

complaint

Miss S complains about short-term loans granted to her by MEM Consumer Finance Limited trading as PaydayUK ("Payday" or "the lender"). Miss S says the loans were not affordable for her and were irresponsibly lent.

background

This complaint is about eight payday loans Payday provided to Miss S between February and June 2013. A summary of the loans is set out below.

| LoanID | Loan Start Date | Loan End Date | Amount Due | Term - Months | Monthly Payment |
|---------|-----------------|---------------|------------|---------------|-----------------|
| 1000001 | 12/02/2013 | 27/02/2013 | 194.92 | 1 | 194.92 |
| 1000002 | 07/03/2013 | 27/03/2013 | 298.88 | 1 | 298.88 |
| 1000003 | 05/04/2013 | 09/04/2013 | 480 | 1 | 480 |
| 1000004 | 24/04/2013 | 30/04/2013 | 337.87 | 1 | 337.87 |
| 1000005 | 12/05/2013 | 31/05/2013 | 129.95 | 1 | 129.95 |
| 1000006 | 05/06/2013 | 13/06/2013 | 600 | 1 | 600 |
| 1000007 | 15/06/2013 | 28/06/2013 | 600 | 1 | 600 |
| 1000008 | 30/06/2013 | 12/07/2013 | 600 | 1 | 600 |

Our adjudicator upheld Miss S's complaint and thought that loans three to eight shouldn't have been given. Miss S had cancelled loans three, four, six, seven and eight and didn't pay any interest on these loans. So a refund was due only in connection with loan five.

It wasn't clear whether loans seven and eight were showing on Miss S's credit file, so the adjudicator said any record of those loans should be removed.

Payday agreed with the adjudicator's conclusions in connection with loan five. It said it would refund interest and charges for that loan, and remove the record of it from Miss S's credit file.

Miss S didn't agree with the adjudicator's conclusions, so the complaint has been passed to me for a final decision.

my findings

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.

Miss S says payday loans have had a huge impact on her finances, and that she was often borrowing from one lender to pay another. She says this created considerable stress and anxiety. With that in mind, she doesn't think the refund offered by Payday is fair.

I can understand why Miss S might take that view. But our approach means we look at the circumstances in which each loan was provided, and consider whether or not the lender did everything it should have when assessing the loan applications. If there were any assessment failings, we look at whether this resulted in the lender agreeing to lend when it should reasonably have known that the customer would find it difficult to repay.

We also consider whether there came a point in the lending relationship where the pattern of lending itself showed that further credit was likely to have been unsustainable.

If it wasn't appropriate for the lender to lend, to put things right we ask it to refund interest and charges paid on the loan or loans that shouldn't have been provided.

The lender usually also has to pay interest on the refund, and remove any adverse information about the loan or loans that shouldn't have been given from the customer's credit file.

We keep in mind that the customer had use of the money that the lender loaned. So unless there are very specific reasons why a refund should be made, we don't usually ask the lender to refund the original loan amount.

Payday accepts that it shouldn't have given Miss S loans three to eight. As all but one of those loans were cancelled by Miss S, a refund of charges and interest is due only in connection with loan five.

Payday has also agreed to remove any adverse information in connection with loan five.

I think that's fair and reasonable, so I won't be asking Payday to make any further refunds in connection with loans three to eight.

But I'm satisfied that Payday should also remove any information about loans seven and eight from Miss S's credit file.

I've thought about whether it was fair and reasonable for Payday to provide loans one and two to Miss S.

The Office of Fair Trading (OFT) was the regulator at the time when Miss S borrowed loans one and two. Its guidance says that Payday needed to make a reasonable assessment of whether she could afford to meet the repayments for her loans in a sustainable manner. This means being able to meet her repayments out of her normal income without having to go without or borrow further.

The regulations aren't prescriptive about what checks Payday needed to carry out. But the checks needed to be proportionate to the circumstances. In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way.

So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the higher the loan amount,
- the lower the consumer's income; or
- the longer the lending relationship.

So, as our adjudicator did, I've first thought about whether or not the checks Payday carried out for loans one and two were proportionate and, if not, what proportionate checks might have shown.

Having looked carefully at all of the evidence, I haven't been able to safely conclude that Payday carried out reasonable and proportionate checks when Miss S applied to it for loans one and two.

Keeping in mind Miss S's declared income of £1,300 and the amounts she was borrowing (£150 and £230), I think it would've been reasonable for Payday to consider not only her income, but also her normal monthly living costs and regular financial commitments. I'm not sure that Payday did that.

So I've given careful consideration to the bank statements Miss S has provided, particularly around the time that loans one and two were provided in order to come to a conclusion about what Payday might have found out about her usual living costs, had it looked into those in more detail

Having done so, I'm not persuaded that the evidence from those statements meant it would've been reasonable for Payday to conclude that Miss S wouldn't be able to sustainably repay her loans. I appreciate that Miss S was borrowing from other short term lenders at the time but I don't think Payday would have found out the extent of her dependence this early on in their lending relationship.

That means I am not upholding Miss S's complaint in connection with loans one and two. I appreciate that this will be disappointing for her, but I hope my explanation makes it clear why I've reached this conclusion.

what Payday should do to put things right

Payday was irresponsible to have agreed loans three to eight for Miss S. Loans three, four, six, seven and eight were cancelled by Miss S. In order to put Miss S back in the position she would have been in, had it not agreed to the loans, Payday should:

- refund all interest and charges (including late fees and default interest charges) Miss S paid for loan five;
- pay interest on that refund at 8% simple* per year from the dates of payment to the dates of settlement;
- remove all information about loans seven and eight from Miss S's credit file.

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

my final decision

I uphold Miss S's complaint for the reasons given above and require MEM Consumer Finance Limited (trading as PaydayUK) to put things right as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 18 August 2019.

Caroline Stirling
ombudsman