

complaint

Mr B complains that Capital Cash Limited (CCL) was irresponsible in that it lent to him and he was *'trapped in a debt spiral'* such that he had to continue borrowing. Mr B says that proper checks would have revealed that his *'finances were in a state of disarray'*.

background

CCL has informed us that Mr B had 26 cash advances from one of its Cash Converters Stores between July 2013 and April 2015. CCL has told us that the total amount lent was £6,927 and Mr B repaid just under £8,909.

CCL responded to Mr B's complaint in March 2018 and conceded in relation to cash advances 18 to 26. CCL offered a sum of money plus interest but it is not clear as to which loans this refund related. Mr B had fourteen days to respond. He did not accept that offer and brought his complaint to this service.

One of our adjudicators considered the complaint and her opinion was that the checks CCL carried out before lending to Mr B for Loans 1 to 5 were proportionate and so she did not think that the complaint should be upheld for these five loans.

From Loan 6 to 26 our adjudicator did not think that CCL had given enough consideration to how the loans were being used. She felt that from Loan 6, CCL should have checked whether Mr B was reliant on the loans and whether approving further loans was unsustainable for him or otherwise harmful. Her opinion was that CCL should put things right for Mr B in relation to Loans 6 to 26.

Mr B was satisfied with our adjudicator's findings and took no issue with the fact that Loans 1 to 5 had not been upheld. CCL did not agree. It did not consider that Mr B was reliant on the loans. It carried out detailed income and expenditure statements and checked Mr B's bank account statements for each loan.

So the part of the complaint which remains unresolved – Loans 6 to 26 – will be considered by me and within the context of the whole lending relationship.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about short-term lending on our website and I've taken this into account in deciding Mr B's case.

Mr B completed applications and CCL has sent to us copy records. The first one in July 2013 shows me that Mr B told CCL he was self-employed and received an average wage of about £480 a week. Mr B gave to CCL copy bank account statements which I have seen. It shows he had a £10 overdraft limit. And his company drawings can be seen to have credited his account on 12 July 2013 being £576 and a week earlier on 5 July 2013 for £480.

This pattern continued. And having asked Mr B for an explanation as to why he took the loans he said that they supplemented his income and he needed it for bills including rent (often paid by cash), and that he was gambling at the time. And part of what did become apparent from the statements I have seen provided by CCL is that Mr B was spending

money on gambling websites. So CCL was on notice as to this element of Mr B's finances. And Mr B has confirmed that he was gambling at the time.

In addition, the statements reveal that CCL would have been aware that Mr B was using other short term lenders.

There was a gap in lending between paying off one loan in September 2014 and taking the next in December 2014. This was a relatively short time and as CCL had been lending to Mr B for 13 months by that stage I do not consider that the gap to be a significant one.

I've decided to uphold Mr B's complaint in part and have explained why below.

CCL needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr B could repay his loans in a sustainable manner.

These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr B's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that a lender should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These would include where:

- a consumer's income is low or the amount to be repaid takes up a substantial portion of their income
- the amount, or amounts, due to be repaid are higher
- there is a larger number and/or frequency of loans
- the period of time during which a customer has been provided with borrowing is long.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Bearing all of this in mind, I think that there are three key questions for me to consider in order to fairly and reasonably determine Mr B's complaint. These questions are:

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

I've carefully thought about all of these questions and what they mean for Mr B's complaint.

Did CCL, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay in a sustainable way? If not, would those checks have shown that Mr B would have been able to do so?

In view of the background to this complaint (referred to above) then I think that the earlier cash advances are not in dispute and so I say no more about them. And in any event the checks CCL carried out were proportionate.

I haven't recreated individual, proportionate affordability checks for Loans 6 to 26 because I don't think that it is necessary to do so. I'll explain why this is the case in the next section.

Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr B's indebtedness in a way that was unsustainable or otherwise harmful?

I've also looked at the overall pattern of lending. I've looked to see if there was a point at which CCL should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so CCL should have realised that it shouldn't have provided any further lending.

Given the particular circumstances of Mr B's case, I think that this point was reached by Loan 6 (approved on 8 November 2013) and I say this because the amounts Mr B was borrowing were generally increasing, and CCL ought to have realised it was likely that his indebtedness was increasing unsustainably. An example is that the loans in October 2013 combined added up to about £550 and in November 2013 the two loans added up to over £600.

I think that Mr B lost out because CCL continued to provide borrowing from Loan 6 onwards because:

- these loans had the effect of unfairly prolonging Mr B's indebtedness by allowing him to take expensive credit over an extended period of time
- the sheer number of loans was likely to have had negative implications on Mr B's ability to access mainstream credit and so kept him in the market for these high-cost loans

So I'm upholding Mr B's complaint about Loans 6 to 26 because the overall pattern of lending increased his indebtedness in a way that was unsustainable or otherwise harmful and he lost out as a result.

Did CCL act unfairly or unreasonably in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude CCL acted unfairly or unreasonably towards Mr B in some other way.

putting things right – what CCL needs to do

CCL should

- refund all interest and charges Mr B paid on Loans 6 (approved 8 November 2013) to 26 (approved 18 April 2015);
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- the number of loans taken from Loan 6 means any information recorded about them is adverse. So all entries about Loans 6 to 26 should be removed from Mr B's credit file if those entries were made in the first place.

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

my final decision

For the reasons I've explained, my final decision is that I'm partially upholding Mr B's complaint. Capital Cash Limited should pay redress as I've set out above.

Under the rules of the Financial Ombudsman Service I need to ask Mr B to accept or reject my final determination on or before 11 May 2019

Rachael Williams
ombudsman