

complaint

Mr C complains that CURO Transatlantic Limited trading as WageDay Advance (“WDA”) gave him loans that he couldn’t afford to repay.

background

Mr C was given seven loans by WDA between March 2014 and September 2014. He was unable to repay his final loan on the due date and needed to defer his repayment for a month by paying some additional interest. But all Mr C’s loans have now been fully repaid. A summary of Mr C’s borrowing from WDA is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	06/03/2014	31/03/2014	£ 100
2	03/04/2014	30/04/2014	£ 250
3	05/05/2014	30/05/2014	£ 300
4	02/06/2014	30/06/2014	£ 300
5	01/07/2014	01/08/2014	£ 450
6	01/08/2014	01/09/2014	£ 550
7	02/09/2014	30/09/2014	£ 600

Mr C’s complaint has been assessed by one of our adjudicators. He thought that the checks WDA had done before agreeing the first two loans had been sufficient. But he thought WDA should have done more checks before giving the rest of the loans to Mr C. And he thought that better checks would have shown WDA that Mr C couldn’t afford to repay those loans. So he asked WDA to pay Mr C some compensation.

WDA accepted that assessment in relation to loans 5 to 7. But it still didn’t think it had been wrong to give Mr C loans 3 and 4. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr C accepts my decision it is legally binding on both parties.

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’ve also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

WDA was required to lend responsibly. It needed to make checks to see whether Mr C could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr C was borrowing, and his lending history, but there was no set list of checks WDA had to do.

The Financial Conduct Authority was the regulator at the time Mr C borrowed most of his loans from WDA. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as “CONC”). These 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.” They define ‘sustainable’ as being able to make repayments without undue difficulty. And explain that this means 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.

So, the fact that the amounts borrowed and the interest paid might have appeared affordable in comparison with what Mr C declared about his disposable income, or that he managed to repay the loans in full and on time, doesn’t necessarily mean the loans were affordable for him and that he managed to repay them in *a sustainable manner*. In other words I can’t assume that because Mr C managed to repay his loans that he was able to do so out of his normal means without having to borrow further.

WDA has told us about the checks it did before lending to Mr C. It asked him for details of his income and normal monthly expenditure. It doesn’t seem that WDA checked Mr C’s credit file before lending to him – WDA says that the data available at the time wasn’t sufficiently accurate. But I’m not aware of anything that WDA would have seen if it had done this check that might have caused additional concerns.

I think that the checks WDA did before giving Mr C the first two loans were sufficient. I have considered that the amount Mr C borrowed on his second loan was much larger than on his first. And that he took that second loan within just a few days of repaying his first. But on balance I think the repayments he needed to make appeared sufficiently affordable based on the information he provided about his finances. And I think at this stage of its relationship with Mr C it was reasonable for WDA to rely on that information. So I don’t think WDA did anything wrong when it gave the first two loans to Mr C.

But I don’t think the checks were sufficient from loan 3 onwards. Mr C asked for his third loan just a few days after repaying his second. This was now his third request in less than two months. And the amount he asked to borrow had increased again. I think WDA should have realised at this point that there was a real likelihood that Mr C was becoming dependent on short term lending. I don’t think it was reasonable to conclude that Mr C’s finances were as healthy as the information he was providing suggested. So I think WDA should have sought to independently verify that information before lending to Mr C.

And Mr C’s borrowing pattern continued. Over the next four months Mr C took a further four loans. Each time he borrowed on the same day, or the day after, he’d repaid an earlier loan. And the amount he asked to borrow increased each time. I think it should have been clear to WDA that Mr C’s finances were under pressure. And I think WDA should have continued to independently verify Mr C’s true financial position before lending to him.

But although I don’t think the checks WDA did from loan 3 onwards were sufficient, that in itself doesn’t mean that Mr C’s complaint should succeed. I’d also need to be persuaded that what I consider to be proportionate checks would have shown WDA that Mr C couldn’t sustainably afford the loans. So I’ve looked at Mr C’s bank statements, and what he’s told us about his financial situation, to see what better checks would have shown WDA.

Looking at Mr C's finances I can see that he was earning around the same amount that he declared to WDA. And his expenditure was broadly similar to what he'd declared. So based on that Mr C did have some disposable income left over each month. But looking at his bank statements I can see that Mr C was making a large number of what appear to be gambling transactions. The amounts he spent each month ranged between almost £400 and over £1,000. So this spending took most, if not all, of any disposable income that Mr C had each month.

If WDA had done what I consider to be proportionate checks I think it would have seen the extent of Mr C's spending on gambling transactions. And I think, as a responsible lender, it would have concluded that it wasn't sustainable for Mr C to repay any additional borrowing. So I don't think WDA should have given Mr C loans 3 to 7 and it needs to pay him some compensation.

putting things right

I don't think WDA should have agreed to lend to Mr C after, and including, the loan that he took on 5 May 2014 (loan 3). So for each of those loans WDA should;

- Refund any interest and charges applied to the 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 C's credit file in relation to the loans.

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

my final decision

My final decision is that I partly uphold Mr C's complaint and direct CURO Transatlantic Limited to put things right as detailed above.

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

Paul Reilly
ombudsman