

## The complaint

Mr S says MYJAR Limited lent to him irresponsibly. He said that he had problems repaying the earlier loans he took and so MYJAR should've been aware he was in financial difficulty and not continued to lend to him.

## What happened

This complaint is about five payday, and one instalment, loans MYJAR provided to Mr S between April 2016 and May 2019.

loan number	date taken	amount borrowed	monthly instalments	date repaid
1	16/04/2016	£100	1	08/07/2016
2	30/09/2017	£175	6	27/04/2018
3	30/10/2018	£225	3	18/01/2019
4	18/01/2019	£300	3	12/04/2019
5	12/04/2019	£300	3	09/05/2019
6	17/05/2019	£375	3	outstanding

This complaint has been looked at a number of times here. And I've thought about all of the things both sides have said in response to our adjudicator's findings.

The most recent adjudicator to look at this complaint partially upheld it. He thought that MYJAR was wrong to approve loans 2 to 6. This was because Mr S had struggled to repay loans 1 and 2. And whilst there were breaks in the lending between loans 1 and 2, and 2 and 3, Mr S had been declined for loans within these breaks. Both of these showed Mr S was having financial problems.

MYJAR disagreed with the adjudicator's opinion. It said that the loans that were declined were evidence of its procedures working well. And some of the declined loans were within a three month '*cooling off*' period that was applied after loan 1 and again after loan 2.

As no agreement was reached the complaint was passed to me, an ombudsman, to issue a 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 irresponsible 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 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.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator 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 decided to uphold Mr S' complaint in part and I've explained why below.

Mr S didn't disagree with our adjudicator's opinion about loan 1. 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 it was part of the borrowing relationship Mr S had with MYJAR. So it is something I will take into account when considering the other loans he took.

Mr S had problems repaying loan 1 and he entered into a repayment arrangement to do this. He took around three months to repay a loan that had an initial term of one month. So as a starting point, in my view, this is a clear sign of financial difficulty.

I can accept that it is reasonable to have a period where loan applications are declined after this, MYJAR has called this a 'cooling off period'. But Mr S applied for, and was declined, four times between the end of loan 1 and the start of loan 2. Only one of these applications was within MYJAR's 'cooling off' period.

This means that from the start of loan 1, to the start of loan 2, which is a period of not far short of a year and a half, Mr S was either having problems repaying his existing lending or his financial situation was such that MYJAR didn't think it was reasonable to approve any loans.

And the situation is very similar before loan 3. Mr S had struggled to repay loan 2 and had been declined for further borrowing between loans 2 and 3.

So, I think that after loan 1 MYJAR could've realised at that time that Mr S may have some longer term financial problems rather than just using the loans to help with a temporary cash flow problem. MYJAR should've also become concerned about whether it knew enough about Mr S' true financial situation.

I think that it would've been proportionate to fully review Mr S' financial situation before approving loans 2 to 5. And I think that MYJAR needed to verify the information it found out where possible. This is to make sure Mr S was in position to make the repayments sustainably.

I don't think MYJAR did this. So I need to think about what MYJAR would've likely seen if it had carried out proportionate checks.

Mr S has provided some information about his financial circumstances which includes his bank statements. I accept that this isn't exactly what MYJAR would've seen at the time. But I think it would've found out similar information if it had made proportionate checks, so I think it's reasonable to rely on it.

This shows that Mr S was having problems managing his money over this time. Most importantly he was borrowing and repaying significant amounts from other short term loan providers and he had been doing this for some time.

I think that MYJAR would've found out this information if it had made proportionate checks. And I think MYJAR would've seen Mr S wouldn't have been able repay loans 2 to 5 in a sustainable way. So I think that MYJAR shouldn't have given loans 2 to 5 to Mr S and I think he's lost out as a result of this. I'm therefore upholding Mr S' complaint about them.

I've also considered the pattern of lending up to loan 6 and I think the lending history and pattern of lending itself clearly demonstrates that further lending would likely be unsustainable. So I think MYJAR was irresponsible to continue lending after this point. So I'm also upholding Mr S' complaint about loan 6.

### **Putting things right**

MYJAR shouldn't have given Mr S loans 2 to 6.

If MYJAR has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If MYJAR is not able to buy the debts back 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 S towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

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

C) MYJAR should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr S as though they had been repayments of the principal on all outstanding loans. 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. 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 outstanding loans. If this results in a surplus then the surplus should be paid to Mr S. However, 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 has already written-off.

E) MYJAR should remove any adverse information recorded on Mr S' credit file in relation to loans 2 to 5. The overall pattern of Mr S' borrowing by loan 6 means any information recorded about this loan is adverse, so it should remove loan 6 entirely from Mr S' credit file. MYJAR does not have to remove loan 6 from Mr S' credit file until it has been repaid, but MYJAR should still remove any adverse information recorded about this loan.

\*HM Revenue & Customs requires MYJAR to deduct tax from this interest. MYJAR should give Mr S a certificate showing how much tax MYJAR has deducted, if they ask for one.

### **My final decision**

For the reasons I've explained, I partly uphold Mr S' complaint.

MYJAR Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 December 2020.

Andy Burlinson  
**Ombudsman**