

complaint

Mr C has complained about short-term loans granted to him by Apfin Ltd trading as cashasap.co.uk ("Apfin" or "the lender").

background

The background to the complaint was set out in my provisional decision dated 3 May 2017, a copy of which is attached and forms part of this final decision.

In my provisional decision I set out why I was minded to partially uphold this complaint. I asked both parties to let me have any further comment or information. Both parties have responded – Mr C accepted my provisional decision and Apfin said it had nothing further to add.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I partially uphold this complaint.

what Apfin should do to put things right

I have concluded that Apfin should have done more to check that Mr C could sustainably repay its loans from his third loan onwards. Had it done so, it would not have agreed to these. So I think Apfin needs to refund all of the interest and charges Mr C paid on these loans. Specifically, it should:

- refund the interest and charges for the loans it agreed for him from November 2015 to September 2016.
- pay interest on these refunds at 8% simple from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Mr C's credit file.

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

my final decision

I partially uphold Mr C's complaint and require Apfin Ltd (trading as cashasap.co.uk) to refund him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 July 2017.

Michelle Boundy
ombudsman

COPY OF PROVISIONAL DECISION**complaint**

Mr C has complained about short-term loans granted to him by Apfin Ltd trading as cashasap.co.uk ("Apfin" or "the lender").

background

Apfin agreed nine short-term loans for Mr C between October 2015 and September 2016. The loan amounts ranged from £112 to £297 and Mr C usually borrowed within a day or two of repaying his previous loan, sometimes within a week or 10 days. The below table summarises some of the information Apfin provided about these loans.

	Application	Repayment	Amount
1	14/10/2015	29/10/2015	£160
2	29/10/2015	27/11/2015	£297
3	28/11/2015	18/12/2015	£295
4	18/12/2015	06/06/2016	£296
5	07/06/2016	30/06/2016	£122
6	02/07/2016	02/07/2016	£112
7	09/07/2016	28/07/2016	£220
8	07/08/2016	30/08/2016	£182
	31/08/2016	Declined	£325
9	07/09/2016	28/09/2016	£200
	28/09/2016	Declined	£325
	14/11/2016	Declined	£150
	02/12/2016	Declined	£325

Mr C says that he could not afford these loans and had to borrow more in order to repay them. He says Apfin should have known about his debt problems and not lent to him.

One of our adjudicators has looked into Mr C's complaint already. He recommended that it be upheld and that Apfin refunds the charges Mr C paid for the last seven of his nine loans. Apfin did not agree with this recommendation and so the complaint has come to an ombudsman for a final decision.

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 also taken into account the law, any relevant regulatory rules and good industry practice at the time.

In making this decision I have considered whether or not Apfin did everything it should have when assessing Mr C's loan applications. And following on from this, whether any assessment failings resulted in Apfin agreeing to lend to Mr C when it should reasonably have known that he would find it difficult to repay.

I have concluded, as our adjudicator did, that Apfin should not have lent to Mr C beyond his first two loans. I appreciate this will be disappointing for Apfin, but I hope my explanation makes it clear why I have come to this conclusion.

did Apfin carry out proportionate checks?

Apfin was required to lend responsibly. It needed to check that Mr C could afford to repay his loans sustainably. There was no set list of checks it needed to do, but the checks should have been proportionate to the circumstances of each loan which might include considerations about the amount borrowed, the associated cost and risk to Mr C, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

Apfin says it carried out a proportionate check for each of Mr C's loan applications: it asked him about his income and expenditure each time and it says it was entitled to rely on the information he provided. Apfin hasn't provided a record of Mr C's expenditure for his first four loans. The lender says it asked about the details of Mr C's expenditure when he applied for his fifth and subsequent loans and has provided a record of this. The lender says it also carried out a credit check on each occasion and that its checks didn't reveal any judgements or insolvencies.

Mr C first borrowed from Apfin in October 2015. He borrowed again the day he repaid this loan, and again within a day of repaying his second. I think the checks Apfin carried out for Mr C's first two loans were proportionate but, because of the consecutive nature of his borrowing, I think it should have done more to check he could afford the repayment for his third loan.

The Financial Conduct Authority was the regulator at the time Mr C borrowed from Apfin. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These regulations require lenders to take "*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.*" - CONC 5.3.1(2).

CONC 5.3.1(7) defines 'sustainable' as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

When Mr C asked to borrow his third loan, I think Apfin should have been alerted to the possibility that he might not be using these loans to meet unexpected expenses but, rather, to meet his normal living expenses. Whatever Mr C borrowed he would have to repay the following month, alongside these living expenses. And so he might have difficulties repaying these loans out of his normal means, in other words he might not be managing to repay them in a *sustainable manner*. And I think it should have done more at this point to check what he was telling it about his finances. For example, Apfin could have asked Mr C for evidence of his expenditure or asked further questions about his credit commitments, including any other payday loans he might have needed to repay the following month.

Mr C asked for a fourth loan in December 2015, for a similar amount to his previous two. As above, I think Apfin should have done more to check if Mr C could sustainably repay this loan. The credit agreement shows this was due to be repaid a month later in January but instead was repaid in monthly instalments of £66, the last of which was in early June 2016. I don't know why this happened and neither Mr C nor Apfin have commented on this. I assume it is because Mr C needed to spread his repayments over a longer period.

Mr C asked for his fifth loan the day after he repaid his fourth. As before, I think Apfin should have done more checks. I appreciate that it did ask Mr C for a breakdown of his expenses at this point, including those for other loans or credit card payments. But, given the frequency of Mr C's borrowing and how he'd managed his last loan, I think Apfin needed to have a thorough understanding of Mr C's financial situation before agreeing to lend to him. The lender could have, for example asked him for bank statements or for other evidence of his expenditure.

Mr C went on to borrow in July, August and September 2016, and this last loan was taken out within a week of having a loan application rejected. As with Mr C's earlier applications, I think Apfin should have done more to check that these loans were affordable for him.

In summary, I don't think the checks Apfin carried out for Mr C's third loan onwards were proportionate to the circumstances of the lending and it should have done more to check that Mr C could afford the repayments before agreeing these loans.

what would further checks most likely have shown?

Mr C has provided his bank statements for the period in question. I can see from these that what he told Apfin about his income was broadly correct for 2015 and that he earned more in 2016 with a usual monthly income of about £1,950. I can also see from the statements that his outgoings varied according to the number of short-term loans he needed to repay and how much he spent on what appears to be gambling.

In the months prior to Mr C's third and fourth loans i.e. August to November 2015 Mr C spent an increasing amount of money repaying other short-term lending – approximately £740, £1,000, £1,500 and £1,000 respectively. His standard bills such as phone and car tax combined with his increasing spend on gambling left him with little or no available money to repay further credit. (I am highlighting these payments because they are clearly identifiable on the bank statements, unlike cash payments for example.) And this is before considering any money for food or travel and other usual living costs such as rent.

Mr C's financial situation didn't improve in 2016. In the months before he took out his fifth loan i.e. March – May 2016 his short-term lending repayments averaged just over £1,900 a month. From April he made a regular monthly payment of £550 to repay a personal loan and, as before, taking into account some regular bills he didn't have enough money left to repay further credit aside from any other living costs.

In the following months, Mr C continued to repay on average just under £1,000 a month for his short-term loans. His personal loan repayment, regular bills and gambling spend meant that his loans in July, August and September were also unaffordable for him.

Apfin says that, while Mr C repaid other short-term lending during the time he borrowed from it, he also had the benefit of these loans and this should be taken into account. As I've explained above, if Mr C was relying on short-term loans to supplement his income and cover normal expenditure, then this is likely to be unsustainable. In other words he is not going to be able to repay this lending out of his usual income, without borrowing further. In this case, by the time Mr C came to borrow from Apfin he was already in a cycle of borrowing to meet his repayments. I don't think Apfin would have known this initially but, as I've explained above, over time it should have inquired further into Mr C's ability to sustainably make his repayments.

Had Apfin carried out what I consider would have been proportionate checks for Mr C's loans, I think it would likely have learnt the extent of his ongoing dependence on payday lending and, as a responsible lender, would not have agreed his third or any subsequent loans for him.

what Apfin should do to put things right

In summary, I've concluded that Apfin should have done more to check that Mr C could sustainably repay its loans from his third loan onwards. Had it done so, it would not have agreed to these. So I think Apfin needs to refund all of the interest and charges Mr C paid. Specifically, it should:

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my provisional decision

I am minded to uphold Mr C's complaint and require Apfin Ltd (trading as cashasap.co.uk) to refund him as set out above.

I'll wait a month to see if either party has anything further to add – before considering my decision on this complaint once more.

Michelle Boundy
ombudsman