complaint

Mr M has complained about a number of payday loans he took out with WDFC UK Limited (trading as Wonga.com) between March 2012 and April 2016. He's said that Wonga should've realised from the pattern of increasing loan amounts and rollover payments that his debt problems were getting worse and it wasn't responsible to continue lending to him.

background

Mr M took sixty two loans, in total, with Wonga. For the sake of clarity, I've set out his overall borrowing history in a table at the end of this decision. And any reference to loan numbers in this decision are made with reference to this table.

One of our adjudicators has looked at what Wonga and Mr M said. He thought the checks Wonga carried out before giving loan one were proportionate. But he also thought proportionate checks would've shown Wonga it shouldn't have given loans two to sixty two to Mr M.

Mr M didn't disagree. But Wonga didn't accept our adjudicator's findings in full and asked for an ombudsman to review the complaint. As Mr M hasn't disagreed with our adjudicator, this decision is only looking at whether Wonga should've given Mr M loans two to sixty two.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about short term lending on our website. And I've used this approach to help me decide Mr M's complaint.

Having carefully thought about everything I've been provided with, I'm upholding Mr M's complaint. I'd like to explain why in a little more detail.

the relevant rules and guidance in place at the time of the loans

Wonga gave Mr M loans one to thirty seven during the period it held a standard licence from the Office of Fair Trading ("OFT"), which allowed it to carry out consumer credit activities. And the OFT guidance in place at the time clearly set out the responsibility of a lender to take reasonable steps to ensure a borrower could *sustainably* repay their loan or loans before agreeing to any borrowing.

The OFT guidance specifically 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 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 goes onto 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."*

Mr M was given loans thirty eight to sixty two while Wonga was regulated by the Financial Conduct Authority ("FCA"). The relevant regulatory rules in place at the time were set out in the Consumer Credit Sourcebook ("CONC") section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. And it says a firm had to consider *"the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation"* as well as *"the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement."*

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(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."*

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

CONC 5.3.1(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.".*

In practice all of this meant that a lender had to take proportionate steps to ensure a consumer would've been able to repay what they were borrowing in a sustainable manner without it adversely impacting on their financial situation. Put simply the lender had to gather enough information so that it could make an informed decision on the lending.

Although the guidance and rules themselves in place at the relevant times didn't set out compulsory checks, they did list a number of things (in Section 5.2.4 of CONC and in the OFT guidance) a lender could take into account before agreeing to lend. The key thing was that the rules required a lender's checks to be proportionate. And any checks had to take into account a number of different things, such as how much was being lent and when what was being borrowed was due to be repaid.

I've kept all of this in mind when thinking about whether Wonga did what it needed to before agreeing to Mr M's loans. Mr M was (for the most part) given loans where the capital borrowed plus the interest due was to be repaid in a single payment. So overall I think that this means the checks Wonga carried out had to provide enough for it to be able to understand whether Mr M would be able to make these payments, in full, when they fell due.

Wonga says Mr M was asked to confirm his monthly income and that it carried out credit checks before, at least some of, the applications. And while it has referred to these credit checks, it hasn't provided the details of what these showed in an understandable format.

And Wonga hasn't been able to provide any information that it may have gathered on Mr M's outgoings.

why I don't think Wonga's checks were proportionate

I've thought about what Wonga has provided and what it has said. But having done so, I think it would've been proportionate for Wonga to have carried out further checks before it agreed to give these loans to Mr M.

To explain, Mr M took loan two shortly after having paid loan one and the amount he was looking to borrow was more than double what he'd borrowed previously. Equally the amount borrowed for loan two now represented a significant proportion of what Mr M had declared as his monthly income. And, in these circumstances, I can't see how Wonga could've assessed that Mr M would've been able to sustainably repay this amount when it appears to have had no information at all on his monthly outgoings.

I've seen what Wonga's said about the total payment being less than 40% of Mr M's declared income – I understand that it agreed to refund the interest and charges on the loans where the total payment was above 40% Mr M's declared income.

I'm not sure what it's trying to get at here because it was required to carry out a borrower focussed assessment. And I don't see how arbitrarily applying a 40% of income threshold does this. But, in any event, I think it's overlooking the fact that Mr M had to pay a significant proportion of his income towards this loan. So I don't think simply relying on what Mr M declared as his income was enough here.

I'm also mindful that Mr M took out sixty two loans in total with Wonga in a period of just over four years. I accept there are lots of reasons why a consumer may wish to take out short-term lending. And a consumer taking out more than one short term loan doesn't mean that a borrower won't be able to repay a later one.

But where a lender is aware of such things, I don't think it's unreasonable or disproportionate to expect it to carry out further, more rigorous, enquiries in order to find out whether the consumer is using this type of borrowing in the way it's supposed to be (i.e. as a short term solution to a temporary cash flow problem rather than as a means of supplementing their income). This is especially the case where the consumer is continually borrowing and where the consumer's lending history extends over a number of years.

It looks like the level of checks Wonga carried out stayed much the same, or it, at least, can't evidence it did more, even though Mr M was borrowing more and more and with increasing regularity. I'm not saying the number of loans Mr M took or his existing commitments, in themselves, meant Wonga should've automatically refused to lend to Mr M – although it could be argued that a period of four years can never be considered to be short term. What I'm saying is that the borrowing period we're talking about means that I think it would've been proportionate for Wonga to have carried out further checks to verify whether Mr M would be able to repay what he borrowed.

Overall having carefully thought about everything, I think that Wonga failed to carry out proportionate checks before agreeing to give loans two to sixty two to Mr M.

what I think proportionate checks would most likely have shown

Even though I don't think the checks Wonga carried out were proportionate and sufficient, this doesn't, on its own, mean that Mr M's complaint should be upheld.

After all if further checks would've simply shown Wonga that Mr M would most likely have been able to make his payments to these loans when they became due (and so there was no reason why Wonga shouldn't have lent to Mr M), then further checks wouldn't have made a difference. This is because Mr M won't have lost out as a result of Wonga's failure to carry out proportionate and sufficient checks and there'd be no reason for me to uphold the complaint.

But if further checks would most likely have shown Mr M was unlikely to have been able to make his payments then Wonga would've seen it shouldn't have lent to him. And this would mean Mr M lost out because of Wonga's failure to carry out proportionate and sufficient checks. So there'd be grounds to uphold Mr M's complaint. As proportionate checks weren't carried out I can't say for sure what these checks would have shown. But Mr M has provided us with evidence of his financial circumstances at the time he applied for these loans. And I've been able to get a picture of what his financial circumstances were like.

Of course I accept this isn't perfect as different checks show different things. And just because something shows up in the information Mr M has provided it doesn't mean it would've shown up in any checks Wonga might've carried out. But the information Mr M has provided is the best indication I have of what his financial circumstances were like at the time. And in the absence of anything else I think it's perfectly reasonable to rely on it.

I've carefully looked through everything Mr M's provided and I've also thought about everything both parties have said. Having done so, I don't think Mr M had the capacity to take on this borrowing.

As I've previously explained, I think Wonga needed to find out more about Mr M's monthly outgoings. For the earlier loans, this would've consisted of finding out about Mr M's normal monthly living costs and regular financial commitments. I think that if Wonga had done this here it would've seen that Mr M was substantially overdrawn and paying a significant amount in interest each month. And when his normal monthly living costs and regular financial commitments were deducted from his income he simply didn't have enough left over to repay his loans – indeed in many months his whole salary was swallowed up by his normal monthly living costs and regular financial commitments.

Mr M's income did go up by the time of some of the later loans. But by this stage, I think proportionate checks would've required Wonga to verify the information Mr M was providing on his income and expenditure. And any such checks would've clearly shown that Mr M was spending most of his income on gambling.

Put simply, I think proportionate checks would've shown Mr M was borrowing so he could gamble. And his ability to repay these loans was wholly dependent on success as a gambler. I don't think Wonga would've given Mr M these loans if it had been aware, as I think it should've been, that it would only get its money back if Mr M was successful in his gambling.

All of this leads me to think that if Wonga had taken a reasonable look into Mr M's overall financial circumstances, as it should've done given what it had and what it ended up knowing during the course of his lending history, it would've seen Mr M was simply unable to make the payments he was being asked to commit to for these loans without it adversely affecting his financial position. And so he wasn't in any sort of position to be able to take on these loans. So overall I think that not only did Wonga fail to carry out proportionate checks before giving loans two to sixty two to Mr M, but that he also lost out as a result of this.

putting things right - what Wonga needs to do

In order to put things right for Mr M, Wonga should:

- refund all the interest and charges for loans two to sixty two; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid, if they were paid, to the date of settlement†;
- remove any adverse information recorded on Mr M's credit file as a result of the interest and charges on these loans;

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

I understand there was an outstanding balance on loan sixty two when Mr M complained. If an outstanding balance remains after the interest and charges have been removed (i.e. what Mr M has paid towards loan sixty two so far isn't enough to have repaid what he initially borrowed) then Wonga can deduct this from what it now needs to pay Mr M. Wonga can also deduct what it has already paid Mr M for loan forty seven from what it now needs to pay too.

my final decision

For the reasons given above, I'm upholding Mr M's complaint WDFC UK Limited (trading as "Wonga".com) should pay Mr M compensation as set out above.

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

Jeshen Narayanan
ombudsman

Mr M’s borrowing history with Wonga

Loan	Date taken	Top ups	Capital	Interest and charges	Repayment
1	March 2012	0	£200	£48.06	£248.06
2	April 2012	0	£500	£60.34	£560.34
3	June 2012	0	£586	£23.00	£609.00
4	July 2012	0	£582	£127.18	£709.18
5	September 2012	0	£710	£40.78	£750.78
6	September 2012	0	£250	£20.62	£270.62
7	October 2012	0	£688	£162.82	£850.82
8	November 2012	0	£600	£35.36	£635.36
9	December 2012	0	£600	£29.39	£629.39
10	December 2012	0	£350	£9.01	£359.01
11	January 2013	0	£800	£29.33	£829.33
12	January 2013	0	£750	£20.40	£770.40
13	January 2013	0	£850	£22.38	£872.38
14	February 2013	0	£850	£201.81	£1,051.81
15	March 2013	0	£700	£54.21	£754.21
16	March 2013	0	£900	£32.29	£932.29
17	March 2013	0	£750	£12.95	£762.95
18	April 2013	0	£800	£21.39	£821.39
19	April 2013	0	£900	£5.50	£905.50
20	May 2013	0	£1,000	£74.92	£1,074.92
21	May 2013	0	£850	£30.81	£880.81
22	June 2013	0	£800	£29.33	£829.33
23	June 2013	0	£1,000	£74.92	£1,074.92
24	July 2013	0	£1,000	£25.61	£1,025.61
25	July 2013	0	£1,000	£25.61	£1,025.61
26	July 2013	0	£1,000	£25.61	£1,025.61
27	August 2013	0	£1,000	£25.61	£1,025.61
28	August 2013	0	£1,097	£126.78	£1,223.78
29	September 2013	0	£1,000	£164.44	£1,164.44
30	October 2013	0	£1,000	£25.61	£1,025.61
31	October 2013	0	£1,000	£195.15	£1,195.15
32	December 2013	0	£1,000	£68.89	£1,068.89
33	December 2013	0	£750	£164.16	£914.16
34	January 2014	0	£1,060	£175.98	£1,235.98
35	January 2014	0	£1,096	£137.68	£1,233.68
36	February 2014	0	£1,050	£195.49	£1,245.49
37	February 2014	0	£1,094	£313.36	£1,407.36
38	April 2014	0	£750	£13.06	£763.06
39	May 2014	0	£1,000	£25.61	£1,025.61
40	May 2014	0	£1,002	£15.58	£1,017.58

41	May 2014	0	£1,000	£55.78	£1,055.78
42	June 2014	0	£1,000	£156.33	£1,156.33
43	June 2014	0	£1,000	£75.89	£1,075.89
44	July 2014	0	£1,000	£45.83	£1,045.83
45	August 2014	0	£1,000	£15.56	£1,015.56
46	September 2014	0	£1,000	£35.67	£1,035.67
47	October 2014	0	£600	£0.00	£600.00
48	December 2014	0	£600	£11.56	£611.56
49	March 2015	0	£500	£4.00	£504.00
50	April 2015	0	£750	£96.00	£846.00
51	May 2015	0	£750	£126.00	£876.00
52	June 2015	0	£500	£60.00	£560.00
53	July 2015	0	£750	£48.00	£798.00
54	August 2015	0	£750	£54.00	£804.00
55	September 2015	0	£750	£162.00	£912.00
56	October 2015	0	£750	£132.00	£882.00
57	November 2015	0	£750	£138.00	£888.00
58	December 2015	0	£750	£144.00	£894.00
59	January 2016	0	£800	£166.40	£966.40
60	February 2016	0	£800	£128.00	£928.00
61	March 2016	0	£800	£147.20	£947.20
62	April 2016	1	£800	£169.60	£969.60