

The complaint

Mr N says MYJAR Limited (“MYJAR”), irresponsibly lent to him. Mr N says he was suffering from depression and MYJAR kept giving him loans and in a short space of time. Mr N had to reborrow further to pay off other debt. The lending has left Mr N feeling anxious and depressed.

What happened

This complaint is about three short-term loans MYJAR provided to Mr N in April 2019. Mr N’s borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Repayment
1	09/04/2019	11/04/2019	3	£275.00	£137.75
2	11/04/2019	16/04/2019	6	£600.00	£179.67
3	16/04/2019	Balance outstanding	6	£600.00	£174.95

In its response to Mr N’s complaint MYJAR agreed to uphold loan three, pay redress and remove any adverse information about the loan from Mr N’s credit file. Mr N rejected the offer.

As MYJAR had already offered to put loan three right, our adjudicator didn’t have to make a finding on that loan in the assessment of the complaint. The adjudicator went onto uphold loans one and two as it was clear Mr N was having problems managing his money at the time of the lending and the loans shouldn’t have been given as the lending was unsustainable for Mr N.

MYJAR agreed with the adjudicator’s recommendation. But it said Mr N still owed £588 for loan three. So, the redress it calculated would be offset against the outstanding balance and Mr N would still owe £563.91.

Mr N didn’t agree with the offer. He didn’t think he should have to repay the outstanding amount as the loan was unaffordable.

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 that Mr N 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 N 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.

As MYJAR already offered to uphold loan one, like the adjudicator I don't need to make a finding on this. And MYJAR's redress calculations were as we would expect them to be.

The adjudicator then went onto uphold the complaint about loans one and two on the basis that MYJAR's own checks showed that Mr N was struggling with his finances and wouldn't be able to sustainably repay the lending. MYJAR agreed with the adjudicator and offered to put the matter right. And again, the calculations for the redress were as we would expect them to be. So again, I don't need to make any further findings on whether loans one and two should've been granted.

But, for completeness, I confirm I agree that loans one to three should be upheld.

It seems that Mr N only made a repayment of £12 towards loan three so this means the total amount of principal outstanding is £588. MYJAR's offer totalled £24.09 so that amount would be offset against the outstanding principal balance leaving £563.91 still payable. Mr N has said he doesn't think he should have to repay this as the lending was unaffordable. I can

appreciate why Mr N feels as if he shouldn't repay the principal sum, but that isn't the position this service takes. I've explained below how we look into these types of cases.

When a business has made an error – either because it accepts one has been made or we decide something has gone wrong – the starting point, for this service, is that a consumer should be put back into the position they would have been in had an error not been made. However, this is not always possible especially in cases that involve lending money.

In cases of irresponsible lending, such as this, this service has to acknowledge that the consumer has received a sum of money and has had the benefit of it. This is why in such cases we ask the lender to refund any extra that has been repaid by a consumer, so for example interest and charges. We also direct any additional interest payment to the consumer to reflect the loss of use of those funds. This has the effect of providing the consumer with an interest free loan. By doing this, in our view, a fair outcome is reached.

I've thought about what Mr N has told us and I do have sympathy for his position. I can understand why he wants the outstanding balance written off, and his liability for the lending to be ended. He's also told us two other short-term lenders have written off the debt he owed them. But, in the individual circumstances of this complaint, I'm not in the position to ask MYJAR to do that. I know Mr N will be disappointed with my decision, but I'll explain why I've reached it.

Mr N has had use of the funds and I don't think it would be fair in this case, to ask MYJAR to write off this balance. Mr N, as I've said, has used these funds and I think MYJAR is entitled to recover what was lent – which is what it is proposing to do.

I accept that Mr N hasn't repaid the outstanding balance due on loan three, but I can't say in this case, that should mean MYJAR should write the balance off. But what MYJAR should do is treat Mr N fairly when dealing with him and consider all reasonable courses of action while trying to recover the outstanding balance.

I appreciate this decision will come as a disappointment to Mr N, but I want to assure him that I've listened to his concerns, but on this occasion, I think the offer made by MYJAR to resolve the complaint is fair and reasonable.

Putting things right

In deciding what redress MYJAR should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr N from loan one, as I'm satisfied it ought to have.

Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr N may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr N in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr N would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce MYJAR's liability in this case for what I'm satisfied it has done wrong and should put right.

For clarification purposes, what MYJAR needs to do.

If the outstanding balance due on Mr N's loan three 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) Add together the total of the repayments made by Mr N towards interest, fees and charges on all upheld loans without an outstanding balance.

B) Calculate 8% simple interest* on the individual payments made by Mr N which were considered as part of "A", calculated from the date Mr N originally made the payments, to the date the complaint is settled.

C) Remove all interest, fees and charges from the balance on the upheld outstanding loan, and treat any repayments made by Mr N as though they had been repayments of the principal on the outstanding loan.

If this results in Mr N 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.

MYJAR should then refund the amounts calculated in "A" and "B" and move to step "E".

D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on the outstanding loan. If this results in a surplus, then the surplus should be paid to Mr N. However, if there is still an outstanding balance then MYJAR should try to agree an affordable repayment plan with Mr N.

E) Remove any adverse information recorded on Mr N's credit file in relation to one to three.

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

If after doing the above Mr N still has an outstanding balance due, then MYJAR should try and work together to come to a mutually agreeable repayment plan with Mr N in order to repay what is owed. As I've said above, I'd remind MYJAR of its obligation to treat Mr N fairly.

My final decision

For the reasons given above, I'm upholding Mr N'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 N to accept or reject my decision before 5 January 2021.

Catherine Langley
Ombudsman