

## The complaint

Mr S says MYJAR Limited irresponsibly lent to him. Mr S says he was a bad candidate for borrowing. He had a gambling problem and had defaulted on different types of credit prior to borrowing from MYJAR. His income had reduced and was insufficient to cover the repayments. He says MYJAR took advantage of his circumstances and lent him credit he couldn't afford.

## What happened

This complaint is about two short-term loans MYJAR gave to Mr S in February 2018. Mr S's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Repayment
1	08/02/2018	26/02/2018	3	£200.00	£107.81
2	27/02/2018	Outstanding	12	£925.00	£138.86

Our adjudicator partially upheld Mr S's complaint and thought loan two shouldn't have been given as MYJAR should have carried out more proportionate checks for loan two and would have seen Mr S was having problems managing his money.

MYJAR disagreed with the adjudicator. It said that based on Mr S's repayment history and information declared by him, it would not have been proportionate to request his bank statements at the time of loan two.

As the complaint remains unresolved, it has been passed to me for decision in my role as ombudsman.

## What I've decided – and why

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.

MYJAR 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 Mr S 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 MYJAR should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer'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 MYJAR was required to establish whether Mr S 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 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.

Mr S didn't comment on the adjudicator's opinion that loan one shouldn't be upheld. Because of this, I don't think there is any ongoing disagreement about this loan. So, I won't be making a decision about this lending. But the loan was part of the borrowing relationship Mr S had with MYJAR. So, it is something I will take into account when considering the other loan he took.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr S's complaint. After doing so, I've decided to uphold the complaint in part. I'll explain why.

When Mr S returned for additional borrowing at loan two, it was the day after loan one was repaid. And loan one was repaid early only to be replaced by further borrowing for a much larger sum – nearly five times as much – and the term of the loan had increased from three months to 12 months.

I agree with the adjudicator that this borrowing behaviour would suggest that Mr S may have been having problems managing his money. And I think at this point MYJAR should have been looking to build a bigger picture about Mr S's financial circumstances. It should have

sought further information and evidence from Mr S – such as asking for copies of his pay slips, evidence of his outgoings by asking for copies of bills or his bank statements – as examples.

And if it had done so, I think MYJAR would have seen that Mr S was making a regular high number of transactions on on-line gambling websites and his lending was going some way to finance Mr S's betting. So, I think MYJAR would have concluded that Mr S was having problems managing his money and there was a real risk that he wasn't in the position to make the loan repayments – which proved to be the case as loan two is outstanding. I don't think MYJAR should have agreed to the lending.

So, like the adjudicator I'm also upholding the complaint about loan two and MYJAR should put things right.

### **putting things right – what MYJAR needs to do**

If the outstanding balance due on Mr S's loan has been transferred to a third party MYJAR should buy the loan back if it can. If MYJAR can't buy the loan back, then it needs to work with the third party to make sure the following is achieved:

A) MYJAR should remove all interest, fees and charges from the balance on the upheld outstanding loan, and treat any repayments made by Mr S as though they had been repayments of the principal on the outstanding loan. If this results in Mr S having made overpayments then MYJAR should refund these overpayments with 8% simple interest\* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

B) If there is still an outstanding balance then MYJAR should try to agree an affordable repayment plan with Mr S. MYJAR shouldn't pursue outstanding balances made up of principal MYJAR may have already written-off. But I'd remind MYJAR of its obligation to treat Mr S fairly.

C) MYJAR should remove any adverse information recorded on Mr S's credit file in relation to loan two.

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

### **My final decision**

For the reasons given above, I'm partially upholding Mr S's complaint. MYJAR Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 August 2020.

Catherine Langley  
**Ombudsman**