Financial Ombudsman Service

complaint

Mr M complains that Cash On Go Limited (trading as 'Peachy') was irresponsible to lend him money.

background

Mr M took out two Peachy loans in October 2017. Here's a table showing more information:

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Monthly Repayment
1	18/10/2017	24/10/2017	6	£150.00	£55.64
2	24/10/2017	Not repaid	12	£450.00	£79.46

Mr M told us he doesn't feel that Peachy's checks went far enough and that the loans were unaffordable and shouldn't have been given.

Our adjudicator thought it wasn't unreasonable that Peachy agreed the first loan - but he felt that loan 2 shouldn't have been given to Mr M.

Peachy disagreed with our adjudicator's view. It mainly said that by loan 2, there was no reason for it to conduct further in-depth assessments such as asking for Mr M's bank statements (as our adjudicator had said it should) because Mr M's disposable income meant the loan repayments were affordable, plus he had a steady job and a positive payment record.

The complaint came to me to decide. I issued a provisional decision.

what I said in my provisional decision

Here are some of the main things I said.

"Peachy needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should've carried out proportionate checks to make sure Mr M 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 the 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.

Peachy was required to establish whether Mr M could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

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 relevant regulations define 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 M's complaint.

Peachy has told us about the checks it did before lending to Mr M. It asked Mr M to provide details of his income and to tell Peachy what he normally spent each month – including what he was paying for other borrowing.

I agree with the adjudicator that it wasn't wrong for Peachy to give Mr M loan 1 on the basis of the information he had declared about his income and outgoings and what Peachy had recorded about his financial situation. It was early in the lending relationship and so I think the checks were enough for Peachy to agree to lend. As Mr M hasn't raised any objection to the adjudicator's recommendation in relation to loan 1, I don't think that I need to say more about it.

Peachy has taken issue with our adjudicator's suggestion that it ought to have collected Mr M's bank statements before agreeing to provide loan 2. And I think it's fair to say that there are no prescribed rules saying that a lender is obliged to ask for copies of bank statements. But the checks have to be proportionate.

Mr M repaid loan 1 within less than a week after taking it out. That suggested he might not have been managing his finances in a well planned way or that his situation was volatile.

Mr M then arranged loan 2 the same day that he repaid his first loan, and he borrowed three times as much and planned the repayments over a much longer period – loan 2 was due to be paid by way of 12 monthly repayments – possibly to keep the cost of the monthly repayments down. So, when it was being arranged, Peachy expected Mr M to be paying for this borrowing over a year.

In these circumstances, I think Peachy should have considered if it could safely rely on the information Mr M was providing about his finances. Although the loan might've looked affordable on the figures, I don't think it was any longer reasonable for Peachy to base its lending decision on the information Mr M was providing – given that his borrowing looked to be at odds with what he'd told Peachy about his financial situation. I think it would've been proportionate for Peachy independently to check the true state of Mr M's finances before agreeing to lend loan 2.

I've had the benefit of seeing Mr M's bank statements from around that time. To be clear, I'm not saying that Peachy was required to ask for these before agreeing to lend – but they indicate what better checks would have shown Peachy had it carried out a more in depth investigation into Mr M's financial situation, as I think it should've done.

Had Peachy looked more closely into Mr M's finances it would have realised that he was facing serious problems managing his money. It would have seen that Mr M had three other short term loans – and that it was likely he had used some of the money he'd previously borrowed from Peachy to repay other short term loans that were due.

I think that information ought to have prompted Peachy to decline Mr M's application for loan 2 because it wasn't reasonable for Peachy to conclude that it was likely Mr M would be able to repay loan 2 in a sustainable way.

And that's borne out by what happened - Mr M was only able to afford the first three monthly repayments before entering into a debt management plan".

what the parties said in response to my provisional decision

Mr M has told us he agrees with what I've said.

Peachy told me it has seen my provisional decision and has nothing further to add.

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.

Having done so, and as no further comments have been received in response to my provisional decision that change what I think about this case, I still think it's fair to uphold this complaint for the reasons I explained in my provisional decision.

putting things right – what the lender should do

If Peachy has sold the outstanding debt it should buy it back before doing what I have outlined below – or if it isn’t able to buy the debt back then Peachy should liaise with the new debt owner to achieve the following:

A. Remove all interest, fees and charges from the balance on loan 2, and treat any repayments made by Mr M as though they had been repayments of the principal. If this results in Mr M having made overpayments then these should be refunded with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Peachy should then refund the amounts calculated in "A" and "B".

B. If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance outstanding. If this results in a surplus then the surplus should be paid to Mr M. However if there is still an outstanding balance then Peachy should try to agree an affordable repayment plan with Mr M.

C. Remove all adverse entries from Mr M’s credit file for loan 2 when it is paid - and ask the debt purchaser to do the same if Peachy sold this loan on.

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

my final decision

I uphold this complaint and direct Cash On Go Limited (trading as ‘Peachy’) to take the steps I’ve set out above to put things right for Mr M.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 4 April 2020.

Susan Webb
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