

complaint

Miss K complains that MEM Consumer Finance Limited is pursuing her for a debt under a payday loan agreement which she does not owe, and has wrongly registered defaults against her credit file.

background

Our adjudicator did not recommend that this complaint should be upheld. She said that MEM's records showed that Miss K borrowed £200 from MEM in May 2010. She signed an agreement electronically online to repay £250, inclusive of interest, on 30 June 2010. When the repayment was due, Miss K paid MEM the £50 interest, and asked for repayment of the £200 to be deferred for another month. MEM agreed, and Miss K signed another credit agreement online electronically agreeing to pay £250, inclusive of interest on 30 July 2010.

Miss K repeated this procedure another five times, agreeing, latterly, to repay £250, inclusive of interest, on 31 December 2010. On 5 December 2010, she paid £80 to MEM, leaving £170 outstanding. At the same time, she signed another credit agreement electronically online agreeing to repay £212.50, inclusive of interest on 31 January 2011.

The adjudicator said that on the basis of this history, she was satisfied that the outstanding balance of £212.50, on which no further payments had been made, was correct. Furthermore, Miss K had contacted MEM by email on 25 January 2011 to say that she had encountered financial difficulties and would not be able to make the payment due on 31 January 2011.

So the adjudicator was satisfied that Miss K had been aware that the account belonged to her, and there was an outstanding balance to be paid. The adjudicator could not reasonably say that MEM had made an error in chasing Miss K for repayments, or in recording on her credit file the fact that the balance was unpaid.

Miss K responded to say, in summary:

- she did not agree that she had borrowed the amounts, or signed the agreements, or made the payments, listed by the adjudicator;
- this meant the data recorded on her credit file was not correct;
- new rules had been introduced which limited the number of times a payday loan could be rolled over, and the total interest that could be charged, and these rules should be applied to her account;
- she had not received any notice of default from MEM before it registered a default on her file;
- having initially registered the default with two credit reference agencies ("CRAs") in June 2011, MEM had registered the same default with a third CRA in June 2014 after she complained to this service. She considered that this was against the rules/unlawful; and
- MEM had falsified the records it sent to the adjudicator.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where, as here, the evidence is incomplete, contradictory, or inconclusive, I reach my decision on the balance of probabilities - that is what I consider most likely to have happened in the light of the available evidence and the wider circumstances.

MEM has supplied this service with a log of all the dealings it says it had with Miss K, and copies of all the agreements it says Miss K signed online and electronically. Miss K denies signing any agreements, or borrowing the money, and says MEM has falsified its records.

On balance, I find Miss K's version of events unconvincing. The amount of detail present in MEM's recorded log persuades me that it is more likely than not to be correct. I therefore conclude that by January 2011, Miss K owed MEM £212.50, and she was well aware of this. I accept that she herself contacted MEM in January 2011 to say that because of her financial difficulties, she was not able to pay this. She offered to pay a lesser amount to settle the loan, but this was not acceptable to MEM.

It is not clear whether MEM did send a formal notice of default to Miss K before it registered a default with two CRAs in June 2011. However, even if it did not, as I have found that she was well aware of the default, and has not repaid the money, I do not consider that she was prejudiced by this, or that the entries on her credit file give an incorrect view of her account with MEM.

Miss K complains that MEM registered the same default with a third CRA in June 2014 after she complained to this service. She considers that this is "against the rules" and unlawful. I have checked the new entry and it shows the default as having occurred in June 2011 – the same as the registrations with the other CRAs. So it will drop off her credit file six years after June 2011, the same as the other entries.

Lenders normally register defaults with all the CRAs at the same time. It would appear that it was only when Miss K brought the present complaint that MEM realised that it had not registered the default with one CRA, and took steps to regularise the position. I am not aware of any law or rule which would prevent it from doing this, and do not consider it has prejudiced Miss K.

Finally, although it is correct that new rules have recently been introduced to limit the number of times that loans from payday lenders can be rolled over, and the amount of interest that can be charged on such loans, the new rules make it clear that they only apply to loans made after the new rules came into effect.

So they do not apply to the loan which MEM made to Miss K in December 2010 or her previous loans, and it would not be reasonable for me to tell MEM that it should apply the new rules to those loans.

my final decision

For the reasons I have set out above, my decision is that I do not uphold this complaint, and make no order against MEM Consumer Finance Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss K to accept or reject my decision before 25 March 2015.

Lennox Towers
ombudsman