

complaint

Ms L complains that CashEuroNet UK LLC, trading as QuickQuid and as Pounds to Pocket, ("CEN") approved her loan applications without making the correct checks. She complains that this was irresponsible of CEN.

Ms L also complains that when she asked for help with her debts CEN gave her no help.

background

Six loans were approved by CEN and it arranged a FlexCredit account. These were with QuickQuid and Pounds to Pocket and were between July 2012 and March 2014.

Using the information from CEN, I have drawn up a simplified table of these approved loans and the FlexCredit account. It appears below. I will refer to these by number in this decision.

Credit or loan number	Type	QuickQuid or Pounds to Pocket	Amount or limit	Date approved	Extensions or rollovers	Date closed
1	payday	QQ	£150	14 July 2012	1	24 August 2012
2	payday	QQ	£100	23 September 2012	1 top-up and 4 extensions	5 February 2013
<i>Top-up</i>			£200	5 October 2012		
3	instalment	P2P	£1,100 (£135 x1 & £169 x 11)	5 February 2013	Refinanced twice	11 November 2013
4	payday	QQ	£950	6 March 2013	4 extensions	19 July 2013
FlexCredit account (Loan 5)	running account credit	QQ	£950	19 July 2013		30 March 2015
6	instalment	P2P	£1,100	16 November 2013		26 February 2014
7	instalment	P2P	£1,150	15 March 2014		7 April 2015

Ms L has explained that when she took these loans her debt situation was so poor that she could not afford them and the lending led her to get into a '*debt spiral*'. She has explained the consequences of this and she has told us that she had a gambling addiction at the time.

Our adjudicator looked at Ms L's complaint and thought that CEN should refund her the interest and charges, plus 8% interest and amend her credit file in relation to the loans from the top-up of Loan 2 and Loans 3 to 7 which included the FlexCredit account.

CEN disagreed. Having considered CEN's representations our adjudicator reconsidered the complaint but came to the same conclusion. CEN gave the clear impression that it wished to resolve this complaint, but then asked for it to be passed to an ombudsman for a decision.

In July 2018 I issued a provisional decision. Based on what I had seen I said that I was planning to come to the same outcome as our adjudicator but I went into more detail surrounding some aspects of the loans. And I addressed one new point which had not been covered before – that relating to the ‘trouble and upset’ part. The main part of my provisional decision (“PD”) is attached to this final determination and forms part of it.

Since then, CEN said it has nothing to add. Ms L provided some further information about the section of my PD called ‘trouble and upset’. She did not agree with it and sent me a screenshot of an account balance for February 2015. So I asked CEN to comment on all that Ms L had sent me. It has replied and I deal with this aspect below.

my findings

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

In 2011 the Office of Fair Trading guidelines on irresponsible lending (“ILG”) were available for lenders to use as guidance. More detail is in my PD below.

Neither party has said anything about the main part of the PD. So I come to the same decision about the loans and the FlexCredit account and for the same reasons as outlined in my PD.

trouble and upset

I asked CEN to consider all the points Ms L had raised in relation to this part of her complaint and I sent it the screenshot she had sent to me. Ms L said that when she asked CEN for assistance the ‘on-line chat’ conversations with a CEN representative were not helpful. Ms L wished for CEN to send me the transcripts of those chats.

CEN has replied to say (and I summarise) that it cannot access the server which it used to use for the chats. It has lost access to the archived chats. So it was not able to provide anything more.

I realise that this will be frustrating to Ms L but in the absence of anything more my final determination on this aspect remains the same as my PD. The screenshot Ms L has sent to me seems to show the outstanding balances and repayment schedule from February 2015. But it does not show any issues surrounding repayment plans or financial hardship issues. I have read the emails CEN and Ms L exchanged around this time and nothing gives the impression of any late payments or a repayment plan being put in place. I would need more for me to decide that CEN did something wrong on this aspect.

So I do not uphold this part of Ms L’s complaint.

putting things right

CashEuroNet UK LLC should not have agreed some of the loans it made to Ms L. So I do not think it is right that Ms L should have to pay the interest or charges on these loans, or that they affect her credit file in a negative way. So to put things right I am planning to direct that CashEuroNet UK LLC do the following:

1. for the loans from the top-up of Loan 2, and Loans 3 and 4, the whole of the FlexCredit account advances, and Loans 6 and 7, calculate how much Ms L has paid in interest and charges from the date Ms L paid them to the date of settlement;
2. refund that calculated sum to Ms L plus 8% simple interest* per year on the interest and charges figure calculated;
3. remove any adverse payment information about the loans and credit advances from the Ms L's credit file.

*HM Revenue and Customs requires CashEuroNet UK LLC to take off tax from the interest. It must give Ms L a certificate showing how much tax it has taken off if Ms L asks for one.

my final decision

My final decision is that I uphold Ms L's complaint in part and direct that CashEuroNet UK LLC put things right in the way I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 29 September 2018.

Rachael Williams
ombudsman

part of my provisional decision dated 13 July 2018.

my provisional findings

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

In 2011 the Office of Fair Trading guidelines on irresponsible lending ("ILG") were available for lenders to use as guidance.

A potential lender was expected to take "...reasonable steps to assess a borrower's likely ability to be able to meet repayments ... in a sustainable manner." ILG 4.2.

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

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

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

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

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

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

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

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

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

Loans 1 and 2

CEN approved a loan of £150 in July 2012. The repayment was due to be over £187 eleven days later on 25 July 2012. CEN knew Ms L was employed and that she rented her home. CEN carried out credit searches, the results of which I have not seen. I have read the email correspondence between CEN and Ms L.

CEN's response to Ms L following her complaint to it included: "As part of our assessment, we analyse your current financial commitments, insolvency records, delinquency records, County Court judgements, credit enquiries and other credit accounts currently open."

For a first loan I would have expected CEN to know Ms L's income and it does not appear to know that. From looking at the information Ms L has given us I can see that she was earning about £1,500 a month at this time. So for a repayment figure of about £187, even if CEN had enquired about her income I doubt that it would have made a difference. I am planning not to uphold Ms L's complaint in relation to Loan 1.

Before applying for Loan 2, Ms L had to ask for an extension to her payment date for Loan 1. The email correspondence between Ms L and CEN shows that Ms L asked CEN to extend the date. She paid an interest charge on the original repayment date (25 July 2012) and then the full principal and interest repayment sum on 24 August 2012.

Loan 2 was applied for a month later on 23 September 2012. It was for £100 for 37 days and £125 was due to have been repaid on 30 October 2012. I appreciate that this is a relatively modest amount and so I would have expected it to know, at least, Ms L's income. CEN did not have that information.

I can see that she earned about £1,500 at the time and so in principle I doubt that this would have made a difference to CEN's lending decision. I am planning not to uphold Ms L's complaint in relation to this first part of Loan 2.

top-up to Loan 2

However, on 5 October 2012, Ms L asked for additional money which is described as a 'top up' but in reality was double the original loan approved by CEN two weeks earlier. As Ms L had asked for an extension on Loan 1, and this was the third request for credit in three months, I would have expected CEN to know her income and to check with her that she had enough to repay this additional advance as well as the Loan 2 already approved. The email correspondence shows that this was scheduled to be £450 over two repayments - £75 on the original repayment date of 30 October and £375 on 30 November 2012.

I would have expected CEN to carry out proportionate checks to assess her income, regular outgoings, other regular financial commitments and whether Ms L had any other monies owing to other short term lenders at that time.

I don't think that CEN did know these details but Ms L has given me enough information for me to see these details by looking at her bank account statements for the period.

Ms L had not paid anything towards Loan 2 (first part) when she applied for the additional advance on 5 October 2012. So the total amount was due to have been repaid and in order to assess affordability I think that CEN ought to have looked at her ability to repay the highest scheduled instalment which was £375.

As at 5 October 2012 Ms L's salary was just over £1,560, outgoings (including rent, food, petrol, car insurance and car credit repayments, TV, phones and bank overdraft and account fees) all came to about £1,090. But Ms L also owed another short term lender (which I will refer to as Lender W) over £996 which I can see debited her account on 2 October 2012. At the same time she had just taken another loan with Lender W almost on the same date for £600. This was likely to be due to be repaid later in October 2012 and so was outstanding at the time she applied for the loan 2 top-up.

So had CEN carried out the checks I would have considered proportionate then it would have seen that Ms L was not in a position to repay any of Loan 2 following the additional advance of credit. I am planning to uphold Ms L's complaint in relation to this second part of Loan 2.

Loan 3

Ms L applied for an instalment loan for £1,100 on 5 February 2013. At this stage CEN would have known that Loan 2 plus the top-up (to which I have referred earlier) had to be extended or refinanced and was not repaid by Ms L until 5 February 2013. I do not think it's a coincidence that Loan 3 was applied for on the same day that Ms L repaid Loan 2.

Loan 3 was a large sum relative to her monthly salary, and would have extended Ms L's debt commitment for 12 months as it was a 357 day loan. With the history already outlined above, at this stage CEN ought to have carried out a full review of Ms L's financial position. By this I mean that I would have expected CEN to verify her income and her outgoings, check her regular financial and credit commitments and check what other loans she may have had outstanding in relation to other short term lenders (STL). And carry out the 'borrower focussed' assessment envisaged in the guidance (ILG) to check that Ms L had the ability to repay without undue difficulty, and without having to borrow further.

CEN had been informed by Ms L that her income was about £1,557 and looking at her bank statements this was close to the actual figure for her January 2013 salary of £1,564. I have outlined above that her regular outgoings came to about £1,090 and in January 2013 were about the same for about the same sort of things. In addition, Ms L had taken two loans with Lender W in December 2012 for £300 and £700. And Ms L owed another STL lender (Lender X) £400. These figures are the principal sums and do not include interest.

So I do not think that a responsible lender would be confident of Ms L being able to repay the Loan 3 instalments. I am planning to uphold Ms L's complaint for Loan 3.

Loan 4

CEN lent Ms L £950 a payday loan one month after taking Loan 3. CEN knew Ms L's salary was about £1,557 as it had been given that figure in or about December 2012. So the payday loan applied for was a large proportion of her usual monthly salary. Plus it knew that Ms L had just taken a long instalment loan with CEN. So I would have expected CEN to carry out the same sort of full review of Ms L's finances as outlined earlier. I do not think that CEN did that and so I have looked to see what it would have discovered if it had.

For Loan 3 CEN arranged that Ms L made three payments as follows: £237.50 due on 28 March, £237.50 due on 26 April and £1,187.50 due on 28 May 2013. As her circumstances were as I have described above and as CEN knew she was committed to the Loan 3 repayments I find it difficult to understand how CEN thought Ms L was going to be able to pay Loan 3 and Loan 4 back in April 2013 knowing Ms L's financial circumstances. Because that would have meant that Ms L would have been repaying £169 on Loan 3 and about £237 on Loan 4 which adds up to about £406 in one month.

Given the lending history up to this point, Ms L's repeat borrowing, top-ups and her deferred repayments, had CEN carried out the checks I consider would have been proportionate then I think it would have realised that Ms L was heavily reliant on short term loans. So I do not think that it would have been reasonable for CEN to conclude that Ms L was likely to be in a position to budget for any later, larger repayment by saving any disposable income during the earlier months of the agreement. And I say this because it is unlikely that she would have been able to do that.

I am planning to uphold Ms L's complaint in relation to Loan 4.

FlexCredit account – Loan 5

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

Ms L's credit limit for this FlexCredit account applied for on 19 July 2013 was £950. And again, I do not consider it a coincidence that this was applied for on the same day that Loan 4 was repaid. I can see that the dates coincided from looking at the CEN account statements for Ms L. And on 25 June 2013 Ms L received an email from CEN to say that the payment of just over £1,068 was due on 26 July 2013 for Loan 4. At that time I can see from Ms L's bank account statements that she was about £1,180 overdrawn at that stage and so she likely knew that she was not going to be in a position to repay it.

On 19 July 2013 Ms L was approved for the FlexCredit account and also received an email from CEN thanking her for the repayment of just over £1,105 to clear Loan 4. I have been given a copy of that FlexCredit account with the limit of £950 and it was signed by Ms L and CEN on 19 July 2013. The proposed schedule of repayments on this FlexCredit account lists the highest repayment due as being just over £367.

I would have expected CEN to have carried out a full review of Ms L's financial situation if it had not done so already by this stage. Ms L had been borrowing for a year and was going to be committing to repayments for an additional ten months. Added to which this sort of product was different to the payday loans and instalment loans she had been taking up to that date.

My first point is that I consider it unsustainable for Ms L to be borrowing to repay borrowing. I think that was what happened at that time with Loan 4 and this FlexCredit account. And looking at the bank statements I have for her, Ms L had about £1,300 of outgoings plus about £600 due to Lenders W and X. So if CEN had carried out the proportionate checks at the time, it would have been apparent that Ms L was not in a position to repay the debt.

And the Ms L's financial position overall ought to have been clear if CEN had carried out the proportionate checks I consider to have been necessary. Ms L was not able to sustain these repayments to CEN and to the various lenders plus clear her overdraft and pay for the usual living expenses.

As the FlexCredit account rolled on, Ms L repaid and re-borrowed several times and on 28 November 2013 Ms L drew down £1,050 which was more than the limit agreed. Around that time I can see that Ms L had about £1,000 outgoings but owed about £1,700 in repayments to other STL lenders including her commitments to the FlexCredit account.

I am planning to uphold Ms L's complaint in relation to all of the credit advances made during this FlexCredit account.

Loans 6 & 7

I do not propose to go into detail in relation to Loans 6 and 7. It was irresponsible to continue lending to Ms L and CEN had enough information and history from its own records to have realised that she was not likely to be able to absorb further debt.

Loan 6 was for £1,100, an instalment loan and applied for at the same time that Ms L was repaying the FlexCredit account in mid-November 2013. Her financial position was almost the same as that described above. And proportionate checks would have led CEN to realise the position and a responsible lender would have ceased lending at this point.

I am planning to uphold Ms L's complaint in relation to Loans 6 and 7.

gambling

I appreciate that CEN has raised the gambling element. It is not within my remit to determine whether Ms L's gambling was a leisure activity or a serious habit forming activity. But Ms L has told us that she considered it was a problem at the time and has described it as an 'addiction'. And I can see from her statements that the sums involved were substantial.

At the stage where I think that CEN ought to have carried out a comprehensive review of Ms L's financial situation, then I think it was likely that CEN would have become aware of the gambling. But even taking the gambling out of the picture for Ms L, the details set out in this provisional decision (and in the letters by our adjudicator) have demonstrated that Ms L was not likely to be able to afford most of these loans and credit advancements. So as well as being unaffordable, the gambling element makes these lending decisions irresponsible as well.

trouble and upset

Having asked CEN about the times when Ms L says that she asked for assistance and she was refused the help she needed, CEN has explained a few things but not sent me any transcripts of any on-line chat system. Its explanation is that the length of time and the 'migration' of the system mean that there are no records. It goes on to "provide insight".

CEN says that it would have offered Ms L alternative repayment options or free debt advice. In relation to Ms L it said that when she told them she was not likely able to pay the next repayment it offered her the chance to talk to its collections department. It denies that it advised her to default on her loan.

Reading the emails between CEN and Ms L, I cannot see any notice of default being sent to Ms L. I do note that extensions were given. On the information I have at the moment on these issues I haven't seen enough for me to conclude that CEN treated Ms L so unfairly that I can uphold her complaint. I am not planning to uphold this part of Ms L's complaint.

end of extract of provisional decision