

The complaint

Mr U complains that MYJAR Limited gave him a loan that he couldn't afford.

What happened

Mr U took out one instalment loan with MYJAR for £550 on 8 July 2018. The loan was repayable by six monthly repayments. The repayment for the first month was £128.69 and the five remaining monthly repayments were around £162.63. Mr U hasn't been able to make any of the loan repayments.

Mr U has provided this Service with information about his mental health issues. He suffers with long term mental health issues and isn't working due to his mental health.

The adjudicator sent MYJAR Mr U's Debt and Mental Health Evidence Form in February 2020. In late February 2020, MYJAR responded by offering to waive all interest and charges on Mr U's loan, leaving an outstanding principal balance of £550, and to arrange a suitable repayment plan for Mr U to repay the principal balance to allow sufficient time for the principal amount to be repaid.

Mr U rejected MYJAR's offer.

our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld. But he noted that MYJAR had said that its offer was still valid.

Mr U disagreed. He said that he was on a low income from his mental health. The loan wasn't affordable. He asked that MYJAR further reduce the balance. He had been through a period of immense stress due to his mental health. He said that some of his creditors had agreed it was not correct to lend to him.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr U and to MYJAR on 22 October 2020. I summarise my findings:

I noted that at the time of Mr U's loan, the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook ("CONC"). The CONC contained guidance for lenders about responsible lending.

I said that MYJAR needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Mr U 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 thought less thorough checks might be reasonable and proportionate.

But certain factors might have pointed to the fact that MYJAR should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors included:

- 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 had been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There might even come a point where the lending history and pattern of lending itself clearly demonstrated that the lending was unsustainable.

I noted that MYJAR was required to establish whether Mr U could sustainably repay his loan – 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 didn't automatically follow this was the case. This was because the CONC defined sustainable as being without undue difficulties and in particular the consumer 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 followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Mr U's complaint.

I'd thought about whether MYJAR's checks were proportionate for the loan. I noted Mr U needed to make a highest monthly repayment of around £162 to repay the loan for five of his six monthly repayments and that Mr U was going to be tied in to repaying this loan every month for the next six months. And he was going to have to repay altogether £941.81. Nevertheless, it seemed on the face of it that the repayments would have looked relatively modest compared to Mr U's declared income. However, I thought the information MYJAR gathered should have raised concerns and prompted further checks.

I noted that Mr U had told this service that he was suffering with mental health issues. But I couldn't see that he'd told MYJAR about these before he took out the loan. So, at the time the loan was provided I couldn't fairly say MYJAR ought to have known about these.

MYJAR had told us about the checks it did before lending to Mr U. It had asked for his income which Mr U declared as £1,462, and for his outgoings. MYJAR had asked for details of three categories for Mr U's outgoings: his housing, his credit commitments and "other". I noted that Mr U's loan application showed that his housing costs were £399 but that he had no credit repayments and no other expenses.

MYJAR then made adjustments to those figures using its own internal affordability calculations. I could see on MYJAR's records that they showed Mr U's expenses as £1,130.44.

I also noted that MYJAR had carried out a credit check before the loan and had seen a summary of that check. This showed that Mr U had an overdue high cost short term credit account. It also showed that Mr U had estimated monthly repayments of unsecured debt of £175.44.

So, I thought the results of MYJAR's credit checks ought to have given MYJAR concerns that Mr U already had an adverse credit record and that his finances might be under pressure. MYJAR had also seen from its credit checks that Mr U's expenses were higher than he'd declared. Mr U hadn't declared any credit commitments.

I could also see that MYJAR had adjusted Mr U's expenses to reflect statistical expenditure and what it had seen in its credit checks. I also noted that it determined a monthly affordable amount ("MAA"). It had explained the data used for this calculation.

In its Monthly Affordable Amount Report, MYJAR said that the MAA was £202.80. As the highest monthly loan repayment was around £162.63 for five months, this would have left Mr U with around £40 a month (for five months) to meet any unexpected or seasonal costs. I thought leaving Mr U with this margin for each of those months meant it would be highly likely he would have difficulty meeting his loan repayments without borrowing further. Given this, I thought that MYJAR should have been concerned that this loan wasn't sustainably affordable for Mr U.

So, I thought that MYJAR should have been concerned about Mr U's adverse credit history, the discrepancy between what he'd declared about his credit repayments and what it had seen in its credit checks and the small amount of monthly disposable income it appeared Mr U would have been left with according to its own calculations. So, altogether I thought all this should have alerted MYJAR to do much more thorough checks and to have looked into Mr U's financial situation in more detail before lending to him. So far as I could see MYJAR didn't verify Mr U's income or his expenses – for example by asking to see payslips or bills.

I would normally have looked at the borrower's bank statements and credit report to see what proportionate checks would likely have shown. I asked the adjudicator to ask Mr U to supply these, but he hadn't been able to do so.

But Mr U had supplied payment confirmation that he was in receipt of universal credit at the time he'd applied for the loan. So, it appeared that he wasn't working and was actually in receipt of a far smaller income than he'd declared to MYJAR. He'd received £692 each month. He had also provided this service with an undated income and expenditure form to show that his monthly expenditure was £691.70 at the time he'd received the universal credit amount.

So had MYJAR made what I considered to be proportionate checks and better understood Mr U's financial situation, it would've known that its proposed lending wasn't sustainable and as a responsible lender it would have declined to provide him with the loan. Instead MYJAR provided Mr U with the loan and he wasn't able to make any repayments to it. So overall, I thought MYJAR was irresponsible to have provided the loan to Mr U and I said that I intended to uphold Mr U's complaint.

What MYJAR should do to put things right

I'd said that in most cases, where we find a loan to have been agreed irresponsibly, this Service's usual approach to putting things right was to refund any interest and charges paid by the borrower together with a refund of 8% per annum simple interest on these payments. We'd usually expect the borrower to repay the capital borrowed as they'd had the use of these funds.

As I'd mentioned above, MYJAR had offered to write off the interest and charges on the loan as Mr U hadn't paid any of these. But I needed to consider whether in Mr U's circumstances this redress alone would have been a fair way to settle this complaint.

I'd reviewed the provisions in CONC with regard to arrears. I noted that CONC 7.2.1 said that a firm must establish and implement clear, effective and appropriate policies for dealing with customers whose accounts fall into arrears and for the fair and appropriate treatment of customers who the firm understands or reasonably suspects to be particularly vulnerable. CONC 7.2.2 said that customers with mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers. CONC 7.2.3 said that in developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, firms may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines - "Good Practice Awareness Guidelines for Customers with Mental Health Conditions and Debt". And CONC 7.3.4 said that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

In addition I noted that CONC 7.10.1R stated that a lender must suspend the pursuit of recovery of a debt from a customer when the firm had been notified that the customer might not have the mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time; or the firm understands or ought reasonably to be aware that the customer lacked mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time.

I'd also considered in particular Chapter 13 of the third edition (2015) of the MALG Guidelines and noted that these say that creditors should consider writing off unsecured debts when mental health conditions are long term and hold out little likelihood of improvement and are such that it is highly unlikely that the person in debt would be able to repay their outstanding debts.

I'd reviewed the medical evidence that the consumer had supplied to us. I could see that Mr U had suffered from severe anxiety since childhood. He also suffered from stress and depression. His anxiety was caused in part by debt. He struggled to make decisions. I noted that a letter from the NHS in May 2018 said that Mr U was out of work which affected his finances and that he struggled to cope with the pressure of this. Mr U had told this service that he'd been out of work due to his mental health and was not looking for work because of it. He was in receipt of Universal Credit and PIP and had priority debts with his electricity and water providers. He also had other outstanding debts with other lenders.

MYJAR appeared to have acknowledged that some degree of forbearance was warranted in this case as it had already offered to write off the interest and charges on the loan. I also noted that it had tried to agree repayment plans with Mr U, but these had all failed.

I could see from the medical evidence supplied to this Service and the information provided by Mr U that he was vulnerable and suffered from a long term mental health condition which was affecting his ability to work. Because of this, it appeared unlikely that Mr U would be able to repay his outstanding debt with MYJAR for at least the medium term. And Mr U had told this Service that the thought of his debt with MYJAR was causing him sleep issues.

Bearing the above in mind and taking everything into account, in the context of this case, I thought the fairest thing to do to put Mr U back into the position he would have been in had he not been granted a loan by MYJAR was for the lender to write-off the full balance of the outstanding debt.

Subject to any further representations by Mr U or MYJAR my provisional decision was that I intended to uphold this complaint. I intended to say that MYJAR should:

- a) write-off the outstanding balance, including the capital, on Mr U's loan agreed in July 2018; and
- b) remove any adverse information from his credit file in relation to this loan.

I said that if MYJAR had sold this debt to a third-party and if it couldn't or didn't wish to buy it back, then it needed to work with the third-party to bring about the above steps.

Mr U responded to my provisional decision to say that he was happy with it.

MYJAR responded to my provisional decision to say that it accepted it.

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.

Given that Mr U and MYJAR have accepted my provisional decision, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold the complaint and require MYJAR to take the steps set out below.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of this complaint, I order MYJAR Limited to put things right as follows:

1. Write-off the outstanding balance, including the capital, on Mr U's loan agreed in July 2018; and
2. Remove any adverse information from his credit file in relation to this loan.

If MYJAR has sold this debt to a third-party and if it can't or doesn't wish to buy it back, then it needs to work with the third-party to bring about the above steps.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 7 December 2020.

Roslyn Rawson
Ombudsman