

complaint

Ms I complains about payday loans she took out with MEM Consumer Finance Limited (trading as Payday UK) which she says shouldn't have been given because the loans weren't affordable.

background

A summary of Ms I's borrowing can be found below;

loan number	loan amount	received date	actual repayment date
1	£100.00	18/01/2012	31/01/2012
2	£200.00	07/02/2012	29/02/2012
3	£380.00	05/03/2012	31/03/2012
4	£200.00	01/01/2014	31/01/2014
5	£200.00	06/02/2014	28/02/2014
6	£200.00	01/03/2014	31/03/2014
7	£300.00	31/03/2014	30/04/2014
8	£300.00	30/04/2014	30/05/2014
9	£280.00	02/06/2014	30/06/2014
10	£250.00	09/08/2014	29/08/2014
11	£100.00	20/10/2014	31/10/2014
12	£100.00	06/12/2014	09/01/2015
13	£300.00	10/01/2015	29/05/2015

Ms I had a further five loans after loan 13. But when these loans were approved Payday UK had a different parent company and so those loans will be looked at in a different final decision.

Our adjudicator reviewed the complaint and he thought the checks carried out on loans 1, 2, 4, 5 and 6 went far enough. But he didn't think the checks on the remaining loans were sufficient. And had Payday UK carried out a proportionate check the adjudicator felt that Payday UK would've most likely seen that the loans weren't affordable and so wouldn't have lent to Ms I.

Payday UK didn't agree with the adjudicator's recommendation. In response it made a number of points including;

- Payday was entitled to rely on the information Ms I gave it about her income and expenditure,
- there were gaps in lending between loans 9 – 10, 10 – 11 and 11 – 12 and the amounts borrowed varied which doesn't demonstrate a dependency on the loans,
- Payday UK wasn't required to ask for Ms I's bank statements and
- the interest and charges on loan 13 have already been refunded (in March 2016) following discussions with the regulator.

The adjudicator couldn't resolve the complaint, so the case has been passed to me for a final decision. But there doesn't appear to be any disagreement about loans 1, 2 and 4 – 6. So I won't be looking at those loans in this 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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Payday UK had to gather enough information to be able to make an informed choice as to whether it was going to lend. But the guidance and rules don't set out what checks must be done before lending is approved. But Payday UK needed to conduct enough checks to make sure the loan was affordable to Ms I. And these checks needed to be proportionate to a number of things such as the size of the loan and when the loan was due to be repaid.

But even if the checks Payday UK carried out weren't proportionate, that alone doesn't mean Ms I's complaint should be upheld. I say this because, it's possible, had further checks been carried out by Payday UK they would've shown Ms I was able to repay her loan. So Payday UK wouldn't have been wrong to lend her the money.

Payday UK says that it would've carried out internal and external checks – it went on to say that it used its commercial discretion when it decided whether it was going to lend. Payday UK also carried out credit searches and took details of Ms I's expenditure before agreeing to some of the loans.

Payday UK says that based on the information it gathered about Ms I, it was reasonable to lend to her. But I've thought about what Payday UK says and Ms I's circumstances at the time each loan was approved. And having done so, I don't think all the checks Payday UK carried out were proportionate for any of the borrowing that I'm looking at.

Loan 3

For Ms I's third loan, I don't think the checks carried out by Payday UK were proportionate. Ms I's total repayment on her third loan was close to 50% of her declared income. This was also her third loan in as many months and her borrowing had steadily increased. Knowing this Payday UK needed to consider whether it knew enough about Ms I's financial position before it agreed to lend.

By this point, I think Payday UK should've had a thorough understanding of Ms I's financial position. It could've done this a number of ways. For example it could've asked to see proof of her income and outgoings or as I've done here, asked to see her bank statements. The bank statements are the best indication of Ms I's ability to repay the loan at the time, so I don't think it's unreasonable to rely on them.

Having looked at Ms I's bank statements, I don't think she could afford to repay this loan. Had Payday UK carried out proportionate checks, it would've seen that Ms I was spending the majority of her income gambling and meeting her regular living costs. And I think that had Payday UK undertaken proportionate checks this would've been brought to its attention and it wouldn't have lent to Ms I.

Loans 7 - 13

There was a gap in lending of around 10 months between loans 3 and 4 and I've kept that in mind when thinking about these loans.

Ms I's borrowing had started to increase and she was again borrowing from Payday UK at least once a month. Payday UK would also have been aware that Ms I was borrowing from it shortly after repaying her previous loan. Indeed she was given loan 7 on the same day that loan 6 was repaid.

So taking into account the number of loans Ms I had already taken in this chain of borrowing as well as her loan history, I think Payday UK should've had the fullest possible understanding of her financial position – which I think would've required it to verify the information Ms I was providing. Payday UK could've done this a number of ways. It could've asked to see evidence of her income and outgoings or as I've done here it could've asked to see her bank statements.

For the reasons I've mentioned above, the bank statements are the best indication of Ms I's ability to repay the loans at the time each one was given. The income she declared to Payday UK was broadly correct, although she was receiving additional income from benefits – but even with this extra income it didn't make the loans affordable. And it's likely the checks would've shown that Ms I was spending most of her income on gambling and she still had her regular living costs to meet on top of this. Taking everything into account, had Payday UK undertaken proportionate checks this would've been brought to its attention and it wouldn't have given Ms I these loans.

I've considered the gaps in borrowing that Payday UK referred to in its response to the adjudicator's assessment. But in this case, I don't think those gaps were big enough to make Payday UK think that Ms I's finances had returned to a more stable footing – considering what it ought to have already been aware of.

I appreciate that for this chain of loans Payday UK asked Ms I some questions about her expenditure but for the reasons I've already explained, I don't think it was reasonable to have solely relied on this information when approving these loans. Payday UK should've been doing more to verify the information Ms I had given it, considering the number of loans she had already taken. And as I've mentioned, had Payday UK carried out further checks it would've seen that these loans weren't affordable.

what Payday UK should do to put things right

To put things right for Ms I, Payday UK should:

- refund all the interest and charges paid by Ms I on loan 3 and loans 7 – 13,
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- Payday UK can deduct from the above figure the amount it has already refunded Ms I for loan 13 and
- remove any adverse information recorded on Ms I's credit file because of these loans.

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

my final decision

For the reasons I've explained, I'm partly upholding Ms I's complaint.

MEM Consumer Finance Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms I to accept or reject my decision before 23 September 2017.

Robert Walker
ombudsman