Financial Ombudsman Service

complaint

Mr B has complained about several loans granted to him by Cheque Centres Limited. He's said Cheque Centres allowed him to take out loans he couldn't afford which contributed to him falling into a debt spiral.

background

Cheque Centres says it agreed seven loans for Mr B during the period March to July 2015. On some of the loans he also took top-ups. This is where he added additional funds to a loan within his available credit limit. The following summarises some of the information Cheque Centres provided about these loans:

Loan number	Amount borrowed	Date borrowed	Due date	Date repaid	Amount repaid
1	£500.00	04/08/2012	31/08/2012	31/08/2012	£625.00
2	£500.00	31/08/2012	01/10/2012	19/11/2012	£655.00
3	£500.00	14/12/2012	15/01/2013	21/12/2012	£625.00
Top-up	£700.00	21/12/2012	15/01/2013	15/01/2013	£875.00
4	£700.00	15/01/2013	15/02/2013	15/02/2013	£875.00
5	£700.00	15/02/2013	15/03/2013	23/02/2013	£875.00
Top-up	£750.00	23/02/2013	15/03/2013	15/03/2013	£937.50
6	£600.00	15/03/2013	15/04/2013	15/04/2013	£750.00
7	£800.00	15/04/2013	15/05/2013	24/04/2013	£1,000.00
Top-up	£1,000.00	24/04/2013	15/05/2013	22/01/2014	£1,280.00

Our adjudicator didn't think the affordability checks that Cheque Centres carried out before lending to Mr B were proportionate. He said that if it had carried out proportionate checks, it would've discovered that none of the loans were affordable for Mr B. So he recommended that Cheque Centres should refund all interest and charges applied to each loan to put things right.

Cheque Centres disagreed with our adjudicator. It says its process was to lend up to the value of 70% of a consumers stated income. It says it checked Mr B's bank statements to verify his income, and based on the checks it completed the loans appeared affordable.

Because no agreement has been reached the complaint has 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. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Cheque Centres was required to lend responsibly, which means it needed to check that Mr B could afford to repay his loans sustainably. Affordability checks needed to be proportionate, and might include considerations about the amount borrowed, the associated cost and risk to Mr B, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

At the time Mr B took out his loans Cheque Centres was regulated by the Office of Fair Trading (OFT). 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."*

Cheque Centres says it asked Mr B for details of his income. And it says it verified this information using Mr B's bank statements. Cheque Centres also says that it asked Mr B about his outgoings but holds no record of these. But it says it didn't use the statements to assess Mr B's outgoings. I don't necessarily agree with this approach. I think the fact that Cheque Centres requested statements from Mr B means it should've taken into account the information they included. But I've seen copies of the statements Cheque Centres has on file. And it appears it only requested the relevant page of each statement that showed Mr B's income. So it doesn't look like it actually had the full statements to review for each loan.

Cheque Centres says its underwriting criteria at the time allowed 30% of a consumer's net income as a reasonable and proportionate measure of essential living against income. And it's pointed out that the OFT guidance says that it *"may be appropriate for the creditor to use affordability calculators which assume a reasonable level of domestic outgoings on day to day expenditure."*

Cheque Centres says it recorded Mr B's income as between £1,702.24 at its lowest to £1,959.80 at its highest. So it says Mr B was eligible for loans of up to £1,191.56 based on the lower income figure, and £1,371.86 based on the higher figure. Mr B's loans ranged from £500 up to £1,000. So based on this, Cheque Centres says the loans were affordable for him.

I've thought carefully about everything Cheque Centres has said. And I accept that the regulations do say that it might be appropriate for creditors to use affordability calculators in certain circumstances. But I haven't seen anything in the guidance which suggests a calculator that always assumes 30% of a consumer's monthly income as the monthly outgoings will always be proportionate.

I think it's also worth mentioning that the guidance refers to using an affordability calculator to assume a reasonable level of domestic outgoings. Whereas Cheque Centres has said it allows 30% of income as a reasonable and proportionate measure of *"essential living against income".* So I'm not sure whether Cheque Centres is thinking about the same sort of outgoings as the guidance in place at the time. I say this because reasonable domestic outgoings could include regular spending on, for example, things like mobile telephone, internet and landline, television packages, credit cards, personal loans etc. But Cheque Centres might not include some or all of these things. And so might not have fully considered the risk to Mr B in all of its lending decisions.

Mr B took out both loans 1 and 2 in August 2012. And his income was around £1,700. He borrowed £500 each time and needed to repay £625 the following month. Based on these amounts relative to his income I think Cheque Centres should've gathered an up to date picture of his financial situation and asked Mr B specifically about *all of his regular outgoings*, including any other short term credit he had outstanding before it agreed to lend. This would've allowed it better understand whether he could afford to repay the loan sustainably.

Cheque Centres says it did ask Mr B about his regular outgoings. But unfortunately it hasn't been able to provide a record of the information Mr B gave. So I've had a look at his bank statements to see what his regular outgoings were. And I've thought carefully about what I think Mr B would've declared at the time.

From what I've seen of Mr B's situation when he took out loans 1 and 2, his regular outgoings, including rent, food, travel and credit cards came to around £1,250. And on top of that I can see that he had a loan of over £1,000 with another short term lender, of which he appeared to have only repaid £250 of at the time he took these loans.

I think Mr B's bank statements are a reasonable indication of what he would have told the lender – particularly as he'd provided it with a copy of some bank statements already. So if Cheque Centres had carried out proportionate checks I think it would've discovered that Mr B didn't have enough disposable income to cover all of his outgoings, including the repayment on these loans. And as a responsible lender I don't think it would've agreed to lend.

Mr B took out loan 3 around a month after he repaid loan 2 – which was repaid over two weeks late. He again borrowed £500 meaning he needed to repay £625 in full the following month. I think by this stage Mr B's borrowing was starting to suggest that he might be becoming dependent on short term credit and that he might not be able to afford to repay the loans he was taking in a sustainable manner. I say this because he was now requesting his third loan in relatively quick succession, and he needed to enter into a repayment plan with Cheque Centres on loan 2, as he couldn't repay it on time.

Cheque Centres has highlighted that there was a gap in Mr B's borrowing. But I don't think a gap of one month is significant enough for it to assume that he wasn't becoming dependent on the loans it was providing, without needing to check. So at this stage I think it would've been proportionate to fully assess Mr B's financial situation, so it could be sure that he wasn't dependent on short term credit. And to check that he could afford to repay this loan sustainably. There are many ways that Cheque Centres could've built a full picture of Mr B's finances, such as by requesting payslips and/or further bank statements to verify the information he was providing.

From what I've seen, when Mr B took out loan 3 his income was around £2,000 and his regular outgoings were around £1,250. But he also had around £1,050 outstanding with other short term lenders. So if Cheque Centres had carried out proportionate checks I think it would've discovered this. And as a responsible lender I don't think it would've approved this loan.

Mr B took a top-up of £700 on loan 3. This meant he needed to repay £875 in January 2013. Because a top-up increases a consumer's overall indebtedness, and the amount they need to repay, I think a business should take steps to ensure that the top-up is affordable. I appreciate that Cheque Centres says that Mr B was borrowing within his agreed credit limit. But I think it still needed to make sure that Mr B could sustainably repay his loans when they were due. As with the initial borrowing on loan 3 I think Cheque Centres should've built a full picture of Mr B's finances before it approved this top-up. And if it had, I think it would've discovered that it wasn't affordable for Mr B either.

Mr B took out loan 4 on the same day he finished repaying loan 3. This loan was for £700 meaning he needed to repay £875 the following month. This was Mr B's fourth loan in a row without a significant gap. And as I've explained I think Cheque Centres should've already had concerns about Mr B's borrowing before this point. So I think it would've been proportionate for it to continue fully assessing Mr B's finances before this and each of the subsequent loans and top-ups. I say this because he continued the same pattern of borrowing *ie* borrowing on the same day he repaid the earlier loan, or taking top-ups on his loans.

If Cheque Centres had carried out proportionate checks on the remainder of Mr B's loans, I think it would've discovered that none of them were sustainably affordable for him. This is because he continued to spend most of his disposable income on his regular outgoings, other short term credit and what appears to be gambling. I understand a repayment plan was arranged for Mr B's final loan.

For example, in January 2013 he had around £2,100 coming in, but spent around £1,350 on his regular outgoings, around £750 on short term credit and around £200 on gambling. In February 2013 he had £1,850 coming in, but spent £2,000 on his regular outgoings and around £350 on other short term credit. And in March 2013 he had around £3,000 coming in, but spent around £2,500 on his regular outgoings, around £900 on other short term credit and around £950 on gambling. And from what I've seen I think this pattern of spending likely continued. I say this because Mr B was still regularly spending money on gambling and other short term lending commitments in October 2013.

I note that Mr B frequently had many transfers coming in and out of his accounts. Some of these he's explained as payments for his rent and others as repaying personal loans. He's also explained that he and some of his friends would frequently lend each other money. Looking at the value of these transfers each month, Mr B generally transferred out around the same amount as he received. But even if he didn't, I don't think borrowing money from friends can be classed as a sustainable way of repaying his loans. So I haven't considered these transfers when looking at the affordability of the loans.

In summary I don't think the checks that Cheque Centres carried out on any of the loans were proportionate. And if it had carried out proportionate checks I think it would've discovered that Mr B couldn't afford to repay any of the loans sustainably.

It follows that I think Mr B has lost out because of what Cheque Centres did wrong.

what Cheque Centres should do to put things right

Cheque Centres should:

- refund all interest and charges for each of the loans (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 Mr B’s credit file.

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

my final decision

For the reasons I’ve explained above I uphold Mr B’s complaint.

Cheque Centres Limited should put things right by doing what I’ve said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 5 October 2017.

Adam Golding
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