Financial Ombudsman Service

complaint

Mr H complains that CashEuroNet UK LLC trading as Quick Quid and as Pounds to Pocket made irresponsible lending decisions and lent him money he could not afford to repay.

background

CEN advanced credit to Mr H in the form of ten payday loans and one FlexCredit account. In July 2017 Mr H complained to QuickQuid about loans he had taken from 2010. The reply he received was clear that all of the CashEuroNet lending history had been reviewed. So I will use CEN to refer to both trading names. I have created a table of approved loans.

Highlighted are the loans on which CEN has made offers.

Pounds to Pocket loan	**date approved**	**amount borrowed**	**actual closure date**
1 – instalment loan 12 months	27 June 2011	£500	25 May 2012
Quick Quid loans	**date approved**	**amount borrowed**	**actual closure date**
2 - payday	17 July 2012	£200	5 September 2012
3 - payday	8 September 2012	£250)	9 September 2012
4 - payday	12 September 2012	£100	19 October 2012
4A – *top-up*	6 October 2012	£150	
5 - payday	28 October 2012	£250	20 November 2012
5A – *top-up*	2 November 2012	£100	
6 - payday	29 March 2013 (52 days)	£200 two payments scheduled - £59 19 April and £259 20 May	4 April 2013
7 - payday	22 June 2013 (90 days)	£350 (£660 due in 3 payments up to 20 Sept 2013)	1 August 2013
FlexCredit account	17 August 2013	Credit limit £850 Total borrowed £3,250	15 May 2015
8 - payday	16 May 2015	£500	31 July 2015
9 - payday	10 August 2015	£350	14 October 2015
10 - payday	22 December 2015	£700	28 February 2016

The figures used have been rounded up or down by me for ease but are not to be used for the calculation of any redress due to Mr H. I plan to use the loan numbers I have allocated to each loan in the table and are the same numbers used by our adjudicator. I refer to the FlexCredit account by its name, not a number.

CEN has sent to us a loan table to clarify the numberings but it missed out the one taken on 12 September 2012 and the further advances.

Mr H says that he had to use so much of his wages to repay the borrowings that he had to borrow again. He says that CEN should never have given him these unaffordable loans.

Our adjudicator thought that CEN should not have lent to Mr H from 8 September 2012 which on this table is Loan 3. She recommended that CEN put things right for Mr H from that date. CEN disagreed and our adjudicator did make additional points in early February 2018.

Mr H was told that CEN had not replied to our adjudicator's letter. This was incorrect. CEN responded three times and disagreed with our adjudicator's views. It wanted to have more details of Mr H's financial situation given to it before it could take the matter further. We have received additional details from Mr H and his partner.

CEN did make an offer in relation to Loans 8 and 10 which Mr H rejected. As CEN has agreed that something needs to be put right in relation to Loans 8 and 10, then I will take account of them as part of the history of the lending relationship, but there is no dispute about Loans 8 and 10 so I make no additional findings in respect of them.

The complaint remained unresolved, and it was passed to me for a decision. I issued my provisional decision earlier this month and invited both parties to send me anything else either wished me to see or to know about.

my findings

I have reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have taken into account the law, regulations and guidance applicable at the time.

Mr H accepted the provisional findings, the majority of which are set out below and form part of this final decision.

CEN has responded and does not agree but the additional points it has made are not persuasive. In Mr H's specific circumstances of his complaint which I have taken care and time to consider in detail on an individual basis, I have decided to come to the same conclusions I did in my provisional decision and for the same reasons.

I uphold Mr H's complaint in relation to Loans 3, 4, 4A, 5, 5A, the whole of the FlexCredit account period and Loans 8, 9 and 10.

putting things right

CashEuroNet UK LLC must:

- refund all interest and charges Mr H paid on loans 3, 4, 4A, 5, 5A, the whole of the FlexCredit account period and loans 8, 9 and 10;
- add to the above interest at 8% simple per year, from when Mr H paid them until he gets the refund†
- remove any adverse payment information about the loans and credit advances from Mr H's credit history.

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

my final decision

My final decision is that I uphold Mr H's complaint in part and plan to direct that CashEuroNet UK LLC does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 August 2018.

Rachael Williams
ombudsman

my provisional 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 taken into account the law, regulations and guidance applicable at the time.

In 2011 the Office of Fair Trading guidelines on irresponsible lending ("ILG") were available for lenders to use as guidance. A potential lender was expected to take "…reasonable steps to assess a borrower's likely ability to be able to meet repayments … in a sustainable manner." ILG 4.2.

This was to be a "borrower focussed" test. The assessment was to assess a borrower's ability to undertake the loan commitment and it was meant to be wider than simply assessing the likelihood of him/her being able to repay. The ILG also recommended that the creditor looked at the borrower's ability to repay without undue difficulty, and without having to borrow further.

The ILG also gives guidance that these checks were to be proportionate to a number of factors relating to the borrower's current financial situation, including his/her credit history, indications of present or past financial difficulties, and future financial commitments.

The ILG would only expect a lender to take account of future financial commitments of which it was aware and 'reasonable steps' to obtain that information was what was expected.

The ILG pointed out that it encouraged the borrower to carry out his or her own affordability checks at the same time.

A 'Pay Day and Short-term Loans Charter' (effective from November 2012) was a cross-trade association charter designed to add protection to consumers. One of the many Key Commitments was to tell the consumer that "…a payday or short term loan should be used for short term financial needs and is not appropriate for long term borrowing or if you are in financial difficulty."

From April 2014 the Financial Conduct Authority (FCA) became the regulator and its Consumer Credit Sourcebook ("CONC") contains some of the rules and guidance.
A potential lender had to carry out an assessment of the creditworthiness of an applicant/customer: CONC 5.2.1R (1).

A firm "…must consider (a) the potential for the commitments…to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the…agreement is to be made; and (b) the ability of the customer to make the repayments as they fall due..." CONC 5.2.1R (2).

The firm should "take into account more than assessing the customer's ability to repay the credit." CONC 5.3.1G. It ought to take reasonable steps to "assess the customer's ability to meet repayments … in a sustainable manner." 'Sustainable' means that the applicant is able to repay on time, out of income and savings, without undue difficulties, and without having to borrow to meet those repayments: CONC 5.3.1G (6).

I've looked at the information CEN had before making the lending decisions – both information from Mr H and information it discovered through its own enquiries. Having done that, I've looked to see whether I think the affordability checks carried out were proportionate.

Loan 1

Mr H declared his income to CEN (Pounds to Pocket) when applying for this loan. It was Mr H's first application in June 2011 and an instalment loan, due to be repaid over 12 months commencing July 2011. The highest amount for the scheduled instalments was about £78.

I would expect CEN to know about Mr H's income (which it did - £1,300) and because the debt was due to be repaid over a long period of time then I would expect CEN to ask about Mr H's regular outgoings. Mr H and his partner have provided us with information and at this time Mr H's contribution to the household bills was about £650 which was to cover rent, water, council tax, utilities, TV licence, landline bill and his food. In addition I have seen from Mr H's bank statements for July 2011 - which is close to this period in time - Mr H regularly paid for two sets of insurances coming to about £85.

So I think that even if CEN had enquired about Mr H's outgoings in June 2011, it's likely that CEN would have approved this instalment loan as the repayments were about £78 each month. I am planning not to uphold Mr H's complaint in relation to Loan 1.

Loan 2

Loan 1 was paid off in May 2012. Just before that in April 2012 Mr H applied to CEN (QuickQuid) for a payday loan and it was refused. Reading the email correspondence between CEN and Mr H at the time CEN explained this refusal was because Mr H had not paid off Loan 1 with CEN (Pounds to Pocket) at the application date.

Having paid Loan 1 off early (25 May 2012) the email correspondence shows that he applied to CEN (Pounds to Pocket) for another loan on or about 26 May 2012 and was declined. On 26 and 27 May 2012 Mr H wrote emails to CEN about the fact that he had a '100% payment history' and yet had been declined. I do not know if he received a response.

CEN records registered Mr H's income as being about £1,300 on 27 May 2012. And I can see from the CEN records for Pounds to Pocket that it carried out full credit bureau checks on Mr H on 27 May and 27 June 2012. CEN records for QuickQuid shows that it did more credit bureau checks on 17 July 2012. I have not received any results of those credit checks.

Mr H applied for Loan 2 on 17 July 2012, a couple months after repaying Loan 1. It was for £200 and about £244 was due to be repaid on 20 August 2012. I would have expected CEN to know about Mr H's income and his regular financial commitments and daily living costs as part of its affordability checks.

I do not think that CEN carried out the checks I would have expected as proportionate checks for Loan 2. So I have looked at the information I do have to see what CEN would have found if it had carried them out.

I have received Mr H's bank statements and Mr H and his partner have explained what his usual outgoings were - about £650 as outlined above. In addition I can see that he had three direct debits for insurances and one other regular commitment and these add up to just over £104. And he has told us that he spent about £50 on transport.

So with a declared income of £1,300 and outgoings adding up to about £804, Mr H would have had about £496 left to repay Loan 2. So Mr H seems to have been in a position to afford this loan. I am not planning to uphold Mr H's complaint in relation to Loan 2.

Loan 3

By the time Mr H applied for Loan 3 for £250 on 8 September 2012 the history of Loan 2 would have been apparent to CEN. Loan 2 had been due to be repaid on 20 August 2012 and just after Mr H received an email from CEN reminding him of this, he asked for the repayment date to be extended. So a finance charge was added to his CEN account, and he paid a smaller sum of about £44 on 20 August 2012. The Loan 2 repayment date was extended to 20 September 2012. In fact he then chose to repay it early on 5 Sept 2012.

So by Loan 3 – applied for a few days later on 8 September 2012 – Mr H had already had an extension on Loan 2. And this Loan 3 was for a larger figure of £250 with a scheduled repayment of *about £324 on 20 September 2012 – his next payday date. So I consider that proportionate checks would have included looking at Mr H's regular commitments and living costs plus checking to see if Mr H had any other outstanding loans with other short-term loan providers (STL). I don't think that CEN did this and so I have looked to see what it would have discovered if it had.*

I have outlined above that Mr H's regular outgoings and commitments were, about £804 each month, and he would have had about £496 left over. But I can see that Mr H had been borrowing regularly from another STL lender (Lender A) and as at 9 September 2012 he owed it about £450.

And so I think that if CEN had carried out the checks I would have considered to have been proportionate at the time then it would have known that Mr H was not able to afford to repay Loan 3. I am planning to uphold Mr H's complaint in relation to Loan 3.

Loan 4 and 4A

On 12 September 2012 Mr H applied for Loan 4 for £100, for which about £130 was due to be repaid on 20 September 2012.

I would have expected that the checks carried out for Loan 3 would have been the same as those for Loan 2. His outgoings for his living costs and regular financial commitments came to about £804. He would have been left with about £496. And by 12 September 2012 Mr H owed more to Lender A – that repayment amount due had risen to over £620. This was just a few days after Mr H had applied for Loan 3, and his indebtedness with the other STL lender had risen, so using those figures I do not think Mr H would have been able to afford Loan 4.

Then on 6 October 2012 he requested a top-up of £150 which came shortly after asking for another extension (on 19 September 2012).

I can see that on or about 6 October 2012 Mr H would have owed Lender A about £376 because he had already repaid Lender A over £620 (on 21 September 2012) and had taken another STL with it on 29 September 2012. Mr H was then due to repay CEN £324 later that month.

So on the figures it would have been clear that in one payday month he owed so much in STL debt both to Lender A and to CEN that he was not likely to be in a position to repay Loan 4 or the top-up (Loan 4A). I am planning to uphold Mr H's complaint in relation to Loan 4 and 4A.

Loan 5 and 5A

Loan 5 was for £250, applied for on 28 October 2012 and due to be repaid on 20 November 2012. So I would have expected CEN to carry out a full review of Mr H's financial situation. And I say this because this was the fifth time Mr H had asked for credit since July 2012 and he had already asked for extensions and a top-up which may suggest that it was difficult for him to make the payments. And he had already had a long term loan with CEN (Loan 1).

By a full review of Mr H's financial situation I mean that CEN ought to have verified his income, outgoings, regular financial commitments, living costs and any other STL he may have had outstanding.

A full review could have been achieved by asking for payslips, bills, rent details or it could have been carried out by looking at Mr H's bank statements. As I have Mr H's statements I have used them: it's not the only way but some may view it as being a convenient method to assess a person's financial position. I have a copy of Mr H's personal credit file.

I can see that his income was usually about £1,260 and he received a Department of Work and Pensions allowance of about £290. So his income would have been about £1,550.

As well as the two STL with Lender A mentioned above (£620 plus £376) Mr H had taken a third with Lender A on 10 October 2012 (after he had taken Loan 4A with CEN) and so that repayment sum of about £241 was due to Lender A on or about 24 October 2012. Then he took another with Lender A for £310 on 26 October 2012 which was a couple of days before applying for Loan 5. So at the time he applied for Loan 5 from CEN he would have had a £310 loan outstanding (repayment of about £400) due to Lender A.

The loan Mr H was applying for (Loan 5) was due to be repaid on 20 November 2012.

Then Mr H applied for a top-up sum (Loan 5A) on 12 November 2012 taking the figure due to CEN on 20 November 2012 to £453. This plus the outstanding Lender A loan would have meant that he would have been due to repay about £853 to CEN and Lender A.

We have been told that Mr H's partner had moved out by end of October 2012 when Mr H applied for Loan 5. Mr H was paying for all the bills and food and I understand had two dependants as well. So the picture is different at this stage.

I think it is fair to CEN that I use his 'contribution to bills figure' of £650 plus the additional insurances he paid for making his total outgoings about £804 as before. I say this because his partner had just moved out mid-October 2012 and so his outgoings were likely to be higher going forward but his statements do not reflect that at the end of October 2012. So it seems fair to use the lower sum of £805.

Even using this figure of £805 with his actual income of £1,550 plus his STL commitments of £853 then it's clear to me Mr H would not have had enough to repay this Loan 5 and top-up. And if CEN had carried out the checks I would have considered proportionate at the time then it would have seen that Mr H was getting to a stage where the combination of his STL with Lender A and CEN was getting too much to be able to repay in a sustainable fashion.

I am planning to uphold Mr H's complaint in relation to Loan 5 and 5A.

November 2012 to March 2013

There was a period of about four months during which Mr H did not obtain loans with CEN. By March 2013 I think that the history Mr H had with CEN was long enough for me to think that a four month gap was not enough to break the chain in lending.

Loan 6

Loan 6 was applied for on 29 March 2013 and had a different structure. It was a payday loan for £200 but repayable over two instalments of £59 on 19 April 2013 and £259 on 20 May 2013.

As I consider this to be the same chain of lending then I think that it would have been proportionate for CEN to have done a comprehensive evaluation of Mr H's financial position. And I think that these sorts of checks ought to have been carried out for each lending decision going forward.

As I have mentioned, by this stage Mr H was on his own with two children and his income and his outgoings were quite different. So I can see from the bank statements I have that his income from various benefits and tax credits he received on top of his salary was higher than before. And I can also see that his outgoings were higher as he was paying for all of the bills, rent and food for himself and the children. He had one outstanding Lender A loan for £200.

I do not have statements for March 2013 but using the period up to his April 2013 payday date and the information I have been given from Mr H then it seems that his income was about £2,032 including salary, tax credits and DWP allowance. And his outgoings including rent, insurances, utilities, TV licence and subscriptions, council tax, petrol costs, school food and food (I have allowed about £250 for a family of three) leads me to think they were about £1,375.

On those figures, I think that Loan 6 was likely affordable in principle. A full and comprehensive review of Mr H's finances would have shown CEN that he was carrying out betting and gaming transactions. But at this stage the extent of the spend may have been part of the commercial decision to lend which I make no finding about. So in principle this loan was affordable using the highest scheduled repayment of £259.

I am planning not to uphold Mr H's complaint in relation to Loan 6.

Loan 7

Loan 7 was applied for on 22 June 2013. It was arranged to be repaid over 90 days in three instalments. The principal sum of £350 was due to be a total repayment figure of just under £660. The instalments were arranged to be £103.25 on 19 July, £103.25 due on 20 August and £453.25 due on 20 September 2013.

Mr H's income from salary, tax credits, child benefit and the DWP allowance was over £2,300. I have not got any statements for May 2013, so I have used latter end of April and all of June 2013 to see Mr H's regular income and outgoings.

Assuming his outgoings were the same or similar to April 2013 at about £1,375 then that would have left Mr H with about £929. He had no outstanding STL from other lenders from what I can see as at 22 June 2013.

Looking at the highest proposed scheduled repayment of just over £453 then if CEN had carried out the assessment I would have expected it to do its likely not to have made a difference to its decision to lend.

The transactions on gaming and betting sites show on the statements for the period around June 2013 and likely to have been a factor for any responsible lender. And if CEN had carried out the checks I consider to have been proportionate at this stage then it would have seen that this was a regular feature.

But I cannot ignore the fact that Mr H had some large deposits into his account in April 2013 – almost £7,000 – which appear to have been from some of the same sites to which he had made the betting and gaming transactions. This was only a couple of months before and as I do not have May 2013 statements, I cannot see what it was spent on or whether Mr H received further credits into his account. I can use only what I have been given.

So in fairness to CEN I do not think that I can say that Mr H was not in a position to afford this loan on the evidence I have here. By making this finding I stress that this is in the particular circumstances surrounding this particular loan application by Mr H. I am planning not to uphold Mr H's complaint in relation to Loan 7.

FlexCredit account

CEN's FlexCredit account is one it describes as a 'running account credit' in that the limit is set and then the customer is able to draw down credit advances up to that limit. Initially the customer receives an example of what a ten month repayment schedule would be assuming that the full amount allowed on the pre-approved credit limit is drawn down on day one.

Mr H applied for this type of account in August 2013 and was given a credit limit of £950. The proposed repayment schedule over ten months had a high repayment of about £308 and the rest were lesser sums – about £260, £269, £231 and so on.

So when assessing Mr H's ability to service this FlexCredit account it is reasonable of CEN to have assessed the highest proposed repayment which for this account was about £308.

Having looked at Mr H's statements for July 2013 I can see that Mr H received about £2,326 income as salary and benefits or tax credits. His outgoings for rent, utilities, pension contribution, travel and petrol, council tax, phone/media payments all came to about £1,214. This includes a very modest sum on supermarket shopping. Mr H took over £1,000 out in cash and so it is feasible that some of that was spent on food in addition to the amount that I have seen being spent using a card in supermarkets. So I think it's likely his total regular outgoings were about £1,420. Which leaves him, in principle, with about £900 left and so on the face of it looks like he was in a position to afford the repayments.

However, I can see that Mr H spent at least £1,664 (card purchases) on betting and gaming and received about £1,240 in winnings. The net difference is about £424. He probably spent some of the cash on betting/gaming as well so his net loss on those transactions may have been more than the £424. In addition, the fact that Mr H was a regular user of these sort of websites was likely to impact on the affordability assessment. So if CEN had carried out the full review of Mr H's situation which I consider to have been the proportionate approach for this account, then the spend on gaming and betting was likely to have made a difference to CEN if it was approaching the application as a responsible lender.

The margin between Mr H being able to repay the FlexCredit repayments and not being able to afford them was too narrow for me to think that the betting and gaming activity can be ignored. Had CEN known of this and seen that Mr H's ability to repay may have depended on the success he had at betting and gaming, CEN may have come to a different lending decision.

As the account rolled forward I can see that Mr H does not usually take particularly large amounts as drawdowns except at Christmas 2013. He continued to take STL loans from the other lender fairly regularly until February 2014.

A potential lender was expected to take "…reasonable steps to assess a borrower's likely ability to be able to meet repayments … in a sustainable manner." ILG 4.2 as referred to above. And the ILG para 4.3 refers to 'sustainability' in conjunction with open-ended agreements such as this one "as meaning credit that can be repaid by the borrower:…within a reasonable period of time".
From April 2014 the FCA CONC rules took precedence and it does stipulate the need for an account such as this to be repaid "within a reasonable period": CONC 5.2.1 (2) (b).

The original ten month period envisaged at the start in August 2013 was due to end around June 2014. And Mr H continued to use it well beyond that date. The FlexCredit account agreement itself does refer to "this type of lending is a very expensive form of credit, and is not suitable for long term or regular borrowing but for short-medium term, borrowing needs."

The gaming/betting activity remained visible on Mr H's bank statements for this period and I can see that Mr H was taking loans from another STL lender fairly regularly as well, adding to his indebtedness and demonstrating that Mr H may have been borrowing to repay borrowing – a sign of unsustainability.

On 16 December 2014 CEN served formal 'Notice of Termination' under the existing legislation and CEN gave an explanation in that email that no new drawings could be taken from 1 January 2015. This will likely have been in order to dovetail with the new rules brought in by the FCA on the cost-cap for such credit which came into force on 1 January 2015. The email to Mr H went on to invite him to apply for new borrowing if he needed from February 2015. And in fact Mr H did not drawdown further after 24 December 2014 and paid the account off which closed in May 2015.

Throughout the period, I think proportionate checks would have shown CEN that
Mr H's expenditure was exceeding his income. This was due to a mixture of factors: the amount Mr H was spending on repaying other short-term lenders; regular creditors; and on gaming/betting - each played a part. The factors were interchangeable but the overall picture remained quite consistent.

So all in all I consider that this account ought never to have been granted to Mr H and I am planning to uphold Mr H's complaint in relation to the FlexCredit account from August 2013 to May 2015.

Loan 8

This was applied for (£500) immediately after paying off the FlexCredit account. It was designed as a three payment instalment loan: £52.00 due on 29 May, £112.00 due on 26 June and £640.00 due on 31 July 2015. CEN has made an offer in relation to this loan.

Loan 9

Reading the email correspondence and looking at the credit searches CEN carried out in early August 2015, it seems that Mr H applied for a loan and was not offered the amount that he wanted. He comments that his 'credit limit' has reduced from £800 to £150. He planned to go elsewhere for his loans.

Then on 10 August 2015 Loan 9 was approved for £350. It was for 74 days with the repayments being £50.40 due on 28 August, £78.40 due on 25 September and £428.40 due on 23 October 2015. Mr H repaid it a little early on 14 October 2015.

At the date of application Mr H had told CEN a few months earlier that his income was around £1,673 and his total monthly living expenses were £800. Just a few days earlier he had told CEN that his expenses were £975.
For the application which resulted in being Loan 10 Mr H's housing costs had reduced by £100 and Mr H's food expenses were inputted as £75 rather than £300.

These are such large changes that I think CEN ought to have investigated further. And as I have outlined above, the proportionate checks I would have expected it to have been carrying out at this stage was a comprehensive review of Mr H's financial situation.

I do not have statements from Mr H for July 2015 so I have looked at the ones I have for June 2015 plus most of August 2015 which straddles the period in question and is likely to be enough for me to obtain a good picture.

His actual income was a total of his salary (£1,735) plus tax credit funds and child benefit and DWP allowances of about £500 making a total of about £2,235. His outgoings were similar to before – about £1,040 plus cash likely used to pay food. Mr H was due to repay a different STL lender over £400 on or about 11 August 2015. His betting and gaming transactions were present and although these had reduced by this stage CEN would have seen that this was a regular feature. This plus the fact that Mr H had been borrowing from CEN for over four years then I do not consider it to be a sustainable level of debt for him.

I am planning to uphold Mr H's complaint in relation to Loan 9.

Loan 10

Mr H applied for this loan and it was approved for £700 starting on 22 December 2015. It was due to be repaid in three instalments of £196, about £157 and £896 in January, February and March 2016 respectively. CEN has made an offer in relation to Loan 10.

The extract of the provisional decision ends here.