

complaint

Miss G complains that Wage Day Advance Limited ("Wage Day") gave her loans without checking that she could afford to repay them. She wants all interest paid refunded and the final loan removed from her credit records.

background

In my provisional decision I set out why I intended to uphold Miss G's complaint. Miss G accepted my view, but Wage Day disagreed. It said that there was no legal requirement to check credit records. While it accepted the third loan was for quite a lot more than previous loans, Wage Day didn't think the loan was unaffordable due to the information it held about her income and spending and previous borrowing history. It could see the logic I applied to the fourth and fifth loans, and pointed out it had offered redress in respect of the fifth loan.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In my provisional decision I said:

When lending money to a consumer, lenders are required to ensure the consumer can repay the borrowing in a sustainable manner without it adversely impacting on their financial situation. A lender should obtain sufficient information to make an informed decision about the lending. Exactly what the lender should consider is for each lender to decide and the guidance and rules lists a number of things each lender may wish to consider. Any checks should be proportionate, based on the size of the borrowing.

The first issue I have to consider is whether the checks carried out by Wage Day were proportionate. The first two loans were for £125 and £165. The first loan was deferred once and the second loan repaid as planned. I think it was proportionate to rely on the information from Miss G regarding her income for these two loans.

But the third loan was for £285, which is a much larger sum than Miss G had borrowed before. While the precise checks lenders at the time were expected to carry out wasn't specified, I think Wage Day should've carried out more checks, such as checking Miss G's credit records. I also am of the same view for the fourth loan, even though it was for a smaller sum, due to the number of times Miss G deferred repaying the third loan, and the fifth loan due to both the amount borrowed and the previous payment history.

The second issue is what would've Wage Day seen if it had carried out more checks? From Miss G's credit records, I think it's would've seen she had other payday loans with several lenders at the relevant time. From her bank statements, it's clear Miss G was struggling financially from the start. She was paying significant sums to other payday lenders, direct debits and other payments were being returned, even for priority bills, and in my view she didn't have the disposable income to repay the loans taken out from June 2011 onwards. I note in 2013 and 2014 Miss G was also spending money gambling, but these sums were relatively small.

Based on what I've seen, from the third loan taken out in June 2011 Miss G couldn't afford to pay the loans from Wage Day. I think it's fair and reasonable for all the interest and fees paid on those loans be refunded, with interest, and any negative information about those loans removed from her credit records. But as Miss G owes Wage Day money, it's also fair for Wage Day to be allowed to set off this compensation from any of the borrowed money which she still owes.

As I stated in the provisional decision, the law didn't require lenders specifically to check credit records, but lenders had to carry out proportionate checks. I remain of the view that it would've been proportionate to check Miss G's credit records at the time the third loan was given. I note Wage Day hasn't raised any arguments about my provisional findings regarding affordability and the fourth and fifth loans. Having considered Wage Day's comments, my provisional view remains unchanged.

my final decision

My final decision is that I uphold the complaint and Wage Day Advance Limited should take the following actions:

- refund all interest and fees paid by Miss G for the loans taken from June 2011 onwards;
- pay 8% simple interest on the above sum from the date of payment until the date of refund;
- use the amount calculated above to repay any money borrowed by Miss G and still unpaid (bearing in mind she shouldn't pay interest and fees for the three loans taken out from June 2011);
- remove all negative information about the loans taken out from June 2011 onwards from Miss G's credit records;
- If Wage Day Advance Limited considers it should deduct income tax from the interest element of my award it may do so but should give Miss G the necessary certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 4 November 2016.

Claire Sharp
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