

## complaint

Mr W complains about three short term loans that he took out with Curo Transatlantic Limited, trading as WageDay Advance, ("WDA"). He said that WDA shouldn't have given him the loans as they were unaffordable.

## background

Mr W took out two instalment loans and one payday loan with WDA as follows:

Loan number and date of loan	Loan amount	Amount to be repaid including interest (if paid by due date)	Date repaid and other comments
1. 18/10/2016	£500	3 instalments of £191.93 and one instalment of £191.95	Repaid early on 11/11/16
2. 12/12/2016	£600	£720.00	Payment deferred on due date of 6/1/17. Repaid on 3/2/17.
3. 11/2/2017	£805	4 instalments of £306.79	Repaid on 2/5/17 by a family member

Mr W said that WDA had acted irresponsibly in loaning him funds. He said that he had a large amount of debt due to a gambling addiction. He had borrowed from numerous credit providers. He said that he had struggled with his repayments and borrowed from a family member to make his repayments. Mr W was surprised that WDA had provided him with loans as he was being turned down by other lenders. He said that his credit report at the time would have shown how bad his financial situation was.

WDA said that it had asked Mr W for his income and expenditure. It used this information, along with internal data to make decisions about whether it should lend and if so how much. This internal information enabled it to understand Mr W's ability to meet his loan repayments.

WDA also used credit reference agency data, from a number of different sources, to assess a customer's circumstances. WDA said that it assessed that Mr W could affordably borrow £1,000 based on his disposable income, although it lent less. It wasn't aware of Mr W's gambling addiction.

### *our adjudicator's view*

The adjudicator concluded that WDA had done proportionate checks on all the loans. She noted that WDA had assessed Mr W's income and expenditure which he had provided to it. She said that as Mr W's declared disposable income showed he had enough to meet his repayments, she didn't think there was any reason for WDA to be concerned with Mr W's ability to repay the loans. As they were his first few loans with WDA she thought it was fair for it to rely on the information Mr W gave them. So she couldn't see any reason for it to have carried out any further checks. She had also reviewed a copy of the results of WDA's

credit checks and she couldn't see anything concerning on them to prompt WDA to have done anything more. She said there were no defaults or county court judgements shown. She concluded that with the information WDA had, the loans appeared affordable. So she didn't think WDA was wrong to lend to Mr W.

Mr W disagreed and responded to say that WDA wasn't behaving responsibly by providing loans to him when he was already in a debt repayment plan.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr W and to WDA on 27 November 2018. I summarise my findings:

I'd noted that WDA was required to lend responsibly. It should have made checks to make sure Mr W could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr W was borrowing, and his lending history. But there was no set list of checks WDA had to do.

I explained that the Financial Conduct Authority was the regulator at the time Mr W borrowed from WDA. Its regulations require lenders to take "*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.*" The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this meant borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

WDA had shown us the checks it did before lending to Mr W. It asked him each time about his normal income, and his monthly expenditure. Mr W declared his income as £2,500 for Loans 1 and 2, and £2,600 for Loan 3. And his declared expenditure for Loans 1 to 3 was £815. The application forms WDA had provided to us broke the expenditure down into rent, monthly other credit and monthly living costs.

WDA had also provided us with a summary of its credit checks for Loans 1 and 2. With regard to Loan 1, I noted that the four monthly repayment amounts of around £192 that Mr W needed to repay on his first loan were relatively modest compared to his declared monthly income of £2,500 and his declared disposable income of £1,685. WDA's credit check showed that he had no defaults, no active short term loan accounts in the previous six months and no accounts in debt management in the previous 12 months. I didn't think at that stage of its relationship with Mr W that WDA had any reason to doubt the information he'd provided. And there was little to suggest to WDA at that stage that Mr W wasn't using the loan in the way it was intended – as a short term solution to a temporary cash flow problem. As the loan repayments were a relatively small proportion of Mr W's income, I thought WDA's checks were proportionate for this loan and I didn't think WDA was wrong to agree to this loan.

Mr W repaid Loan 1 early and borrowed Loan 2 around a month after he'd repaid Loan 1. I'd also noted that the amount of £720 to be repaid for Loan 2 was a significant proportion of Mr W's declared disposable income of £1,685. In view of the substantially increased repayment amount, I thought that WDA should have been concerned about whether it knew

enough about Mr W's financial situation before granting Loan 2. I noted that WDA had carried out a credit check before Loan 2 and it had provided us with a summary of this. This showed that Mr W's debts had increased from £18,753 to £24,990 since he'd taken out Loan 1 less than two months earlier. But it also showed that he had twelve accounts up to date in the last three months and had taken a short term loan one month before. The check had also showed that he had no defaults and no accounts in debt management. But in view of the large repayment amount and increase in Mr W's debts shown in his credit check, I thought WDA should have supplemented the disposable income information it had obtained from Mr W before Loan 2 by gathering information before Loan 2 about his then current short term lending. I couldn't see that it did this.

Loan 2 was deferred by a month and repaid on 3 February 2017. Eight days later, Loan 3 was taken out. The loan was for an increased amount of £805, although the four monthly loan repayments were for almost £307. Mr W said that his income had increased to £2,600 and his declared expenditure remained at £815. WDA hadn't provided us with its credit checks before Loan 3. I thought WDA should have been concerned about the frequency of Mr W's loan requests and the increased amount of his borrowing. I thought these might have suggested to WDA that Mr W was using short term loans as a supplement to his normal income, rather than using them to meet a temporary one-off problem. And I thought WDA should have been on notice that it was unlikely Mr W's financial position was as good as he'd declared. I'd noted that WDA thought that it should be able to rely on the income and expenditure figures it had received from Mr W. But whilst these showed a significant amount of disposable income each month, I thought WDA should have been concerned that Mr W needed to borrow very regularly. So by the time of Loan 3, I didn't think that reliance by WDA on Mr W's declared income and regular outgoings was a sufficient check. In view of his deferred previous loan and the frequency of his loan requests, I thought it might have been proportionate at that time for WDA to have independently reviewed the true state of Mr W's finances.

Although I didn't think the checks WDA made on Loans 2 and 3 were sufficient, that in itself didn't mean that Mr W's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have suggested to WDA that Mr W couldn't sustainably afford the loans.

For Loan 2, I thought that it was still reasonable for WDA to rely on the information Mr W had provided about his financial position before Loan 2. He'd said he had a disposable income of £1,685. But, as I'd said above, I also thought WDA needed to supplement this information by asking Mr W if he had other short term loans. To find out what, if any, outstanding short term commitments Mr W had, I'd reviewed his bank statements for the month before Mr W took Loan 2. I thought the statements were the best indication of his short term borrowing at the time. And I could see that Mr W did have a short term loan from another short term lender outstanding for £1,000, although this was due to be repaid in instalments. I noted that Mr W was due to make a payment of around £350 on that loan around the time that Loan 2 was due to be repaid. But taking into account what Mr W had told WDA about his disposable income before Loan 2, I didn't think WDA was wrong to lend Loan 2 to Mr W as it still would have seemed affordable if WDA had made what I considered to be proportionate checks.

With regard to Loan 3, as I'd said above, I thought WDA should have been independently reviewing the true state of Mr W's finances. To find out more about this, I'd reviewed Mr W's bank statements for the month before he took Loan 3 to see what better checks would've shown WDA. The bank statements might not have shown WDA everything it

would've seen by carrying out proportionate checks. But I thought they were the best indication of Mr W's ability to afford the loans at the time they were approved. I could see that Mr W's monthly income was somewhat higher than he'd declared to WDA at around £3,060. But if WDA had done what I considered to be proportionate checks for Loan 3, I thought it would have become aware that Mr W was gambling heavily. And to support this gambling expenditure he was also borrowing from a number of other short term lenders. He spent over £3,000 on gambling and took out around £2,650 of new short term lending that month.

So, if WDA had done what I considered to be proportionate checks, I thought it would've been clear that Loan 3 wasn't sustainable, and as a responsible lender, it shouldn't have lent Loan 3 to him. So, I thought WDA needed to pay Mr W some compensation.

Subject to any further representations by Mr W or WDA my provisional decision was that I intended to uphold this complaint in part. I intended to order Curo Transatlantic Limited, trading as WageDay Advance to:

1. Refund all interest and charges that Mr W paid on Loan 3;
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about Loan 3 from Mr W's credit file.

\*HM Revenue & Customs requires WDA to take off tax from this interest. WDA must give Mr W a certificate showing how much tax it has taken off if he asks for one.

Mr W responded to say that he agreed with my provisional decision and had no further points to raise.

WDA hasn't provided any further information in response to my provisional 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.

Given that Mr W and WDA have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require WDA to pay Mr W some compensation as set out below.

### **my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Curo Transatlantic Limited, trading as WageDay Advance to:

1. Refund all the interest and charges that Mr W paid on Loan 3;
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about Loan 3 from Mr W's credit file.

\*HM Revenue & Customs requires WDA to take off tax from this interest. WDA must give Mr W a certificate showing how much tax it has taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 January 2019.

Roslyn Rawson  
**ombudsman**