converters was wrong to approve loans 1 to 6. However from loan 3, Cash Converters would've seen that Mrs H had started to borrow from other short term lenders in addition to the loans it was providing. Her borrowing quickly increased from £500 to over £1,000 each month. And from loan 5 it would've seen that she started gambling large amounts each month – beginning at around £500 but quickly escalating to over £1,800. So although I think loans 1 to 6 would've appeared affordable, I think Cash Converters should've had real concerns about the sustainability of Mrs H's borrowing.

From loan 7, I think Cash Converters would've built enough of a picture of Mrs H's circumstances to see that her short term credit commitments and her gambling expenses had become a regular feature of her monthly finances. I've also looked into loans 8 to 15 in detail too, because loans 1 to 7 made up Mrs H's first year of borrowing, and 8 to 15 the second year. From what I've seen Mrs H continued to borrow heavily from other short term lenders. And she continued gambling large amounts each month.

So, if Cash Converters had taken those expenses into account alongside her other regular expenses, I think it would've concluded that none of those loans were sustainably affordable for Mrs H. And as a responsible lender, I don't think it would've approved loans 7 to 15.

Following loan 15, Mrs H went on to borrow a further 17 loans from Cash Converters between April 2012 and August 2013. During this time the longest gap between repaying one loan and taking another was just over two weeks.

The OFT guidance that was in place at the time mentions that 'this type of credit is unsuitable for supporting sustained borrowing over long periods, and would be expensive as a means of longer term borrowing.' At this stage Mrs H had already been borrowing consistently from Cash Converters for two years. So by this point, if not before, I think Cash Converters should've questioned whether its' loans had become unsuitable for Mrs H.

In those two years, Cash Converters would've seen from the checks it says it completed that Mrs H's income had varied from between £2,600 to £4,000, and once came to £5,500. But that it fluctuated erratically, increasing some months and decreasing in others. Cash Converters would've also seen that Mrs H was borrowing very regularly from other short term lenders, in addition to the loans Cash Converters was providing. And that in the last year she'd spent an average of around £900 each month on gambling.

In the particular circumstances of this case, considering the level of affordability checks Cash Converters says it completed, I think that by this stage it would've built up enough of an understanding of Mrs H's financial situation to see that her continual borrowing wasn't sustainable. Even if certain loans in isolation might've appeared affordable. So taking everything into account, I don't think Cash Converters should've provided any of the loans after loan 15 either.

Based on these findings, I recommended that Cash Converters should:

- *refund all interest and charges Mrs H paid towards loans 7 to 32 (including any late fees and default interest).*
- *pay interest on this refund at 8% simple* per year from the dates of payment to the dates of settlement.*
- *remove any adverse information about these loans from Mrs H's credit file.*

I asked everyone to send me any further comments and information before I reached a final decision.

Mrs H responded to my provisional decision, and said she had nothing to add.

I also received a response from an insolvency administrator, informing our service that Ausgroup Limited (trading as Cash Converters) had entered into 'creditor's voluntary liquidation' on 21 June 2017. This is where an insolvent company instigates the process of its assets being sold, and the proceeds are distributed to the company's creditors. At the end of the liquidation, the company is dissolved, which means any outstanding debt will remain unpaid.

The insolvency administrator provided evidence of the liquidation, as well as a 'creditor's claim form' for Mrs H to fill out. This is so Mrs H can be added to Ausgroup's list of creditors as part of the liquidation.

Neither Ausgroup nor the insolvency administrator had any comments to add to my first provisional decision. And the deadline to do so has now passed.

my provisional findings

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable. And in the absence of any new arguments, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

But the creditor's claim form that the insolvency administrator has provided requires Mrs H to include the amount Ausgroup will owe her after I issue my final decision. And as this figure will include 8% simple interest, I've calculated it for Mrs H myself.

So before I issue my final decision, I'm sending this second provisional decision to explain how I've reached my calculations. And to allow both sides time to comment on them if they wish.

what Ausgroup should do to put things right

- refund all interest and charges applied to loans 7 to 32 (including any late fees and default interest).
I've worked this out to be £2,986.70
(see note i. in appendix)
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement
I've worked this out to be £1,303.36, before tax. But HM Revenue & Customs requires Ausgroup to take off tax from this interest. I've worked this out to be £260.69, which means, by my calculations, Mrs H is due £1,042.69.
(see notes ii. & iii. in the appendix)
- remove any adverse information about these loans from Mrs H's credit file.

my provisional decision

For the reasons I've explained, I'm intending to uphold Mrs H's complaint in part and to tell Ausgroup Limited to pay Mrs H £4290.06 before tax – as it stands at the date of this provisional decision. After tax, that means it should pay £4,029.39 to Mrs H and £260.67 to HM Revenue and Customs.

I will also tell Ausgroup Limited to continue adding simple interest on the extra Mrs H paid until it pays her.

So unless the comments and evidence I get by 27 December 2017 changes my mind, that's what I'll tell Ausgroup Limited to do in my final decision.

notes

- i. I've looked at Mrs H's statement of account – provided by Ausgroup – and I've taken the total amount of interest Mrs H paid on each loan that I don't think Ausgroup should've provided. These payments are as follows.

31 March 2011	£150.00
28 April 2011	£180.00
17 June 2011	£180.00
20 July 2011	£60.00
07 September 2011	£60.00
30 September 2011	£180.00
08 November 2011	£150.00

01 February 2012	£60.00
04 April 2012	£60.00
16 May 2012	£105.00
31 May 2012	£150.00
29 June 2012	£105.00
31 July 2012	£120.00
31 August 2012	£90.00
28 September 2012	£150.00
31 October 2012	£120.00
30 November 2012	£150.00
31 December 2012	£150.00
31 January 2013	£90.00
28 February 2013	£124.50
28 March 2013	£45.00
30 April 2013	£30.00
31 May 2013	£129.60
28 June 2013	£141.60
31 July 2013	£141.00
04 June 2014	£10.00
11 June 2014	£5.00
25 June 2014	£5.00
02 July 2014	£5.00
10 July 2014	£5.00
17 July 2014	£5.00
24 July 2014	£5.00
30 July 2014	£5.00
07 August 2014	£5.00
22 August 2014	£5.00
27 August 2014	£5.00
27 August 2014	£5.00

- ii. Simple interest is calculated by multiplying each payment amount by the daily interest rate (8% divided by 365) and then by the number of days since the payment was made.
- iii. The total simple interest Ausgroup should pay before tax (up to the date of this provisional decision) is £1,303.36 – so it should pay Mrs H £1,042.69 and HM Revenue and Customs £260.67.