

## The complaint

Mr P says MYJAR irresponsibly lent to him.

## What happened

This complaint is about 5 short term loans MYJAR provided to Mr P between late 2014 and Autumn 2016. Mr P's borrowing history is as follows:

Loan	Start date	Repaid	Number of Instalments	Amount £'s	Highest repayment Approx. £'s
1	12/12/2014	30/12/2014	1	100	120
2	01/02/2015	20/03/2015	2	200	245
3	06/08/2015	19/09/2015	3	575	314
4	08/12/2015	26/01/2016	3	1,000	542
5	01/10/2016	Outstanding	3	825	423

On 21 August 2020 I issued a provisional decision, provisionally upholding the complaint in respect of loans four and five.

Mr P didn't send us any more information but accepted my provisional decision. MYJAR didn't respond at all. So I see no reason to vary my provision findings or decision

## 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 P 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 P 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.

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

I am satisfied that, in relation to loans one, two and three, the information MYJAR obtained from Mr P, and the checks it carried out, were proportionate. And didn't disclose anything that ought to have given rise to a concern that Mr P couldn't sustainably repay them. However, I think it would have been proportionate for MYJAR to have asked Mr P what other short-term loans he had outstanding before giving him the fourth loan. Had it done so, Mr P would have had to disclose that he had at least three other such loans at the time. And I find that, in the circumstances of this complaint, MYJAR should reasonably have concluded from this that Mr P was having difficulty managing his money. And that it was therefore unlikely he would be able to sustainably repay the fourth loan. So MYJAR shouldn't have given him it.

There was a gap of over eight months between Mr P paying off the fourth loan and taking out the fifth. I've seen the information MYJAR had in its possession at the time he applied for loan five relating to his financial circumstances during that period. This shows that his estimated monthly debt repayment of about £125 in December 2015 increased to over £150 in February and April 2016. And then increased in May, July and September 2016 up to over £525. Further, this information shows that, in the previous three months, he'd opened five new accounts and had had seven accounts where the balances had increased. I don't consider that this information could reasonably have led MYJAR to conclude that Mr P had gained control over his finances in that period. Accordingly, I find that MYJAR should have treated the fifth loan as a continuation of his chain of borrowings with it. And it should have looked further into his financial circumstances before making the loan. Had it done so, it would have seen, as well as other matters, that Mr P had at least three other short-term loans at that time. Again I find that this should reasonably have indicated to MYJAR that Mr P was struggling with his finances. And therefore unlikely to be able to sustainably repay

this further loan. So I find that MYJAR shouldn't have given him this loan either.

So I think that Mr P has lost out because MYJAR gave him the fourth and fifth loans when it shouldn't have.

### **Putting things right**

If MYJAR has sold the outstanding debts MYJAR should buy these back if MYJAR is able to do so and then take the following steps. If MYJAR isn't able to buy back the debts, then MYJAR should liaise with the new debt owner to achieve the results outlined below.

A. MYJAR should add together the total of the repayments made by Mr P towards interest, fees and charges on loans 4 and 5, not including anything MYJAR has already refunded.

B. MYJAR should calculate 8% simple interest<sup>†</sup> on the individual payments made by Mr P which were considered as part of "A", calculated from the date Mr P originally made the payments, to the date the complaint is settled.

C. the amounts calculated in "B", (after deduction of tax), and "A" should be used to repay any capital balance remaining on loan 5 and any principal MYJAR has already written-off. If this results in a surplus, then the surplus should be paid to Mr P. However, if there is still an outstanding balance, then MYJAR should try to agree an affordable repayment plan with Mr P.

D. MYJAR should remove any adverse information recorded on Mr P's credit file in relation to loan 4 and, once it has been paid off, loan 5.

<sup>†</sup> HM Revenue & Customs requires MYJAR to take off tax from this interest. MYJAR must give Mr P a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reason I've given, my decision is that I uphold this complaint in respect of loans four and five. And I order MYJAR Limited to carry out the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 January 2021.

Ros Barnett

**Ombudsman**