

complaint

Mr L complains that DJS (UK) Limited, trading as PiggyBank, (“DJS”), gave him short term loans which were unaffordable.

background

Mr L took out four instalment loans with DJS. A summary of Mr L’s borrowing history is below:

Loan number	Date	Loan amount	Number of repayments and repayment amount	Date repaid
1.	26/8/2016	£400	7 fortnightly payments of £81.75	25/11/2016
2.	2/2/2017	£250	3 monthly payments of £122.97	2/5/2017
3.	6/9/2017	£350	4 monthly payments of £172.33	8/1/2018
4.	20/3/2018	£300	3 monthly payments of £133.11	-

Mr L said he doesn’t believe that DJS made proper checks and if it had, it wouldn’t have approved his loans. He had payday loans with other lenders as well as long term loans, multiple credit cards and three overdrafts. He also had a gambling problem. Mr L said that if DJS had checked his credit file or asked for his bank statements, it wouldn’t have approved his loans.

DJS said that it had asked for Mr L’s income and regular expenditure. To this it added any financial commitments it could see from Mr L’s credit file. DJS noted that Mr L had told it that his credit commitments were between £120 and £240. But it could see from its credit checks that his credit commitments were between £477.28 and £572.14, leaving a disposable income of between £487.86 and £582.72. It said that the adverse credit file information on Mr L’s credit file was historical but it didn’t automatically consider that a reason not to lend. DJS said that Mr L had sufficient disposable income to make the loan repayments and there was nothing on his credit file that suggested signs of financial difficulty.

DJS also noted that Mr L had complained to it about harassment as he’d received 15 emails and texts from it. DJS said that its loan agreement terms said that it would attempt to contact Mr L if his repayments were late. It also said that it contacts borrowers to ensure that repayments are comfortable and affordable.

our adjudicator’s view

The adjudicator said that the checks DJS had made on Loans 1 to 3 went far enough. But on Loan 4 she said that DJS should have also checked Mr L’s short term credit commitments. She had checked Mr L’s credit file and noted that he had one short term loan repayable with a repayment amount of £28. So the adjudicator said that even if DJS had asked about other short term lending, the repayments for Loan 4 would have seemed affordable.

Mr L disagreed. He said that if DJS had made proper checks, it would have seen he had multiple loans with other payday lenders, credit cards and long term loans. His outgoings far exceeded his income. And if his bank statements had been checked, DJS would have seen

he had a serious gambling problem. Mr L was also borrowing one loan to repay another or to pay his everyday expenses. He also said that DJS shouldn't have relied on the application form as there could be mistakes.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr L and to DJS on 6 March 2019. I summarise my findings:

I'd noted that Mr L had complained to DJS about harassment in his complaint to DJS. But as he didn't include that issue in his complaint to this service, I said that I wouldn't be considering it here.

I'd noted that DJS was required to lend responsibly. It needed to make checks to make sure Mr L could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr L was borrowing, the length of the agreements and his lending history. But there was no set list of checks DJS had to do.

I'd explained that the Financial Conduct Authority was the regulator at the time Mr L borrowed from DJS. Its regulations require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*" The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this meant borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

DJS had explained in its final response letter about the checks it did before giving Mr L each of the loans. It asked him to provide details of his income and regular expenditure, including any credit commitments. DJS also reviewed Mr L's credit file and added an amount representing Mr L's credit commitments to his expenses figure to ascertain Mr L's disposable income.

Loan 1

I'd noted that Mr L needed to make seven repayments of £81.75 per fortnight. I'd considered the level of borrowing in comparison with the income of £1,900 and expenditure of £810 (including credit commitments) Mr L declared to DJS. I'd also considered that DJS deducted an amount for additional credit commitments from Mr L's income in making its assessment. The loan repayments were still relatively low in comparison with Mr L's income, and I could see that the loan seemed affordable. I'd noted DJS's credit file check showed that Mr L had seven other open credit accounts but these didn't appear to include other payday loans. There was also a defaulted account from around two years before Loan 1 but I'd thought that was sufficiently long ago not to have caused DJS additional concerns. There was otherwise little to suggest to DJS at this stage that Mr L wasn't using the loan in the way it was intended – as a short term solution to a temporary cash flow problem. So I didn't think DJS was wrong to agree to this loan.

Loan 2

Mr L applied for Loan 2 just over two months after Loan 1 was repaid. The loan repayments

had reduced to £122.97 per month for three months. DJS's records show that Mr L had stated a disposable income of £1,090 which was the same as before Loan 1. His declared outgoings included credit repayments of £120, which was the same amount as he'd stated before Loan 1.

But I'd noted that DJS's credit check showed that Mr L had an additional defaulted account. And the number of his credit accounts had increased from seven to ten and he had a new unsecured loan for £1,777. So, I'd thought DJS should have been on notice that it was unlikely Mr L's financial position was as good as he was declaring. I'd noted that DJS took into consideration an amount representing the credit commitments it saw on its credit check. But whilst its assessment still showed that Mr L had a significant amount of disposable income each month, I'd thought DJS should still have been concerned that Mr L had an additional defaulted account and an increasing need for credit which might have suggested that Mr L was in financial difficulty. So, I thought that DJS should have been concerned about whether it knew enough about Mr L's financial situation before lending to him. And I thought it would have been proportionate for DJS to have asked some questions about what the credit checks showed and for it to independently check the information Mr L had provided. It could've done this in a number of ways. It could've asked for evidence of Mr L's income and expenditure such as payslips and bills or it could've looked at things like his bank statements. I couldn't see that it had done this.

Loan 3

Loan 3 was for an increased amount of £350 repayable by four increased monthly repayments of £172.33. But Mr L's declared disposable income had decreased to £970. And I'd noted that DJS's credit check showed that Mr L's situation hadn't improved. He now had 14 credit accounts and the total amount owed to creditors had increased. So, I thought DJS should have again been on notice that it was unlikely Mr L's financial situation was as good as he was declaring. And it ought to have been concerned about the risk to Mr L of him not managing to make his repayments in a sustainable manner. So I thought it ought to again have put together a clearer picture of his finances before agreeing to lend to him, rather than relying on adding an amount to his expenses to reflect the credit commitments it had seen on its credit check.

Loan 4

The loan amount for Loan 4 had decreased to £300 repayable by three monthly repayments of £133.11. Mr L's declared disposable income remained at £970. But DJS's credit check showed that Mr L's financial situation had significantly worsened. He now had another recent defaulted account, a delinquent account and a payday loan account for £507. The number of credit accounts had increased to nineteen credit accounts with an increase in total credit value of £1,344. So again I thought DJS couldn't rely on what Mr L had told it, and that it ought to have again gathered a more comprehensive view of Mr L's circumstances.

Although I didn't think that the checks DJS did on Loans 2 to 4 were sufficient, that in itself didn't mean that Mr L's complaint should succeed. I also needed to see whether what I'd considered to be proportionate checks would have shown DJS that Mr L couldn't sustainably afford Loans 2 to 4.

So I'd thought DJS should have been independently checking what Mr L was earning and spending each month. So I'd tried to do this by looking at Mr L's bank statements at the time of these loans to see what better checks would have shown DJS. The bank statements

might not have shown DJS everything it would've seen by carrying out proportionate checks. But I'd thought that the bank statements were the best indication of Mr L's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to rely on these.

Loan 2

If DJS had checked Mr L's bank statements before Loan 2, it would have seen that he was earning less than he'd declared, around £1,400. His wife contributed £583 to living costs, but the normal living costs and regular financial commitments shown on the statements appeared to total around £2,100. DJS would also have become aware that Mr L appeared to be gambling heavily with gambling expenditure of over £2,600. Mr L's spending on gambling together with his outgoings I thought made it clear that any new borrowing was unlikely to be repaid sustainably. So overall, if DJS had carried out what I considered to be proportionate checks before Loan 2, I thought it was likely that it would have concluded that Loan 2 wasn't sustainable.

Loan 3

If DJS had checked Mr L's financial information before Loan 3, it would have seen that he was earning less than he'd declared, around £1,300. His wife contributed £583 to living costs, but normal living costs and regular financial commitments appeared to be around £2,100. Mr L was still gambling heavily with gambling expenditure of over £1,500. Mr L had also taken out two other short term loans totalling £750 which would have been repayable around the same time as Loan 3. Mr L's living costs, his spending on gambling and his need to borrow to fund his gambling I thought made it clear that any new borrowing was unlikely to be repaid sustainably. So overall, if DJS had carried out what I considered to be proportionate checks before Loan 3, I thought it was likely that it would have concluded that Loan 3 wasn't sustainable.

Loan 4

If DJS had checked Mr L's financial information before Loan 4, it would have seen that he was still earning less than he'd declared, around £1,640. His wife again contributed £583 to living costs, but normal living costs and regular financial commitments appeared to be around £1,840. And Mr L was still gambling heavily with gambling expenditure of over £950. So overall, if DJS had carried out what I considered to be proportionate checks before Loan 4, I thought it was likely that it would have concluded that Loan 4 wasn't sustainable.

I'd noted that Mr L did receive some 'winnings' from gambling but these were substantially less than he'd spent. So, overall, I thought if DJS had done what I considered to be proportionate checks, it would have seen the problems with Mr L's financial situation. And as a responsible lender, I didn't think it would have agreed to lend Loans 2 to 4 to him. So, I thought that DJS needed to pay Mr L some compensation relating to Loans 2 to 4.

Subject to any further representations by Mr L or DJS my provisional decision was that I intended to uphold this complaint in part. I intended to order DJS (UK) Limited, trading as PiggyBank, to:

1. Refund all interest and charges that Mr L paid on Loans 2 and 3;
2. Refund all interest and charges that Mr L paid on Loan 4;
3. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement;

4. Write off any unpaid interest and charges from Loan 4;
5. Apply the refunds referred to above to reduce any capital outstanding on Loan 4 and pay any balance to Mr L; and
6. Remove any adverse information about Loans 2 to 4 from Mr L's credit file.

*HM Revenue & Customs requires DJS to take off tax from this interest. DJS must give Mr L a certificate showing how much tax it has taken off if he asks for one. If DJS intends to apply the refunds to reduce any outstanding capital balance, it must do so after deducting the tax.

Mr L responded to my provisional decision to say that it was a fair outcome and he had nothing to add.

DJS responded to my provisional decision to say that it agreed to my provisional 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.

Given that both Mr L and DJS have accepted my provisional decision and given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require DJS to pay Mr L some compensation as set out below.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order DJS (UK) Limited, trading as PiggyBank, to:

1. Refund all interest and charges that Mr L paid on Loans 2 and 3;
2. Refund all interest and charges that Mr L paid on Loan 4;
3. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement;
4. Write off any unpaid interest and charges from Loan 4;
5. Apply the refunds referred to above to reduce any capital outstanding on Loan 4 and pay any balance to Mr L; and
6. Remove any adverse information about Loans 2 to 4 from Mr L's credit file.

*HM Revenue & Customs requires DJS to take off tax from this interest. DJS must give Mr L a certificate showing how much tax it has taken off if he asks for one. If DJS intends to apply the refunds to reduce any outstanding capital balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 May 2019.

Roslyn Rawson
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