complaint

Mr C complains that Cash on Go Limited, trading as Peachy.co.uk, ("Peachy") gave him a loan that he couldn't afford to repay.

background

Mr C initially took an instalment loan of £100 from Peachy on 19 April 2018 repayable by five monthly instalments. Later that day, he took a top up loan of £200 and entered into a loan agreement to repay the total loan of £300 by 12 monthly instalments. The highest instalment was £52.44. The loan hasn't been repaid.

Mr C said that he doesn't feel that Peachy had carried out a credit check. If it had done so, it would have seen that he had several defaults going back to 2013, with his most recent default in February 2018. Mr C also said that his credit search history would have shown that he was desperate for credit and had made a lot of credit applications at the same time. He borrowed persistently to feed his gambling habit. He said that a credit search would have shown his poor lending and repayment history and that he was in financial difficulties. He has asked that the loan balance be written off.

Peachy had asked Mr C for details of his monthly net income and normal outgoings and it had carried out a credit search. It said that Mr C had a monthly disposable income of £710 and that the information from his credit search didn't suggest that he was experiencing financial difficulties or unable to afford the loan repayments.

our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld. In view of the amount of Mr C's disposable income, he thought that Peachy knew enough to be satisfied that Mr C could afford to repay the loan in a sustainable manner.

Mr C responded to say that he didn't accept the adjudicator's view. He referred to his three other payday loans in the three months prior to Peachy's loan and his gambling addiction. He also said that Peachy hadn't taken into account his defaulted accounts. He also asked the adjudicator to obtain a copy of Peachy's credit search.

The adjudicator obtained a copy of Peachy's search and noted that Mr C had two defaulted accounts and had used other short term lenders. But he concluded that he didn't think this should have prompted Peachy to carry out better checks before lending.

Mr C said that he didn't understand that Peachy wasn't able to see his other defaults from four to five years previously and that the search only revealed two defaults.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr C and to Peachy on 25 October 2018. I summarise my findings:

I explained that Peachy was required to lend responsibly. It needed to make checks to make sure Mr C could afford to repay the loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr C was borrowing, the length of the agreement and his lending history. But there was no set list of checks Peachy had to do.

I noted that the Financial Conduct Authority ("FCA") was the regulator at the time Mr C borrowed from Peachy. Its 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.*" The regulations define 'sustainable' as being able to make repayments without undue difficulty, and 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.

I noted that Peachy had said that before lending to Mr C, it had carried out a credit check and had asked him about his monthly income and expenditure. It said that Mr C had told it he earned £1,300 and his expenses were £590 which included total credit commitments of £150. So it appeared that Mr C had around £710 left over each month that he could use to make his monthly loan repayments of up to around £53. So that would have seemed relatively affordable based on what he'd told Peachy about his outgoings.

I'd seen a summary of the results of Peachy's credit check. I noted that Mr C was concerned that the check didn't refer to his defaults from four to five years previously. I could see that the report only referred to Mr C's credit history within the previous three years. But I didn't think it was unreasonable for Peachy to be interested in Mr C's more recent credit history for the purposes of assessing whether the loan was affordable.

I could see that the credit report showed that Mr C had two defaults in the previous twelve months. The check also showed that Mr C had made six credit applications in the last month and that his last credit account was opened nine days previously. The report also showed that the total of Mr C's regular payments on all fixed term accounts was £282. As Mr C had told Peachy he was spending £150 on credit commitments each month, I thought the results of the credit check might have suggested to Peachy that Mr C's declared expenditure wasn't accurate. And I'd thought the report had built a picture of a customer with a recent default history and a need for credit which might have suggested that Mr C was in financial difficulty. So, I thought that Peachy should have been concerned about whether it knew enough about Mr C's financial situation before lending to him, especially as Mr C was committing to making the loan repayments over 12 months. So I thought it would have been proportionate for Peachy to have asked some questions about what the credit checks showed and for it to have independently checked the information Mr C had provided. I couldn't see that it did this.

Although I didn't think the checks Peachy did were sufficient, that in itself didn't mean that Mr C's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown Peachy that Mr C couldn't sustainably afford the loan.

As I'd said above, I thought Peachy should have been independently checking the information Mr C had provided. To find out more about this, I'd reviewed Mr C's bank statements for the month before he took the loan. Had Peachy done so, it would have seen that Mr C appeared to be earning around £978, less than he'd declared to it. And Peachy also would have become aware that Mr C was gambling heavily and that he appeared to be spending more than his income on gambling. And to support this gambling expenditure, he had taken short term loans totalling around £700. So, if Peachy had carried out what I considered to be proportionate checks, I thought it was likely that these would have suggested that the loan wasn't sustainable. So I thought Peachy was wrong to give Mr C this loan.

Subject to any further representations by Mr C or Peachy my provisional decision was that I intended to uphold Mr C's complaint in part and to say that Peachy should:

1. Refund all the interest and charges that Mr C has paid on the loan, and pay 8% simple interest* a year on the refund from the date of payment to the date of settlement;
2. Write off any unpaid interest and charges from the loan;
3. Apply the refund referred to above to reduce any capital outstanding on the loan and pay any balance to Mr C; and
4. Remove any adverse information recorded on Mr C's credit file with regard to the loan.

*HM Revenue & Customs requires Peachy to take off tax from this interest. Peachy must give Mr C a certificate showing how much tax it has taken off if he asks for one. If Peachy intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Mr C responded to say that he would like Peachy to write off the entire loan as it shouldn't have issued it in the first place. Mr C was shocked and surprised at how easy it was to get the loan from Peachy at a time when he was at the height of his gambling addiction and he was trying to get credit anywhere.

Peachy disagreed and responded to say, in summary, that:

- The obtaining of bank statements was not in line with what can be considered a reasonable and proportionate assessment based on sufficient information from multiple sources;
- It obtained information from Mr C about his financial situation and his income and expenditure and it verified this by comparing it to the information on its credit check;
- It doesn't agree that the information from its credit check which showed Mr C's credit repayments of £282 which differed from his self declared credit commitments of £150, should have made it question the discrepancy and ask for bank statements;
- Although there was a discrepancy in the information revealed by the credit check, this didn't suggest the loan was unaffordable;
- It believed the credit repayment information in the credit check differed from that provided by Mr C as Mr C would have taken the payments already made into account and considered what he was required to pay in the future;
- It said that the six application searches indicator was not an adverse indicator as consumers can shop around for credit;
- It said that the two defaults in the previous twelve months weren't active defaults as the defaults had been settled. It was also 18 months since Mr C's last short term loan account was opened;
- It said that my approach to the credit check data didn't take account of other information available, that this was Mr C's first loan with it and he had no previous adverse borrowing history with it.

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 note that Mr C said that he would like the entire loan written off. But I don't think it would be fair to say to Peachy that it should write off the entire loan as Mr C had benefitted from it.

I note that Peachy said that the obtaining of bank statements wasn't in line with what could be considered a reasonable and proportionate assessment based on sufficient information from multiple sources. As I'd said above, I think that Peachy should have been concerned about whether it knew enough about Mr C's financial situation before lending to him, especially as Mr C was committing to making the loan repayments over 12 months. So I think it would have been proportionate for Peachy to have asked some questions about what the credit checks showed and for it to have independently checked the information Mr C had provided. This doesn't necessarily mean that Peachy had to ask Mr C for his bank statements. Peachy could have asked Mr C for more information about his living costs, other commitments and debts. And it could have asked him to see proof of these in another form or used whatever means it thought appropriate to satisfy itself that it had an accurate picture of Mr C's circumstances.

I also note that Peachy said that it verified the information it obtained from Mr C about his financial situation and his income and expenditure by comparing it to the information on its credit check. But I can't see that Mr C's information was verified by Peachy's credit check. As an example of this, I note that Mr C told Peachy just ten days before the loan that he had no monthly credit commitments and short term loan commitments of £50. On the date of the loan, Mr C told Peachy he had monthly credit commitments of £50 and short term loan commitments of £100. But I can see that both sets of information differ from the information shown in Peachy's credit check which showed credit repayments of £282, and so weren't verified by the credit check. Peachy also said that its credit check showed that Mr C hadn't opened a short term loan account for 18 months. But I can see there was also a discrepancy here between the credit check and the information provided by Mr C. Mr C had provided information on two occasions in the ten days before the loan about his current short term loan commitments.

I also note that whilst Peachy's credit check showed that Mr C hadn't opened a short term loan account for 18 months, Mr C's own credit report showed that he'd opened four short term loan accounts in around the two months before he borrowed from Peachy. And I note that Peachy also said that its credit check had shown that Mr C's two defaults had been settled. But Mr C's own credit report shows a default seven weeks prior to the loan which hadn't been settled.

I understand that when a lender carries out a credit search, the information it sees doesn't usually provide the same level of detail that a consumer's credit search will and it isn't necessarily up to date. I'm also aware that not all payday and short term lenders reported to the same credit reference agencies. So, Mr C might have taken other payday or short term loans, which might not have been identified by Peachy's credit checks or his own credit search. So I can understand why Mr C's information might not have been verified by Peachy's credit check.

I also note that Peachy said that the credit repayment information provided by the credit check didn't suggest that the loan was unaffordable. But I think it certainly cast doubt on some of the answers Mr C gave about his expenditure. I can also see that Peachy said that the two defaults had been settled and that Mr C's six credit application searches in the previous month may have meant that he was shopping around for credit. But I think that the defaults and credit applications were indicators that in the fairly recent past, Mr C had been faced with financial problems. So where a lender is aware of such things, and even in the case of a first loan with small monthly repayments, I don't think it's unreasonable or disproportionate to expect a lender to carry out further enquiries to find out whether a consumer is going to be able to sustainably repay his loan. I also think that further checks were reasonable as the loan was to be repaid over 12 months.

So, after having considered the points made by Mr C and Peachy, I'm not persuaded to change my findings from those set out in my provisional decision.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Cash on Go Limited, trading as Peachy.co.uk, to:

1. Refund all the interest and charges that Mr C has paid on the loan, and pay 8% simple interest* a year on the refund from the date of payment to the date of settlement;
2. Write off any unpaid interest and charges from the loan;
3. Apply the refund referred to above to reduce any capital outstanding on the loan and pay any balance to Mr C; and
4. Remove any adverse information recorded on Mr C's credit file with regard to the loan.

*HM Revenue & Customs requires Peachy to take off tax from this interest. Peachy must give Mr C a certificate showing how much tax it has taken off if he asks for one. If Peachy intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 January 2019.

Roslyn Rawson
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