

complaint

Mr H has complained about short-term loans granted to him by CashEuroNet UK LLC trading as "QuickQuid". Mr H says he couldn't afford these loans and that QuickQuid didn't take appropriate steps to check whether he could afford them when he took them out.

background

QuickQuid agreed five short-term loans and a flexible credit facility (flex credit) for Mr H between July 2013 and November 2015. Each loan was repayable over between one and three months, with the exception of the flex credit, which allowed him to drawdown money up to a pre-agreed credit limit, with a view to repaying it – potentially over a period of up to 10 months.

Mr H took out top-ups on some of his loans. This is where he took out further borrowing under the same agreement before paying back the initial amount borrowed. I've set out a summary of lending below.

payday loan

loan no.	application	principal amount (£)	no. of instalments due	highest monthly repayment due (£)
1	16/07/2013	100	1	118

flex credit

loan no.	application	credit limit	no. of instalments due	highest monthly repayment due (£)*
2	05/09/2013	500	up to 10	153

*Based on Mr H drawing down the full credit limit at the outset and repaying the balance over 10 months

payday loans

loan no.	application	principal amount (£)	no. of instalments due	highest monthly repayment due (£)
3	21/03/2015	100	3	122
3a	25/03/2015	125	3	275
3b	03/04/2015	100	3	400
4	22/07/2015	100	1	129
4a	02/08/2015	300	3	496
5	04/09/2015	100	2	122
6	21/10/2015	400	3	489
6a	25/11/2015	500	3	1,127

One of our adjudicators has looked into Mr H's complaint already and recommended the complaint be upheld in part. She felt the checks QuickQuid carried out on loans 1 and 3, as well as on the flex credit agreement at the point of sale were proportionate. And that it was not unreasonable for QuickQuid to have approved these applications based on the results of these checks.

But she thought the checks QuickQuid carried out from the first top-up on loan 3 (3a) onwards weren't proportionate. And she thought that had QuickQuid carried out proportionate checks, it would've seen that the second top-up on loan 3, and the remainder of the lending from this point on would've been unaffordable for Mr H, and would've therefore not agreed to these loans.

She also thought that QuickQuid should've done more to monitor Mr H's account during the course of his flex credit agreement, and that had it done so, it would've seen that by 27 September 2014, Mr H was not using his account as intended. So she recommended QuickQuid refund any interest and charges applied as a result of any drawdowns after this date.

QuickQuid didn't agree with the adjudicators findings regarding loans 3b onwards, so it didn't agree to uphold these loans. But it did accept the findings regarding the flex credit agreement, and offered to refund all the interest and charges applied as a result of any drawdowns from 27 September 2014 onwards in line with our approach in settlement of Mr H's complaint.

Mr H was unhappy with this offer. So as no agreement's been reached at this stage, the case has come to me, as an ombudsman, for a final decision. As loans 1, 3, 3a, and the flex credit account no longer appear in dispute, my decision will focus on QuickQuid's lending decisions from the second top-up on loan 3 (3b) onwards.

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.

Our adjudicator, having looked at everything, found that QuickQuid didn't carry out proportionate checks for Mr H's applications for his second top up on loan 3 (3b) onwards. And she thought that had it done so, it would've likely understood that at this time, and from this point on, the loans and subsequent top-ups approved were no longer affordable for him. These findings were set out in some detail in a view letter to the lender.

QuickQuid initially said it carried out appropriate and proportionate affordability assessments, including validation of Mr H's income and expenses before funding all these loans. It's said it started implementing changes to affordability assessments in June 2014 and all the changes were completed by 28 February 2015.

It said that starting 1 March 2015, before Mr H borrowed loan 3, it had implemented an affordability review that was consistent with the FCA (Financial Conduct Authority) Handbook and was in place at the time it received authorisation by the FCA. And that its assessment was conducted properly and individually for each of these applications.

QuickQuid raised this argument in both its initial submissions, and in response to the adjudicator's assessment. However, our job is to look not only into the rules and regulations set by the regulator at the time of borrowing but also the law, good industry practice and all the available evidence and arguments to help us decide whether we think what the business has done is right or not. And in this case I don't think QuickQuid was right to provide Mr H with some of the loans he borrowed from 2015 onwards.

This service has responded to QuickQuid on the above generic argument directly and through earlier final decisions. So I'm not going to expand on this point any further here, though I have considered it alongside everything else in making my decision.

I would remind QuickQuid at this point of the FCA guidance in how complaints are to be dealt with **promptly and fairly** (my emphasis) by businesses. In particular DISP 1.3.2A [G] which says that businesses' procedures for complaint handling should ...

“ensure that lessons learned as a result of determinations by the Ombudsman are effectively applied in future complaint handling, for example by:

- (1) relaying a determination by the Ombudsman to the individuals in the respondent who handled the complaint and using it in their training and development;*
- (2) analysing any patterns in determinations by the Ombudsman concerning complaints received by the respondent and using this in training and development of the individuals dealing with complaints in the respondent; and*
- (3) analysing guidance produced by the FCA , other relevant regulators and the Financial Ombudsman Service and communicating it to the individuals dealing with complaints in the respondent.”*

So my decision will focus on the specifics of Mr H's complaint and what both parties have said about this.

The FCA was the regulator at the time Mr H borrowed the loans in question. Bearing in mind the rules and guidance set out in its Principles for Business (PRIN) and its Consumer Credit Sourcebook (CONC), I would expect a lender's affordability assessment to vary with circumstance. (I am not quoting the specific regulations here because, as before, I would expect QuickQuid to be conversant with these through previous ombudsman decisions, particularly recent decisions, which set these out in detail.)

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the higher the loan amount,
- the lower the consumer's income; or
- the longer the lending relationship

When Mr H topped up loan 3 for the second time (3b), around two weeks had passed since he'd borrowed the initial advance on this loan. Loan 3 was originally for £100, but after the second top-up, QuickQuid had increased Mr H's total borrowing under this agreement to £325. And this was due to be repaid over three months, with a highest monthly repayment of £400.

By this point, Mr H had been borrowing from QuickQuid for around 20 months. I think by now, and from this point on, before agreeing to lend any further, QuickQuid should've built a full picture of Mr H's financial circumstances and verified the information it was given, to ensure he could afford to meet the repayments on any future lending sustainably.

Mr H's provided bank statements from around the time of the loans in question. So I've looked at these, and all the other evidence provided by both parties, to work out what I think proportionate checks would've shown QuickQuid, had they been carried out at the time.

At the time of Mr H's second top up on loan 3, having looked at his bank statements he appears not to have been working. As just five days after topping up this loan, he was receiving unemployment benefits of around £145 every two weeks.

I think QuickQuid would've found this out had it carried out a full review of Mr H's financial circumstances at the time. I think it would've also seen that his monthly living expenses were around £550. And that he was committed to repay around £250 on his regular monthly credit commitments, as well as a further £250 on his short-term credit commitments. It would've also likely found out that he was spending over £900 a month on online gaming and gambling sites.

Given the above, I think had QuickQuid carried out proportionate checks, it would've realised that at this point Mr H applied for loan 3b, he was in no position to be able to commit to any further repayments, and as a responsible lender would not have agreed to lend to him knowing this.

Loan 4 was taken out around just a week after loan 3 was settled, and Mr H again borrowed £100. It seems at this point Mr H was working again, and was now receiving a monthly salary payment of around £1,470. Which I think QuickQuid would've found out had it carried out proportionate checks.

But proportionate checks would've also shown QuickQuid that Mr H's monthly living expenses were just over £700 a month; and that he owed a further £700 a month towards both his regular and short-term creditors. They would've also likely revealed that Mr H was spending over £200 a month on online gaming and gambling sites, which meant that his monthly expenditure at this time already exceeded his income, and he was in no position to be able to commit to any further credit commitments. Therefore, I think QuickQuid would not have agreed to either loan 4, or the subsequent top-up on this loan (4a), had it carried out proportionate checks.

At the time Mr H took out loans 5, 6, and the top-up on loan 6 (6a), his circumstances had changed very little. His living expenses remained around £700 - £800 a month, and his regular monthly credit commitments remained around £350. His short-term credit commitments throughout this time ranged from around £250 a month to £650 a month, and at the time of each application, and he was spending around £100 a month on online gambling and gaming sites. This meant that his total monthly outgoings at the time of his applications for loan 5 through to 6a, ranged from £1,270 to around £1,910.

But QuickQuid would've likely also seen that Mr H's monthly income at the time of each application was around just £1,220, which was less than his outgoings. So I think had QuickQuid carried out proportionate checks when Mr H applied for loans 5,6 and 6a, it would've again seen that his monthly expenditure exceeded his income, and that he was in no position to be able to commit to any further credit repayments at this time.

In summary, I don't think the checks QuickQuid carried out from loan 3b onwards were proportionate. And I think had it carried out proportionate checks, it would've realised that all of Mr H's loans and subsequent top-ups from this point on would've been unaffordable for him, and as a responsible lender, would not have approved them.

what QuickQuid should do to put things right

QuickQuid has already agreed to refund the interest and charges Mr H paid as a result of any draw downs on his flex credit account from 27 September 2014 onwards, so it should still do this.

In addition to this I think QuickQuid was wrong to have approved loans 3b – 6a. So it needs to refund all of the interest and charges Mr H paid on these loans.

Specifically, it should:

- refund the interest and charges paid as a result of the second top-up it agreed on loan 3 on 3 April 2015
- refund the interest and charges paid for the loans it agreed on loan July 2015 to September 2015, including all top –ups on these loans
- pay interest on these refunds at 8% simple from the date of payment to the date of settlement
- remove any adverse information about these loans from Mr H's credit file

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

QuickQuid should also:

- remove all interest and charges added to loan 6 agreed in October 2015, including any top-ups on this loan
- treat any repayments made, as payments towards the capital balance
- I understand this will leave an outstanding balance, so QuickQuid can deduct this balance from what it now needs to pay Mr H above, if it still owns the debt.

If, after all of the above has been actioned, anything remains outstanding, a mutually agreeable repayment plan should be arranged.

my final decision

For the reasons set out above I uphold Mr H's complaint in part.

And I require CashEuroNet UK LLC to put things right as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 May 2019.

Brad Mcilquham
ombudsman