Financial Ombudsman Service

complaint

Mr H complains that Cash On Go Limited (trading as Peachy) lent to him in an irresponsible manner.

background

Peachy says that it gave two loans to Mr H, in October and December 2017. The first loan was due to be repaid in four monthly instalments, the second loan was due to be repaid over the following twelve months. But in July 2018 Mr H topped up his second loan by taking some additional borrowing. I think it is reasonable to treat that top up as a separate loan since it increased Mr H's monthly repayments significantly. Mr H repaid his first loan a little earlier than planned, but he hasn't fully repaid his outstanding balances from the last two loans. A summary of Mr H's borrowing from Peachy is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	13/10/2017	06/12/2017	£ 100
2	09/12/2017	-	£ 150
3	20/07/2018	-	£ 350

When Mr H first complained to Peachy it didn't agree that it had been wrong to give him any of the loans. But, as a gesture of goodwill, it offered to rebate some of the interest he'd paid and reduce his outstanding balance. Mr H didn't accept that offer and brought his complaint to this Service.

Mr H's complaint has been assessed by one of our adjudicators. He didn't think Peachy had been wrong to give the first loan to Mr H. But he didn't think the remaining loans should have been agreed. So he asked Peachy to pay Mr H some compensation.

Peachy didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr H accepts my decision it is legally binding on both parties.

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 - including all of the relevant rules, guidance and good industry practice - on our website.

Peachy 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 that Mr H could repay the 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 the consumer'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 Peachy should fairly and reasonably have done more to establish that any lending was sustainable for a consumer. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

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

I think that it is important for me to start by saying that Peachy was required to establish whether Mr H could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the FCA's Consumer Credit Sourcebook ("CONC") defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr H's complaint.

Peachy did some checks before it lent to Mr H. It asked him for details of his income, and his normal expenditure. And it checked his credit file before agreeing the loans. Peachy says that there was nothing of concern in the results it received from these checks.

At this stage it would be worth noting that, generally, the information a consumer might see, when they request a copy of their credit file, might be very different to that seen by a lender. A lender might only see a small portion of the credit file, or some data might be missing or anonymised, or the data might not be up to date. So, this may explain any differences between the information provided by Peachy's credit check to it and the information seen by Mr H in his credit report.

Mr H agreed to repay his first loan over a period of four months. His loan was relatively small and the extended repayment period meant that his repayments appeared to be easily affordable based on what he'd said about his disposable income. So given these repayment amounts, what was apparent about Mr H's circumstances at the time, and his borrowing history with the lender, I don't think it would've been proportionate for Peachy to ask him for the amount of information that would be needed to show the lending was unsustainable before agreeing the first loan.

Mr H repaid his first loan after less than two months. And just three days later he asked to borrow again. The amount he asked to borrow had increased, but he now asked to repay that loan over a period of twelve months. So although the amounts that Mr H needed to repay each time were smaller than if he'd taken a loan over a shorter duration he was, of course, committing to making those repayments over a far longer period.

I think given Mr H's behaviour in repaying a loan early, and then asking to borrow a larger amount very shortly afterwards, Peachy should have been concerned about how sustainable it would be for Mr H to make these repayments over such an extended period. So I think Peachy should have taken steps at that time to look in depth at Mr H's financial situation. I don't think it was reasonable for Peachy to base its lending decision on this loan on the information that Mr H was providing.

Had Peachy done better checks it would have seen that Mr H's finances were under significant pressure. He was borrowing, and had been for an extended period of time, from a number of other short term lenders. It would have been clear to Peachy that Mr H was having to borrow further to cover the hole repaying his previous loans was leaving in his finances and that his indebtedness was increasing unsustainably. I can also see that Mr H was making an increasing number of what appear to be online gambling transactions around that time.

As I said earlier, Mr H took some additional borrowing a few months later. And that meant his monthly repayments increased substantially. I haven't seen anything that would make me think Mr H's financial pressures had eased by that time – in fact it seems to me that they were getting worse, with a number of his other credit accounts entering delinquency around that time. I think that this is something that Peachy would have seen if it had done what I consider to be proportionate checks.

I think that proportionate checks before agreeing loans 2 and 3 would have shown Peachy that Mr H was facing significant problems managing his money. It would therefore have been clear that it would be unlikely that Mr H would be able to repay these loans in a sustainable manner. And therefore Peachy shouldn't have given these loans to him. Peachy needs to pay Mr H some compensation.

putting things right

I don't think Peachy should have agreed to lend to Mr H after, and including, the loan that he took on 19 December 2017 (loan 2). So for both of those loans Peachy should;

- Refund any interest and charges paid by Mr H on the loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr H's credit file in relation to the loans.

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

If Mr H still owes Peachy any of the principal sums he borrowed on his last two loans, Peachy may deduct this from the compensation that is due to him. But, to be clear, those outstanding balances should be recalculated to remove any interest and charges, but taking account of any repayments Mr H has made on the loans as though they were applied against the principal sums borrowed.

my final decision

My final decision is that I uphold most of Mr H's complaint and direct Cash On Go Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 January 2020.

Paul Reilly
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