

complaint

Mr D says MEM Consumer Finance Limited, trading as Payday UK, (“MEM”), irresponsibly lent to him. Mr D’s complaint is brought to this service on his behalf by a claims management company. But for ease I will refer below to all actions being taken by Mr D.

background

This complaint is about three payday loans MEM provided to Mr D between September 2012 and March 2013. Mr D’s lending history is as follows:

Loan number	Date of loan	Repayment date	Loan repayment amount
1.	24/9/12	26/10/12	£207.92
2.	23/2/13	24/3/13	£324.88
3.	29/3/13	1/5/13	£259.90

The adjudicator didn’t uphold Mr D’s complaint. Mr D disagreed and the complaint was passed to me.

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.

MEM 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 D 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 Mr D’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 MEM should fairly and reasonably have done more to establish that any lending was sustainable for Mr D. 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.

I think that it is important for me to start by saying that MEM was required to establish whether Mr D could sustainably repay his loans – 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 doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") 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 carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr D's complaint.

I note that Mr D said that MEM should have known the loans weren't affordable due to his borrowing with other lenders which should have been seen on MEM's credit check. MEM's file shows that it carried out a credit check before Loan 1 but it hasn't provided us with the results of its credit check. I can't see that MEM carried out a credit check before Loans 2 and 3. But in any event there wasn't a requirement for it to carry out a credit check.

I appreciate that Mr D says his credit file would have shown borrowing from other lenders. Mr D has provided his credit report to us. I can see that before Loan 1 his credit file showed two other payday loans, and before Loans 2 and 3, his credit report showed one other loan with payments due at the same time as MEM's repayments. But I'm also aware that when a lender carries out a credit check, the information it sees doesn't usually provide the same level of detail that a consumer's credit report will and it isn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I'm also aware that not all payday and short term lenders report to the same credit reference agencies. So, this may explain any differences between the information provided by MEM's credit check and Mr D's actual situation.

I note that the repayments that Mr D needed to make on Loans 1 to 3 were relatively modest compared to the income that he declared to MEM. So given Mr D's repayment amounts, what was apparent about his circumstances at the time, and his history with the lender, I don't think it would've been proportionate for MEM to ask him for the amount of information that would be needed to show the lending was unsustainable.

And there wasn't anything in the information Mr D provided or the information MEM should've been aware of, which meant it would've been proportionate to start verifying what he was saying.

So I don't think MEM did anything wrong when it agreed to give these loans to Mr D. And so it follows that I don't uphold the complaint.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 July 2019.

Roslyn Rawson
ombudsman