complaint

Mr B complains that WDFC UK Limited (trading as Wonga.com) gave him payday loans that he couldn't afford to repay.

background

Mr B first borrowed from Wonga in April 2011. His final loan was taken in May 2016. During this period Mr B borrowed on a total of 79 occasions from Wonga – many of these loans were "topped-up" increasing the amount borrowed, and one was rolled over as Mr B was unable to repay it on the due date. Mr B has repaid the remainder of his loans on time, with two other exceptions.

Mr B took a loan from Wonga in June 2014. It seems he let Wonga know that he was having difficulties repaying this loan. In line with its obligations to treat him sympathetically when facing financial difficulties, Wonga froze the interest on this loan. And then the loan was included in an agreement with the Financial Conduct Authority (FCA) which resulted in Wonga writing off the outstanding balance.

Since that loan was written off, Wonga has continued to lend to Mr B – he has taken a further 27 loans since then. Mr B has been unable to repay his final loan, taken in May 2016. An outstanding balance remains on this loan.

Wonga wrote to Mr B, in response to his original complaint, to explain that it now considers it shouldn't have agreed to give him 27 of the loans he took – all of them before June 2014. But Wonga didn't agree that it had done anything wrong in relation to the other loans it gave to Mr B. So he has brought his complaint to this Service.

Mr B's complaint has been assessed by one of our adjudicators. He thought that Wonga shouldn't have lent to Mr B at all, apart from the first loan he took in April 2011. So he recommended that Wonga should pay Mr B some compensation. Wonga disagrees and has asked, as it is perfectly entitled to, that the complaint be decided by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Wonga was required to lend responsibly. It needed to make checks to see whether Mr B could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to the amount Mr B was borrowing, but there was no set list of checks that lenders had to perform.

Wonga has told us about the checks that it normally performs. It has explained a number of criteria that, if met, would result in a loan application being declined. And it has also shown us some screens that it has recently added to gather information about a consumer's income and normal monthly expenditure. Wonga has also explained that it improved the checks that it normally did after its agreement with the FCA in 2014.

Wonga hasn't been able to show us all the checks that it actually performed on Mr B's applications, or more importantly the results that most of these checks generated. I can see that it recorded details of Mr B's income and employment status, but not any other information. So I can't be sure that Wonga performed proportionate checks when assessing each of Mr B's applications. I've therefore gone on to consider what I think Wonga would have seen if it had undertaken these checks at the time.

I've thought about Mr B's history of lending with Wonga. And I've looked at his circumstances at the time – both in terms of how he was managing his finances and his normal monthly income and expenditure. This was information that would have been available to Wonga through looking at Mr B's credit file, and by asking him about his normal monthly expenditure – or looking at his bank statements as I have done.

When Mr B asked for his first loan from Wonga, it wasn't for a particularly large amount given his monthly income. And as this was his first loan, Wonga didn't have any lending history with him to be concerned about. As I've said earlier, I don't know to what degree Wonga checked Mr B's credit file – but I haven't seen anything to make me think there were any details on this that should have given the lender any undue cause for concern. So, considering the size of this loan, I don't think that Wonga was wrong to lend to Mr B at this time. I can't be sure the checks it performed were proportionate, but I don't think that proportionate checks would have led Wonga to make a different lending decision.

But on the day this loan was repaid Mr B asked for a new loan. The amount he asked to borrow was twice as much as his first loan, and he asked to borrow for a much longer period. So the amount Mr B needed to repay was more than a third of his normal monthly income. I think that this increase should have caused Wonga some concerns, and so the lender might have wanted to review Mr B's ability to repay this loan more carefully than for his first. So I can't safely say that the checks Wonga performed here were proportionate.

Having looked at Mr B's circumstances at that time I can see he had significant balances on two credit cards – that he would have needed to service each month, even if he was only making minimum payments. And I can see that he was already borrowing from other payday lenders at that time. So looking at Mr B's bank statements I can see that he wasn't able to repay this loan in a sustainable manner – taking into account his other credit commitments and essential expenditure. And his financial situation appears to have been made even worse by what looks to be a significant level of spending on gambling transactions.

Mr B continued to regularly ask Wonga for loans. Often his request would be made on the same day that he repaid a loan, sometimes a day or two later, and very occasionally a month or two later. But I think it should have been clear to Wonga that Mr B was heavily reliant on payday lending to meet his normal living expenses and to service his credit commitments. I think that should mean that Wonga needed to assess each of Mr B's applications very carefully – and it doesn't seem that it did.

Looking at Mr B's bank statements he didn't reach a position where he could sustainably afford to repay the lending he was taking. He continued to gamble heavily and support his income with payday loans. So I can't agree that the loans Mr B was given by Wonga were affordable to him, in his circumstances. So I'd agree with our adjudicator that Wonga shouldn't have made any lending to Mr B after his first loan.

There are two other matters that I need to address in this decision.

Wonga has told us that it agreed enhanced affordability checks with the FCA as part of its agreement in 2014. But in considering this complaint I need to be satisfied with the checks that were performed on Mr B's loan applications. Although Wonga might have agreed with the FCA what checks it should do, I need to be satisfied that these checks were actually done. And the level of those checks needs to take into account the individual loan applications – to ensure that they are proportionate to things such as the amount being borrowed and the lending history with that customer. So on balance I don't think that, on its own, Wonga's agreement with the FCA is enough for me to conclude the checks it did were proportionate.

As part of its agreement with the FCA, Wonga wrote off the outstanding balance on one of Mr B's loans. This means that the amount Wonga has effectively given back to Mr B on this loan is far higher than I would be asking it to repay, on this loan, when upholding Mr B's complaint. I think it is fair that I should take account of that when deciding the overall compensation that is due to Mr B for the other 77 loans that I think shouldn't have been granted.

So I'm going to ask Wonga to work out what it should pay Mr B for all 78 loans I think shouldn't have been granted – this includes the loan included in the FCA agreement. But I will allow Wonga to deduct from this the amount it has already paid to Mr B.

putting things right

I don't think Wonga should have made any further loans to Mr B after, and including, the second loan he took from the lender on 15 April 2011. So WDFC UK should;

- Refund the interest and charges applied to all lending to Mr B after, and including, 15 April 2011.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement *.
- Deduct from this total the redress already paid to Mr B under the FCA agreement (for the loan he took in June 2014).
- Remove any adverse information recorded on Mr B's credit file in relation to the loans I am asking to be refunded.

As I noted earlier, Mr B still owes Wonga some money on his final loan. I think it is fair that Wonga should be allowed to deduct these arrears from the final compensation that it pays to him. But for the avoidance of doubt Wonga should recalculate these arrears, removing any interest and charges from them, but taking into account any payments Mr B has already made on this loan.

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

my final decision

My final decision is that I largely uphold Mr B's complaint and direct WDFC UK Limited to pay him compensation as detailed above.

I make no other award against WDFC UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 December 2016.

Paul Reilly
ombudsman