

complaint

Ms W has complained about a series of short term loans she took out with Casheuronet UK LLC (under its two trading names of Quick Quid and Pounds to Pocket).

Ms W, together with her representatives, has said that these loans contributed to her 'debt spiral'. She's said that the lender didn't properly assess and verify her expenditure and if it had, it would've seen she couldn't have sustainably repaid this lending. In addition Ms W has said that she ended up living on short term loans and relying on new loans to repay previous loans. And she's argued that the history of repeat borrowing ought to have made Casheuronet aware that she was 'a poor candidate for credit.'

background

Ms W began borrowing with Casheuronet in February 2012 and repaid her final loan with it in January 2016. During this period of lending Ms W took out 15 loans with repayment structures ranging from one to three repayments. Ms W increased these loans with either additional advances or "top-ups" a further 18 times. In some instances this was multiple times on the same loan.

In addition, Ms W took out an instalment loan which was structured to be repaid over 11 months and a "flex-credit" loan. A flex-credit loan is more commonly known as a revolving credit account where a customer could draw down multiple times up to an agreed limit, provided they paid off the interest that accrued each month. Ms W made around 30 drawdowns over the course of this agreement.

This meant that Casheuronet advanced credit to Ms W 34 times together with the flex credit account where Ms W made around 30 additional drawdowns for credit. And Ms W was borrowing from Casheuronet for just under four years in total. I've attached a summary of Ms W's lending history to this decision as appendix one.

In its response to Ms W, Casheuronet said at the time of each application it completed a 'standard' credit search. And it considered information provided by Ms W during her loan application (which included her net monthly income) and her loan history with it before deciding whether or not to lend. From the information Ms W provided, Casheuronet has said that Ms W always earned enough to repay her loans.

Casheuronet has said that based on all the information it considered, it cannot agree that it was irresponsible to lend to Ms W and so it didn't uphold her complaint.

my provisional decision

I issued a provisional decision on 15 January 2019 setting out my initial thoughts to this complaint and which forms part of this decision. I asked both Casheuronet and Ms W to provide me with anything further either party would like me to consider before reaching a final decision.

In my provisional decision, I summarised the regulatory framework, relevant law, relevant publications, what I consider to be good industry practice and the terms and information provided about Ms W's flex credit agreement. This forms part of my final decision and I have enclosed this as appendix two. I ask both Ms W and Casheuronet to read this alongside my

final decision to provide proper context to my decision. And I have included my provisional findings below.

Based on information contained in appendix two I explained that there were three overarching questions I needed to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These were:

1. Did Casheuronet, each time it lent, complete reasonable and proportionate checks to satisfy itself that Ms W would be able to repay in a sustainable way?
 - a. If not, would those checks have shown that Ms W would've been able to do so?
2. Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Ms W's indebtedness in a way that was unsustainable or otherwise harmful?
3. Did Casheuronet act unfairly or unreasonably in some other way?

If I determine that Casheuronet did not act fairly and reasonably in its dealings with Ms W and that she has lost out as a result, I will go on to consider what is fair compensation.

In my provisional decision (which forms part of this decision) I said:

Did Casheuronet, for each loan, complete reasonable and proportionate checks to satisfy itself that Ms W would be able to repay the loans in a sustainable way?

Before considering this point further I would like to explain the distinction between a lender determining its own level of risk and an assessment of affordability.

A lender will determine how much of a risk it is willing to take on a given application i.e. the risk of not getting its money back. However under the rules applicable to Ms W's loans a lender was also required to complete a reasonable assessment of whether the borrower can afford to meet the repayments in a sustainable way (usually referred to as an affordability assessment). This involves completing a 'borrower-focused' assessment by completing proportionate checks.

What constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (such as their financial history including with the lender in question, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income)
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income)
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting that ongoing use of these loans may signal that the borrowing had become, or was becoming, unsustainable).

Before agreeing the loans in question Casheuronet has told our service that it completed external credit searches before each application. And whilst Casheuronet has said the results of these searches didn't flag any concerns ('such as discharges, CCJ's [county court judgements], credit

searches, or disputes'), it hasn't provided full results of any of the searches it completed. Ms W has provided a copy of her recent credit report and whilst this doesn't show things like CCJ's it does show Ms W was regularly borrowing with other high cost short term credit providers together with other high cost credit providers. But without Casheuronet's results from the time, it's difficult to know what information these searches would've shown.

Casheuronet has also said it asked Ms W for her net monthly income at various points. The chart below shows what Ms W declared across both of Casheuronet's brands. (Casheuronet has previously confirmed that both its brands shared information and so had access to previous lending history and information a consumer has provided.)

I should explain that below doesn't reflect the full record of lending (see the attached summary at the end of this decision for a full record of lending). I've shown below the points in time that Ms W made revised income declarations. And it's not clear if, in the intervening applications, Ms W needed to confirm her previous income declaration or if this information was carried across from her previous application.

Date	Net monthly declared income	Casheuronet brand the declaration was made to
12 January 2012	£1,600	Pounds to Pocket and Quick Quid
19 February 2012	£1,650	Pounds to Pocket
8 August 2014	£3,950	Pounds to Pocket
21 October 2014	£2,000	Quick Quid
14 April 2015	£2,108	Quick Quid
18 December 2015	£2,140	Quick Quid

In addition Casheuronet also began asking Ms W for basic expenditure information. The earliest point I can see that Casheuronet recorded this was on 8 August 2014 to Pounds to Pocket. (And it was at this time that Ms W seems to have made her first revised income declaration since February 2012). Casheuronet asked for declarations under the headings of 'monthly housing expenses, monthly utility expenses, monthly transport expenses, monthly food expenses, monthly other credit commitments and monthly other expenses.' At this time Ms W declared a total expenditure of £1,025. She then made a lower declaration of £825 in October 2014 to Quick Quid. Followed by a further five declarations to Quick Quid of the same expenditure totalling £825 from November 2014 to April 2015. It's again not clear if this information was reconfirmed by Ms W on each application or if this had been carried forward from a previous application. Her final declaration was in November 2015 and she again declared the same as her initial expenditure of £1,025 to Pounds to Pocket.

Casheuronet has also said it validated the income and expenditure information provided by Ms W before agreeing loans 11 to 15 (from February to June 2015). It has said that using the credit search results it was able to create an 'Income Confidence Factor' to gauge the accuracy of the income information. And it compared the declared expenditure information with average expenses data from the Office of National Statistics. And whilst I've noted that Casheuronet has said if 'material discrepancies' were found it would request copies of bank statements, I can't see Casheuronet took these steps before agreeing these loans for Ms W. So in Ms W's case Casheuronet hasn't verified the specific information provided by Ms W with further information about her individual circumstances.

I've thought carefully about the checks Casheuronet has said it completed before agreeing Ms W's loans and I don't think it completed proportionate checks before agreeing any of the loans given to Ms W.

Ms W's first loan was for £300 and she needed to repay approximately £350. At this time Casheuronet asked Ms W for her net monthly income which she declared as being £1,650 per month. Given the amount to be repaid was a relatively high amount and looking at the proportion of her net monthly income she would need to repay the following month, I think it would've been proportionate

for Casheuronet to have gathered information about her regular expenditure. And I'd have expected this to have included gathering information about her regular financial commitments.

I've reached the same thoughts in relation to Ms W's second loan, her top up on this loan and her third loan. Ms W rolled over her first loan (paying only interest) and deferring her final payment (of the principal amount and another interest payment). She then took out the second loan around a week and a half after she'd repaid loan one, before topping up her second loan just over a week after this. The highest repayment on her second loan was then £300 as a result of the top up. Looking at her third loan, I've noted this loan was for a lower amount (before she subsequently topped it up), but this loan was still taken in fairly quick succession (around a month after her final repayment on loan two). And this was now her fourth advance in around four months, with no substantial gaps in lending. So I think it would've been proportionate for Casheuronet to have continued to gather information about Ms W's regular expenditure including her regular financial commitments. However, as I've explained Casheuronet only had information about her net monthly pay (and completed credit searches for which it can't provide the results). So I don't think Casheuronet completed proportionate checks before agreeing these loans.

Ms W then increased her third loan to £350 (from £200) six days after taking it. This loan was previously a single payment loan due at the end of that month (August 2012). However when the borrowing amount was increased, the loan was restructured. Ms W was now due to make an initial payment of interest only in the August, followed by a full payment of capital and interest at the end of September. It's worth highlighting that changes of this nature could easily be seen as a new loan given the loan amount, repayment structure and term of the loan changed. And so I've described it as additional borrowing (or extensions) rather than a top up to highlight the distinction.

Following the additional borrowing, the largest repayment (which was due in the September) was £437.50. As this payment was a substantial proportion of Ms W's declared net income, and was now her fifth advance in a relatively short period of time, I think it would've been proportionate for Casheuronet to have gathered further information.

Together with asking questions about her regular expenditure, including any regular financial commitments, I think Casheuronet also needed to ask about any short term loan commitments Ms W had. This is because I think the number and frequency of loans, top ups and term extensions in a relatively short period of time should've alerted Casheuronet to the possibility that Ms W may have been becoming reliant on this type of lending and potentially borrowing from other high cost short term lenders. For largely the same reasons I also think Casheuronet should've gathered this information for loan four. However, as I've explained Casheuronet had only enquired about Ms W's net monthly income. So I don't think it completed proportionate checks before agreeing either of these loans.

Four days after taking loan four for £300, Ms W took out a further £100. At this time the loan was restructured in a similar way to loan three. Her fourth loan was originally a single repayment loan, due to be repaid in November 2012. When the principal loan amount was increased the repayment structure changed to two repayments – an interest only payment of £100 at the end of November 2012 and a payment of interest and principal loan of £500 at the end of December 2012. Again I've described this as additional borrowing on loan four.

This was now the seventh advance Casheuronet had given Ms W over a period of around eight months (with no significant gaps in lending). And this was now the third time Ms W had returned to Casheuronet to increase her borrowing whilst still having another loan outstanding. It was also the highest amount Ms W had borrowed (£400) and therefore attracted the highest repayment of £500 which was again a substantial proportion of Ms W's declared net monthly income.

By this stage I think it should've been becoming increasingly obvious to Casheuronet that Ms W wasn't using this lending in the way it was intended. I also think that Casheuronet should've started to have real concerns given that Ms W was building up a track record of struggling to repay her borrowing from disposable income and without needing to borrow again. I think it would've been

proportionate for Casheuronet to have independently verified the information Ms W was providing and complete a full review of her income and expenditure circumstances. It could've done this by asking for evidence and information about her outgoings and income. However, Casheuronet relied on her declared net income and as I've explained, can't provide the results of any credit searches it completed. So again I don't think it completed proportionate checks.

Casheuronet then went on to agree a number of additional advances. As I've explained, I've attached a summary of lending to this provisional decision. But to summarise, it agreed a further 27 advances (including an instalment loan and various top ups/ extensions). And around a year and a half into lending to Ms W it also agreed an open-ended flex credit loan which allowed Ms W to have around 30 separate drawdowns.

There were no substantial gaps in lending to Ms W, usually each loan or subsequent loan was taken within days or weeks of the previous loan. And in some instances within around a month or two at most. So, for largely the same reasons, I think that it would've been fair and reasonable for Casheuronet to have continued to take steps to verify Ms W's actual financial position. So I don't think Casheuronet completed proportionate checks for any of the additional borrowing (or at any stage in its lending with Ms W).

I have noted that from August 2014 Casheuronet began to take basic expenditure information from Ms W. Firstly I think it's important to highlight that at this time Ms W also declared a net monthly income of almost £4,000 per month, increasing significantly from £1,650 just two and a half years earlier. And a total expenditure of £1,025, suggesting that she had almost £3,000 in disposable income. If she had this much disposable income it seems unlikely that she would've persistently needed a high cost, short term loan (or that she would've been borrowing from Casheuronet consistently for such a long period prior to this.)

So I think it's fair say that Casheuronet may have had reason to question the information being provided to it at this time. But in any event, Casheuronet didn't start asking for expenditure information until around two and a half years into lending to Ms W. So I think by the time it started asking for this information it had gone well past the point of being reasonable and proportionate to rely on the income or expenditure information being declared by Ms W.

In addition, as I've described earlier in this decision, Casheuronet has said it took extra steps to validate the information provided by Ms W before agreeing loans 11 to 15. To summarise, it's said it compared Ms W's income declarations to an 'Income Confidence Factor' it created from her credit search results. And it compared Ms W's expenditure information to average expenses data from the Office of National Statistics. By taking these steps Casheuronet has said it was able to gauge the accuracy of the information being provided.

I've carefully thought about the additional steps Casheuronet has said it took in relation to these loans (11 to 15), but I still don't think it completed proportionate checks before agreeing these loans. By the time Ms W took out her 11th loan with Casheuronet she was almost three years into her borrowing with it and she hadn't had any significant gaps in lending. Again I think it was well past the point of being reasonable to rely on statistical benchmarks to gauge the accuracy of the information without independently verifying the information based on Ms W's personal circumstances. I have noted that Casheuronet has said where there are 'material discrepancies' (between the declarations and what these checks reveal) it will go on to request the consumer's bank statements. (And requesting bank statements is a way of independently verifying the consumer's actual circumstances). However, Casheuronet hasn't shown it took these steps. So I don't think the additional steps it took for loans 11 to 15 were sufficient and as such I don't think Casheuronet completed proportionate checks before agreeing these loans.

So to summarise and for the reasons I've explained above, I don't think proportionate checks were completed by Casheuronet before it agreed any of the loans it gave Ms W.

Would reasonable and proportionate checks for any of the loans given have indicated to Casheuronet that Ms W would have been unable to sustainably repay the loan(s)?

As I've concluded proportionate checks weren't carried out for these loans (or any of the subsequent instances of lending), I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate affordability check would have told Casheuronet that it was unfair to provide these loans to Ms W. Ms W has provided us with evidence of her financial circumstances throughout the period she applied for the loans.

I accept different checks might show different things. And just because something shows up in the information Ms W has provided, it doesn't mean it would've shown up in any checks Casheuronet might've carried out. But in the absence of anything else from Casheuronet showing what information it gathered (and how it interpreted it), I think it's fair and reasonable to place considerable weight on it as an indication of what Ms W's financial circumstances were likely to have been at the time.

- loans one to three (including the top up on loan two)

As I've explained, I think proportionate checks for loans one to three (including the top up on loan two) would've involved, for example, finding out about Ms W's normal monthly living costs and regular financial commitments in addition to her regular expenditure.

I appreciate that Casheuronet has argued that Ms W was likely to have declared similar expenditure figures as to those she later declared, if it had asked her the relevant questions. In some circumstances I might say this is a reasonable assumption to make. But I don't think this is a fair conclusion to make in Ms W's case as the expenditure declarations were made approximately 2 to 2 and a half years later. So I don't think it's reasonable to conclude, given the time difference between these applications and her expenditure declarations, that it's most likely she would've declared the same expenditure.

But having looked at the information Ms W has provided our service I've been able to get a sense of her regular income and expenditure from around this time. And having done so, I think it's likely that if Casheuronet had completed proportionate checks, the information it would've gathered would've suggested Ms W could've afforded to repay these loans and the top up. Whilst I appreciate this may not have been Ms W's actual position, I have to think about what proportionate checks would've uncovered. And, given the early position in the loan chain and the amount of the loan relative to her declared income, I don't think it would've been proportionate at this stage for Casheuronet to have gone to the level of verifying her information.

- the additional borrowing on loan three and loan four

For the reasons I've explained above, I think proportionate checks for these loans would've involved Casheuronet finding out about any other short term lending Ms W had outstanding, in addition to finding out about her regular income and expenditure.

Again I think these checks would've most likely indicated to Casheuronet that Ms W had enough disposable income left to afford to repay her lending. I would like to stress that I appreciate this wasn't her actual position, but as I don't think proportionate checks at this stage of the lending would've revealed this, I'm not upholding her complaint about these advances.

For the sake of completeness, I should also explain that I've come to this conclusion by trying to gain a picture of Ms W's regular income, expenditure and outstanding financial commitments (both regular and short term). I haven't relied on her later expenditure declarations as again I think they were made a substantial period of time later. And so in the circumstances I don't think it's reasonable to rely on them as being indicative of what Ms W declared approximately two years later.

- the additional borrowing on loan four and subsequent top up on loan four

I've already explained why I don't think Casheuronet's checks for these advances we're reasonable and proportionate. By this stage, I think that Casheuronet not only needed to gather information about Ms W's income and expenditure, it also needed to take steps to verify some of the information being provided in order to have gained a broader understanding of Ms W's financial position.

Had Casheuronet gained fuller understanding of Ms W's circumstances I think it's more likely than not that Casheuronet would've seen Ms W didn't have enough disposable income to be able to sustainably afford these advances. Ms W was living in her £1,700 overdraft fairly consistently, paying overdraft fees, and was making regular payments to a number of other high cost credit providers.

I can also see in the month before taking loan four (and at various subsequent points during the period she was borrowing from Casheuronet) Ms W makes attempts to clear some of her credit commitments. From her testimony it seems she does this by either borrowing from friends and family, (including where friends and family took out loans on her behalf) or through high cost guarantor loans. But from what I've seen, these attempts don't seem to substantially alter her position. Prior to repaying loan three Ms W receives £2,000 (which may well have been used in part to repay loan three shortly after). But she's then quickly back into her overdraft and returns to Casheuronet to borrow loan four within a month. And she's then given two additional advances on loan four.

I think had Casheuronet completed proportionate checks before agreeing the additional borrowing and top up on loan four, it may well have seen what Ms W was trying to achieve. And I think this would've additionally alerted Casheuronet to the possibility that Ms W couldn't have substantially afforded these advances. And despite there being a short one month gap between her repaying her previous loan and returning for loan four, this wasn't because she'd managed her finances and outgoings sustainably in the intervening period. It was because she'd taken on additional borrowing to try and change her circumstances, but had limited success and needed to return to Casheuronet for additional borrowing.

So for the reasons I've explained above, I plan to uphold Ms W's complaint in relation to her additional borrowing and top up on loan four.

I haven't recreated individual, proportionate affordability checks for loans 5 to 17 (including any top ups or additional advances) because I don't think that it is necessary to do so. I'll explain why this is the case in the next section.

Thinking about the short-term purpose of the loans provided, did the overall pattern of lending increase Ms W's indebtedness in a way that was unsustainable or harmful in some other way?

In addition to assessing the affordability of each *individual* loan provided to Ms W by Casheuronet, I also think it's fair and reasonable to look at the *overall pattern* of lending (including the number and frequency of loans and the period of time that Ms W was borrowing from Casheuronet). Bearing in mind the short-term purpose of this type of credit and the relevant rules, guidance and good industry practice at the time (as summarised in the earlier part of this decision) it seems to me that there may come a point at which a responsible lender would reasonably question whether continuing to offer further short-term loans to a customer who appears to be persistently reliant upon them, (especially when that customer is also accessing other forms of high cost credit), was unsustainable or otherwise harmful.

I've explained above why I don't think Casheuronet completed reasonable and proportionate checks on any of the loans it gave Ms W. And I've explained why, based on all the information I have available, if Casheuronet had completed reasonable and proportionate checks it would've most likely seen that the advances on loan four weren't individually affordable.

I think by loan five there was a clear mismatch between the intended purpose of this type of credit and the way in which Casheuronet has allowed it to be used. Whilst I think there were some earlier warning signs, it's at this stage where I think a clear pattern had emerged so that a responsible lender would've considered that it was not appropriate to continue to lend.

I say this because, by this stage:

- Casheuronet had been lending to Ms W for over a year with limited gaps in lending by the time she applied for loan five. So it's clear she wasn't mitigating a short term gap in her finances, but was experiencing a larger on-going problem for which this type of credit was not the right solution.
- It had allowed Ms W to increase her borrowing with additional borrowing/ top ups on several occasions, leading to a clear upwards trend in the amounts being borrowed. And this pattern of taking an initial amount and then quickly going back for further lending was beginning to increase in frequency.
- The loan amounts (although there was some initial slight fluctuation) were on a clear upwards pattern.

Ms W also clearly had problems repaying loan four including the two additional advances. At the time of taking her first additional borrowing on loan four, the loan was restructured to be repaid in two instalments with the final by 27 December 2012. This effectively added a roll-over into the borrowing with interest only being paid in month one, then the full capital plus interest being repaid in month two. This remained the repayment structure when Casheuronet agreed the additional top up on loan four in November 2012.

However, Ms W wasn't able to repay this borrowing when it fell due. She extended this loan at the end of January 2013 for a further month and did the same again in February 2013. It seems she was only able to eventually repay this loan on 27 March 2013. This was the same day she took out a £1,000 instalment loan with Casheuronet. So it seems she finally cleared loan four by consolidating it into loan five. And what started as a single payment payday loan ended up becoming a multi-payment loan which took her six months to repay. And from what I can see it seems she was only really able to repay this borrowing by taking out additional borrowing with Casheuronet.

I have noted that loan five was repaid early. It was an instalment loan due to be repaid over 11 months, but Ms W repaid it early around 6-7 weeks after she took it out. However, this is again following Ms W receiving large funds which she has said was a loan that a friend had taken on her behalf and which she then made repayments towards each month. It seems this was another attempt to stabilise her finances which was unsuccessful. And although Ms W didn't immediately borrow again from Casheuronet, she did need to shortly after, around two and a half months later. This starts to build an additional pattern of Ms W attempting to remove herself from a cycle of debt, but being unable to maintain it for any significant period of time. This again reinforces my view that by loan five Casheuronet should've recognised that she wasn't able to repay the borrowing in a sustainable way.

Looking beyond loan five, I think the clear mismatch between the intended purpose of this type of credit and the way in which Casheuronet has allowed it to be used. This type of credit is meant to be "a short-term solution to temporary cash flow problems" as set out in the ILG, which applied at this time. (This section of the ILG is also specifically cited in CONC, which later became the relevant regulation). This is also supported by Casheuronet itself through its email correspondence with Ms W where it states "Payday advances should be used for short-term financial needs only, not as a long-term financial solution." Whilst I appreciate some of the advances weren't strictly payday advances, a number of them were, or at least initially began as payday advances.

But Casheuronet persistently and repeatedly gave Ms W loans and top ups, with no substantial gaps in lending, over an extended period of time. This period was almost four years in total and more than two and a half years beyond where I think it should've identified a clear pattern of reliance and stopped lending to Ms W.

In this period Casheuronet agreed 25 further advances and a flex credit loan to Ms W (which in itself had another 30 individual drawn downs). Looking at the lending during this period it's clear a pattern

of consistent lending had continued. Ms W was regularly taking loans and quickly realising she needed additional funds. In several instances she took another three top ups in quick succession after the initial loan.

Looking in particular at the flex credit loan, I'd also like to draw Casheuronet's attention to the flex credit agreement (detailed earlier in this decision) and in particular 'Section 1 – Is a Flex Credit Account suitable for me?' This states that this type of lending 'is not suitable for long term or regular borrowing.' I'd suggest that allowing 30 individual drawdowns (including taking additional borrowing shortly after a previous drawdown) is well in excess of 'regular borrowing.' In one example, over a period of 12 days Ms W took six drawdowns totalling £750 in lending.

So given all of Casheuronet's obligations (which I've summarised above), including the short-term purpose of this kind of high-cost credit and what I think is fair and reasonable (based on the circumstances I've described above), I think that Casheuronet acted unfairly in providing Ms W with loans 5 to 17 (including top ups and additional borrowing).

Did Ms W lose out as a result of Casheuronet's shortcomings in relation to loans 5 to 17 (including any top ups or additional borrowing)?

As I've explained, I haven't recreated proportionate checks for the lending from loan five onwards. But I don't think I need to because I think that Ms W suffered adverse consequences as a result of Casheuronet unfairly giving her loans five onwards.

I say this because these loans had the effect of unfairly prolonging Ms W's indebtedness to Casheuronet by allowing her to take high cost credit – which the rules and guidance made clear was only intended for short-term use – over an extended period of time. Casheuronet contributed to her overall indebtedness and the accessibility of this credit (together with other high cost credit) allowed Ms W to remain in an unsustainable cycle of debt for several years.

I also think the consistent lending with Casheuronet (together with other high cost credit providers) would've had and continue to have an additional impact on Ms W's ability to access other mainstream credit. This is because I think the continuous presence of this credit (together with other high cost credit providers) would've had an adverse effect on her credit file. The greater the presence of short-term loans on Ms W's credit file, the less likely she would be able to improve her finances and regain access to mainstream credit.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I'm intending to say that Ms W has lost out because Casheuronet unfairly gave her loans 5 to 17 (including additional borrowing and top ups) which it ought to have realised were unsustainable and harmful for her. And this means I'm intending to tell Casheuronet that it needs to put things right in the way I've described below.

I went on to explain the redress I intended to award which I will detail later in this decision.

Ms W's response to my provisional decision

Ms W agreed with my provisional decision and provided no further information for me to consider.

Casheuronets response to my provisional decision

Casheuronet disagreed with my provisional decision. It felt the checks completed at the time of agreeing all loans were adequate and proportionate and in line with FCA and OFT guidelines at the time of lending.

In relation to Ms W's flex credit loan Casheuronet highlighted that Ms W didn't incur any late

fees on this loan and that there were 'a few occasions' where Ms W repaid more than the amount owed on the contractual due dates. By this I think Casheuronet is arguing Ms W repaid more than the repayment amount due at the time. It feels that a consumer experiencing financial difficulties or a dependency wouldn't be able to make the repayments when they're due or make increased payments.

It has also argued from the top up on loan 10 onwards Casheuronet preformed enhanced checks before lending (which it's said it included information about as part of its initial response to this complaint to the ombudsman service.)

Casheuronet also provided a copy of the lending process it follows when deciding whether or not to lend to a consumer. This included:

- Details of the information collected on its online application from pre 2015 and post 2015
- Online screenshots of the screen for income and employment. This was for the following brands and time periods:
 - Quick Quid pre March 2015
 - Quick Quid flex credit pre March 2015
 - Pounds to Pocket pre March 2015
 - Quick Quid March 2015 to April 2016
 - Quick Quid April 2016 to current
 - Pounds to Pocket March 2015 to current
- Details of how Casheuronet has said it validated income and expenses post March 2015
- A copy of its post March 2015 lending criteria flow chart
- Details of its lending criteria pre and post 2015 sub-divided into creditworthiness and affordability
- Information about the application process for loans with final balloon payments from June 2015 onwards

Casheuronet has also argued that ombudsman service adjudicators appear to only focus on one method of what it calls 'enhanced checks'. This is using the consumer's bank statements to verify the consumer's circumstances. It highlights that looking at FCA regulation there is no prescribed way a lender needs to assess a consumer's financial circumstances before agreeing to lend.

my findings

I've considered all the available evidence and arguments provided from the outset, including the responses to my provisional decision, in order to decide what's fair and reasonable in the circumstances of this complaint.

In reaching my decision, I've taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. I've set out all of this in appendix 2.

Taking into account the relevant rules, guidance, good industry practice and law, I think that the three overarching questions that I set out in my provisional decision remain the ones I need to consider in deciding what's fair and reasonable in the circumstances of this complaint:

- Did Casheuronet, each time it lent, complete reasonable and proportionate checks to satisfy itself that Ms W would be able to repay the loan in a sustainable way?
 - If not, would those checks have shown that Ms W would've been able to do so?
- Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Ms W's indebtedness in a way that was unsustainable or otherwise harmful?
- Did Casheuronet act unfairly or unreasonably in some other way?

And having done so, I've not been persuaded to depart from the conclusions reached in my provisional decision. So my decision is to uphold this complaint in relation to the additional borrowing on loans 4 (October 31 2012) to 17 (including all top ups and additional borrowing). However, I would like to address the points made in response to my provisional decision by Casheuronet.

flex credit agreement

I don't agree with Casheuronet's arguments in relation to the flex credit account – just because Ms W was able to make payments when (or before) they fell due, this doesn't mean she was able to do so sustainably.

Ms W took out her flex credit loan within days of repaying her previous loan with Casheuronet. By the time of this loan she had been borrowing from Casheuronet on a regular basis for around a year and a half and had 12 advances. During the life of the flex credit loan (which was almost a year) Ms W had some 30 drawdowns. As I've explained in my provisional decision, it think it should've been clear to Casheuronet, well before the flex credit loan, that Ms W was building up a pattern of dependency on the type of credit it was providing. And that the accessibility of this credit (together with other high cost credit) allowed Ms W to remain in an unsustainable cycle of debt for several years, limiting her opportunities to access mainstream credit. So I think a responsible lender would've considered that it was not appropriate to continue to lend from (and including) loan 5 onwards which includes the flex credit agreement.

loan 10 onwards

Casheuronet has highlighted the further (or 'enhanced checks') it completed from the top up on loan 10 onwards. This included checking the income and expenditure declared against credit reports and office of national statistics (ONS) data. And if this highlighted concerns, it would check bank statements/ payslips.

Firstly, looking at the schedule of lending, loan 10 didn't have an additional top up. And the types of enhanced checks its described seem to be consistent with the checks it previously said it completed in relation to loans 11 to 15.

Even if I accept these checks were completed from loan 10 onwards, I still don't think these checks were proportionate. Again I think by loan 10 this was well past the point of being reasonable to rely on statistical benchmarks to gauge the accuracy of the information without independently verifying the information based on Ms W's personal circumstances. And it's important to highlight although credit search results provide some details of expenditure, it

won't give a full picture of an individual's expenditure. And comparing this to other statistical data to create creditworthiness scores again doesn't verify Ms W's declaration against her full circumstances.

I have noted that Casheuronet has said part of its process, would be to check the information declared further against bank statements and payslips. However, I've seen nothing to suggest that Casheuronet took these steps before agreeing any of loans 10 onwards to Ms W.

proportionate checks (pre March 2015)

Casheuronet has argued it completed proportionate checks throughout its lending to Ms W. Therefore although I'm still not upholding loans one to four (excluding additional borrowing and the top up on loan four) I will still address the points Casheuronet has made in relation to these loans, together with the other lending it gave Ms W.

In its response to my provisional decision Casheuronet has explained that pre March 2015 it gathered details of employment and income for every application. It has said it also completed a credit search and other third party checks for example a fraud related check. And Casheuronet also provided online screenshots to show the layout of how these questions were asked (across Quick Quid, Pounds to Pocket and its flex credit product). However, this largely gives the same information about the types of checks Casheuronet has previously said it completed.

This is with one exception to the Pounds to Pocket application (which Ms W made in March 2013). Here I can see a request for total monthly household income in situations where the consumer indicated they were married or living together. However, I've not seen anything suggest Ms W declared any other household income in addition to her own income.

Therefore the response Casheuronet has provided in relation to this period of lending to Ms W doesn't give further information about what its checks revealed about Ms W's circumstances at the time of lending. In particular (and as I explained in my provisional decision) I note that whilst Casheuronet has repeatedly said it completed credit searches, it isn't able to provide further consumer specific information about what those searches revealed. So I've not seen anything here to suggest Casheuronet took additional steps or that it gathered (and is able to provide) further information specific to Ms W about her circumstances at the time.

Therefore for the reasons I've explained in my provisional decision, I don't think Casheuronet completed proportionate checks before agreeing any of the pre March 2015 loans it agreed. And I think that had it done so, it would've seen that the additional borrowing and top up on loan four were unaffordable for Ms W.

proportionate checks (March 2015 onwards)

I've reviewed two screenshots provided for March 2015 onwards (QuickQuid March 2015 to April 2016 and Pounds to Pocket March 2015 onwards.) Whilst it's helpful to visually see the application process Ms W would've followed, they also show that Casheuronet gathered the same information as it previously explained in relation to Ms W's expenditure. So for the reasons set out in my provisional decision and in this decision, I also don't think Casheuronet completed proportionate checks for any of the loans agreed from March 2015 onwards.

I can see Casheuronet has provided a further screenshot for Quick Quid applications from April 2016 onwards. However, as Ms W's final loan was agreed in December 2015 this isn't relevant to this complaint.

income and expenses validation post March 2015 and post March 2015 lending criteria flow chart

The checks Casheuronet has described here appear to be the same as those described above when addressing loan 10 and onwards. It said it asked income and expenditure information and verified this against information from the consumer's credit reports and ONS data. And it said it would have manually verified this information against bank statements and payslips if needed. I've therefore explained above and in my provisional decision why I don't think these checks were proportionate before agreeing any of the post March 2015 lending.

lending criteria pre and post 2015 (creditworthiness and affordability)

Casheuronet has provided details of the type of information it gathered from a consumers credit search results. However, I believe I've addressed this above when discussing the further checks Casheuronet has said it completed from loan 10 onwards. So I don't intend to comment on this further.

Casheuronet has also provided further information about its Quick Quid affordability checks when agreeing multi payment loans (with a final balloon payment.) This is in relation to loans agreed from June 2015 onwards (loans 15 to 17). It has explained that the information provided to the consumer would've highlighted that they needed to save in the earlier months to afford the final balloon payment (where their declared monthly disposable income is less than the final repayment amount.) Whilst some of the loans taken from June 2015 have more than one repayment and a final balloon payment, the circumstances Casheuronet has described aren't applicable to any of these loans. So I don't think this impacts on my findings.

Turning to the individual circumstances of this complaint, I agree (as Casheuronet has said) that it was not specifically required to look at bank statements. As I've set out in appendix two, Section 4.1 of the ILG says:

The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors

Section 4.12 ILG is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

As I've also explained in appendix 2, the ILG has a great deal of alignment with CONC 5 and CONC 6. And CONC also doesn't include a list of prescriptive checks a lender *must* complete before agreeing a given loan.

However both regulators were clear on the need to complete proportionate checks before agreeing to lend. And for the reasons I've explained, above and in my provisional decision, I don't think it completed proportionate checks before agreeing any of the lending.

To summarise, I think that had Casheuronet completed proportionate checks it would've still agreed to lend loans 1 to 4. However, I think proportionate checks before agreeing the additional borrowing and top up on loan four were likely to have revealed that Ms W couldn't have afforded these advances. And considering the short-term purpose of the loans provided, I think overall pattern established by loan 5 increased Ms W's indebtedness in a way that was unsustainable and harmful (full details of my reasoning is outlined in my provisional decision which forms part of this decision). So I think that Casheuronet acted unfairly in providing Ms W with loans 5 to 17 (including top ups and additional borrowing).

fair compensation (as detailed in my provisional decision)

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably possible – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Casheuronet putting Ms W in the position she'd now be in if she hadn't been given the loans I'm upholding.

But when it comes to complaints about irresponsible lending this isn't straightforward. Ms W was given the loans in question and she's used the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Ms W back in the exact position she would be in if she hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Casheuronet to put things right in the following way.

interest and charges on the loans Ms W shouldn't have been given

As I've explained throughout this decision, Casheuronet continually lending to Ms W over a sustained and consistent period of time left her in a position where she wasn't able to properly clear her debt. This was because Ms W had to borrow additional funds to pay the interest and charges on her Casheuronet loans together with other debts. And then at times she had to borrow again from Casheuronet to either repay others or cover the hole in her finances and so she incurred more interest and charges when she did this. So to start with, I think that Casheuronet should refund the interest and charges Ms W paid on the additional borrowing on loan four (31 October 2012) up to and including loan 17 (and including all top ups and additional borrowing on these loans).

It's also clear that Ms W did lose the use of the funds she used to pay the interest and charges. And as Ms W lost the use of these funds, I think that she should be compensated for this. We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. I see no

reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So Casheuronet should pay Ms W 8% per year simple interest on the interest and charges she paid from the date they were paid to the date it settles Ms W's complaint.

Ms W's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given.

So to start with I think that Casheuronet should remove any adverse information recorded on Ms W's credit file as a result of the interest and charges on the additional borrowing and top up on loan four, as this lending was clearly unaffordable and Ms W shouldn't have had to pay those interest and charges.

But I'm upholding Ms W's complaint about loan five onwards because I think the overall pattern of lending increased Ms W's indebtedness in a way that was unsustainable or harmful in some other way. I explained that this lending caused her to pay a high amount of interest and charges. And I've already explained how Ms W should be compensated for this.

I also explained that the amount of time Ms W spent borrowing from Casheuronet (together with other high cost credit provider) is likely to have had implications on Ms W's ability to access mainstream credit. The greater period of short-term loans (and other high cost credit) on Ms W's credit file the less likely Ms W was able to rehabilitate her finances and regain access to mainstream credit. And I think my direction in relation to Ms W's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Ms W's credit history and creditworthiness so that a lender can make an informed decision on whether lend to her, I think that these loans in themselves are adverse information on Ms W's credit file. And could impact her ability going forward to access mainstream credit. In these circumstances, I think that it is fair and reasonable for Casheuronet to remove all reference to loans 5-17 (including on top ups and additional borrowing) from Ms W's credit file, as this in itself is adverse information.

All of this means that I think it would be fair and reasonable in all the circumstances of Ms W's complaint for Casheuronet to put things right in the following way:

- refund all the interest, fees and charges paid on the additional borrowing on loan four (31 October 2012) up to and including loan 17 (18 December 2015) and including all top ups and additional borrowing on these loans and;
- add interest at 8% per year simple on the above interest and charges from the date they were paid by Ms W to the date of settlement†;
- remove any adverse information recorded on Ms W's credit file as a result of the additional borrowing on loan four (31 October 2012) and the subsequent top up on loan four.

- remove all reference to loans 5 to 17 (and including all top ups and additional borrowing on these loans) from Ms W's credit file.

† HM Revenue & Customs requires Casheuronet to take off tax from this interest. Casheuronet must give Ms W a certificate showing how much tax it's taken off if she asks for one.

my final decision

For the reasons explained, I uphold Ms W's complaint in part against Casheuronet UK LLC. And I direct it to put things right for consumer in the way I've described above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms W to accept or reject my decision before 25 May 2019.

Claire Lisle
ombudsman

appendix one – summary of lending

Loan number	Amount	Date	Type	Final repayment date
Loan 1	£300	25 February 2012	One repayment of £356.25	24 April 2012 (rolled over from March 2012)
Loan 2	£200	3 May 2012	Two repayments of £50 and £250	
Loan 2 top up	£100 (£300 total)	11 May 2012	Increased loan 2 repayments to £75 and £300	28 June 2012
Loan 3	£150	2 August 2012	One repayment £187.50	(due end of August 2012)
Loan 3 – additional borrowing	£200 (£350 total)	8 August 2012	Two payments (£87.50 and £437.50)	28 September 2012
Loan 4	£300	27 October 2012	One repayment £375	(due end of November 2012)
Loan 4 – additional borrowing	£100 (£400 total)	31 October 2012	Two repayments £100 and £500 Due 29 Nov and 27 Dec	The repayment dates for these advances was first instalment on 28 November 2012 and second on 27 December. However, it wasn't repaid until 27 March 2013.
Loan 4 – subsequent top up	£100 (£500 total)	17 November 2012	Two repayments £125 and £625 (maintains repayment date)	
Loan 5 (Pounds to Pocket)	£1,000	27 March 2013	Eleven repayments of £168.67	(due 28 February 2014) Repaid 11 May 2013
Loan 6	£250	2 August 2013	One repayment of £312.50	28 August 2013
Loan 7	£100	7 September 2013	Three repayments of £21.25, £21.25 and £121.25	(due 25 November 2013)
Loan 7 top up 1	£150 (£250)	14 September 2013	Amended to a single payment of £303.12	due 25 September 2013 (term decreased at time of the top up)
Loan 8 Flex credit	£1,000 limit Multiple drawdowns – around 30 during the course of this agreement	30 September 2013	Initially set up with indicative repayment structure of 10 months (based on full limit drawdown and monthly repayments thereafter) Highest repayment based on this was £313.73	closed on 16 September 2014

Loan 9	£100	19 November 2014	One repayment of £133.31	24 December 2014
Loan 9 top up 1	£100 (£200 total)	5 December 2014	One repayment of £251.39	24 December 2014
Loan 9 top up 2	£100 (£300 total)	6 December 2014	One repayment of £368.52	24 December 2014
Loan 9 top up 3	£50 (£350 total)	12 December 2014	One repayment of £418.52 (slightly lower amount quoted as due but this is the figure paid)	24 December 2014
Loan 10	£50	20 January 2015	One repayment of £64.40	21 January 2015 (due on 25 February 2015)
Loan 11	£100	3 February 2015	Two repayments of £17.60 and £122.40	25 March 2015
Loan 11 top up 1	£100 (£200 total)	10 February 2015	Two repayments of £29.60 and £244.80	25 March 2015
Loan 11 top up 2	£75 (£275 total)	12 February 2015	Two repayments of £31.80 and £336.60	25 March 2015
Loan 11 top up 3	£50 (£325 total)	13 February 2015	Two repayments of £33.40 and £397.80	3 March 2015 (due 25 March 2015)
Loan 12	£100	18 March 2015	One repayment of £133.60	26 March 2015 (due 29 April 2015)
Loan 13	£150	2 April 2015	One repayment of £179.16	29 April 2015
Loan 13 top up 1	£100 (£250 total)	8 April 2015	One repayment of £294.28	29 April 2015
Loan 13 top up 2	£50 (£300 total)	14 April 2015	One repayment of £344.28	29 April 2015
Loan 13 top up 3	£75 (£375 total)	16 April 2015	One repayment of £413.88	29 April 2015
Loan 14	£150	14 May 2015	Two repayments of £14.04 and £180.24	24 June 2015
Loan 14 top up 1	£75 (£225 total)	15 May 2015	Two repayments of £20.52 and £270.36	repaid 27 May 2015 (due 24 June 2015)
Loan 15	£150	3 June 2015	Two repayments of £25.20 and £192	29 July 2015
Loan 15 top up 1	£75 (£225 total)	10 June 2015	Two repayments of £33.60 and £288	29 July 2015
Loan 15 top up 2	£50 (£275 total)	8 July 2015	One repayment of £346.40	29 July 2015
Loan 15 top up 3	£50 (£325 total)	9 July 2015	One repayment of £404.40	repaid 13 August 2015 (due 29 July 2015)
Loan 16	£100	16 September 2015	Three repayments of £10.64, £21.28 and £121.28	repaid 20 October 2015 (due 25 November 2015)
Loan 17	£150	18 December 2015	Three repayments of £48, £33.60 and £192	repaid on 22 January 2016 (due 30 March 2016)

appendix two - the legal and regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

Casheuronet gave Ms W her first 7 loans and flex credit facility in the period up to the end of March 2014. This included Ms W's longer instalment loan of 11 repayments and an additional 5 top ups on her loans. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

- (1) *In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
- (a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
 - (b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
 - (c) practices and procedures that the applicant proposes to implement in connection with any such business;*
 - (d) evidence of the kind mentioned in subsection (2A)*
- (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
- (a) committed any offence involving fraud or other dishonesty or violence;*
 - (b) contravened any provision made by or under—*
 - (i) this Act;*
 - (ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
 - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
 - (c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
 - (d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*
 - (e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) [my emphasis].*

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the **OFT to involve irresponsible lending** [my emphasis].*

In January 2008 the OFT released 'Consumer credit licensing – General guidance for licensees and applicants on fitness and requirements.' This guidance explained that in the OFT's view irresponsible lending (contrary to the provisions of section 25(2B) of the Consumer Credit Act 1974) was:

... failing to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so.

In August 2008 the OFT released a scoping paper on irresponsible lending. The OFT explained in this paper that its objective was 'to provide a clear OFT position on the test for irresponsible lending under section 25 of the CCA.' It went on to explain that this was expected to result in 'the publication of guidance setting out the basic standards expected of licensees in relation to irresponsible lending practises.'

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Ms W's case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- explain the key features of the credit agreement to enable the borrower to make an informed choice*

- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*
- *treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, 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 and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe “undue difficulty” (as referred to in Section 4.3 – see above) and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
 - *the borrower's financial situation at the time the credit is sought;*
 - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
 - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of “specific irresponsible lending practices” relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action...when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a "deceptive and/or unfair practice" where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

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.

Section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an "Assessment of creditworthiness" was set out in section 55B of the Consumer Credit Act.

It's important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said

Assessment of creditworthiness

- 55B** (1) *Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*
- (2) *Before significantly increasing—*
- (a) *the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or*
- (b) *a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement,*
- the creditor must undertake an assessment of the debtor's creditworthiness.*
- (3) *A creditworthiness assessment must be based on sufficient information obtained from—*
- (a) *the debtor, where appropriate, and*
- (b) *a credit reference agency, where necessary.*
- (4) *For the purposes of this section an agreement is an excluded agreement if it is—*
- (a) *an agreement secured on land, or*
- (b) *an agreement under which a person takes an article in pawn."*

From 1 April 2014 onwards this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

regulation by the Financial Conduct Authority (from 1 April 2014)

Casheuronet gave Ms W a further 9 loans and 13 top ups after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. In addition the latter half of the flex credit agreement continued whilst Casheuronet was regulated by the FCA.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to providers of consumer credit like Casheuronet. CONC also replaced the requirements set out in Section 55B. CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. It said a firm must consider:

- (a) *the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

[Note: paragraph 4.1 of ILG]

- (b) *the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

[Note: paragraph 4.3 of ILG]

CONC also included guidance about 'proportionality of assessments'. CONC 5.2.4G(2) said:

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.

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contained further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) said:

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.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then said:

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.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) had a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and stated:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R said that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

[Note: paragraph 4.31 of ILG]

CONC 6.7 sets out a firm's obligations in relation to its post contract business practices. CONC 6.7.21G, CONC 6.7.22G and CONC 6.7.23R contained specific obligations for high-cost short-term credit providers like Casheuronet.

CONC 6.7.21G says:

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

[Note: paragraph 6.25 of ILG]

CONC 6.7.22G says:

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

[Note: paragraph 6.25 (box) of ILG]

Section 6.25 of the ILG is set out on earlier in this decision and is concerned with what the OFT referred to as 'deceptive and/or unfair practices'.

CONC 6.7.23R (which applied from 1 July 2014) says:

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

CONC 6.7.17R defines refinancing and says:

(1) In CONC 6.7.18 R to CONC 6.7.23 R "refinance" means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:

- (a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;*
- (b) exercising a contractual power contained in an existing regulated credit agreement; or*
- (c) other means, for example, granting an indulgence or waiver to the customer.*

- (2) *“Exercise forbearance” means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:*
- (a) there is no charge in connection with the refinancing; or*
 - (b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.*
- (3) *The term “refinance” within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.*

Section 140 of the Consumer Credit Act 1974

All of Ms W's loans were given to her after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

- (1) *The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-*
- (a) any of the terms of the agreement or of any related agreement;*
 - (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
 - (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*
- (2) *In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*
- (3) *For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*
- (4) *A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*
- (5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) *An order under this section in connection with a credit agreement may do one or more of the following—*

- (a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*
- (b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*
- (c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*
- (d) direct the return to a surety of any property provided by him for the purposes of a security;*
- (e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*
- (f) alter the terms of the agreement or of any related agreement;*
- (g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

the law

I've also taken account of the Consumer Credit Act (including the provisions I haven't set out above), and other relevant legislation, including the law relating to negligence, misrepresentation and contract; as well as the law relating to causation and remoteness.

other relevant publications and good industry practice

The ILG and CONC set out the regulatory framework that regulated/authorised consumer credit providers have to adhere to. But they represent a minimum standard for firms. And as I've explained, I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice when reaching a fair and reasonable decision.

the OFT's Payday Lending Compliance Review Final Report

The OFT published its "Payday Lending Compliance Review Final Report" in March 2013. The purpose of the review was "...to establish the extent to which payday lenders [were] complying with the Consumer Credit Act, other legislation and [were] meeting the standards set out in the ILG."

The review sought to highlight examples of what the OFT considered poor practice and evidence of non-compliance with the relevant law and failure to meet the minimum standards expected. The analysis was also put together to help the FCA's work on payday lending ahead of it assuming responsibility for regulating the sector from April 2014.

The report began with an overview section setting out the OFT's concerns. Page two of the report says that the OFT:

...is particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can't repay are encouraged to extend them, exacerbating their financial difficulties This is causing real misery and hardship for a significant number of payday users

Page three of the report says:

Our evidence paints a concerning picture of the payday lending market. It appears that irresponsible lending is not a problem confined to a few rogue traders, but it has its roots in the way competition works in this market. The evidence suggests that many consumers are in a weak bargaining position, and that firms compete on speed of approval rather than price

It then goes on to say:

Additionally, firms describe and market their product to consumers as one-off short term loans (costing on average £25 per £100 borrowed for 30 days), but in practice around half the revenue comes from loans which last longer and cost a lot more because they are rolled over or refinanced. Lenders do not need to compete hard for this source of revenue because by this time they have a captive market. This, and the misuse of continuous payment authorities to reclaim monies owed, may distort incentives for lenders, encouraging them to make loans to people who cannot afford to repay them first time.

the Consumer Finance Association Lending Code for Small Cash Advances

The principal trade association representing the interests of short-term lending businesses operating in the United Kingdom is the Consumer Finance Association ("CFA"). The CFA published its Lending Code for Small Cash Advances ("the code") in July 2012. I consider the code to be indicative of the standards of good industry practice expected of lenders at the time and I note that as stated on its website Casheuronet was a founding member of the CFA.

Section 1 of the code sets out its purpose. Section 1b says:

Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online

Section 1c says:

This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months). The loan is not designed for longer term borrowing, but to improve short term personal cash flow

And Section 1d says:

The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in the Code, and accordingly protects and benefit consumers

Section 3 sets out the general obligations expected of lenders. Amongst other things Section 3 says members shall:

b) trade honestly, responsibly and treat customers with respect.

l) ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.

Section 4 of the code sets out a lender's specific lending obligations. Part (a) of this section is concerned with advertising and marketing and amongst other things, it says:

iii) members shall ensure all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.

Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining....:

- *that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.*

Ms W's Flex credit consumer credit agreement

I have looked at Ms W's Flex credit agreement in detail. This agreement explains how and when credit will be provided, saying:

Following receipt of your request to drawdown credit, subject to our approval, we will deposit in your designated bank account ("Your Bank Account"), the amount you wish to borrow up to the credit limit, following execution of this Agreement. You may request further drawdowns up to your credit limit and upon approval we will likewise transfer such funds to Your Bank Account. You may request additional funds at anytime. Any request for additional funds is subject to our review of your account and is subject to approval in accordance with our responsible lending criteria.

Ms W's Flex credit consumer credit agreement contains an explanation sheet which says:

Section 1 - Is a Flex Credit Account suitable for me?

Credit of this type is designed to provide you with the option to drawdown credit up to your credit limit and repay it over a maximum of 10 months (as determined by our minimum repayment requirements).

....You may request additional funds at anytime, Any request for additional funds is subject to our review of your account and is subject to approval in accordance with our responsible lending criteria.

Please note, 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.