

complaint

Miss L complains about a number of payday loans agreed by MEM Consumer Finance Limited (trading as Payday UK). She has said the loans were unaffordable for her.

background

Miss L took out a total of nine loans with Payday UK between September 2008 and October 2012. The loan amounts varied up to a maximum of £200. Payday UK has said that this service couldn't look into the first five loans as Miss L had raised a complaint about them too late. Miss L has told us that she doesn't wish to pursue the first five loans further and so this decision only covers the last four loans Miss L took.

From the information I've seen the last four loans were as follows:

loan number	date loan was taken	loan amount	date repaid
6	21/01/11	£80	25/02/11
7	21/03/11	£200	26/07/12
8	03/09/12	£200	28/10/12
9	29/10/12	£200	18/10/13

Loan 6 was fully repaid when it was contractually due, however loans seven to nine were deferred before they were fully repaid. The full repayments for loans seven and nine were deferred for about a year while loan eight was deferred for a month.

Miss L brought her complaint to this service and it was looked at by one of our adjudicators. Our adjudicator didn't think Payday UK carried out sufficient checks before providing any of the loans in question. He thought that had Payday UK carried out sufficient checks then it would have found that Miss L was unable to afford the repayments and wouldn't have lent to her.

Payday UK didn't agree, it said it made the checks that were necessary in line with the regulations at the time and that there was nothing within the credit check to prompt further checks. However, it offered to refund the interest paid on the deferrals in respect of loan seven from January 2012 and all the interest charged on loans eight and nine.

Miss L didn't accept this offer and as the complaint hasn't been resolved, it has come to me - an ombudsman.

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 was required to lend responsibly. It needed to make checks to see whether Miss L could afford to pay back each loan before it lent to her. So, in making this decision I've first considered whether Payday UK did everything it should have when assessing Miss L's credit applications. And, following on from this, I've thought about whether any assessment failings resulted in Payday UK agreeing to lend to her when it should have known that it would be difficult for her to repay.

I accept that the guidance in place at the time wasn't prescriptive about what checks a lender needed to carry out. But it was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower can sustainably repay their loans. The Office of Fair Trading (OFT) Irresponsible Lending Guidance states *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

The guidance goes on say that repaying credit in a sustainable manner means being able to repay credit "out of income and/or available savings" and without "undue difficulty." And it defines "undue difficulty" as being able to repay credit "while also meeting other debt repayments and normal/reasonable outgoings" and "without having to borrow further to meet these repayments"

So even though Miss L repaid all her loans in full that doesn't automatically mean they were affordable for her or that she repaid them in a sustainable manner. In other words, I can't say that because Miss L repaid all her loans, she was able to do so out of her normal income and without further borrowing.

did Payday UK carry out proportionate checks?

Although this service isn't considering the affordability of the first five loans, they form part of Miss L's lending history with Payday UK and so they have been taken into account when considering what Payday UK knew about Miss L and whether the checks for the last four loans were proportionate.

Payday UK has told us what checks it carried out. It said it checked Miss L's income before each loan and searched her credit file in March 2011 – around the time of loan seven. I can't see that Payday UK carried out any other checks or asked further questions during the lending period. Payday UK has said it began asking customers about their expenses in mid-2013 – however, by this stage, it had agreed all Miss L's loans.

Payday UK knew that Miss L had taken five previous loans before requesting loan six, and although the loan amount appeared relatively low compared to her declared income of £970, I'm not satisfied that simply requesting her income was sufficient. I say this because Miss L had been borrowing regularly from Payday UK. In fact the previous four loans were taken out within short intervals. Loans seven, eight and nine were for higher amounts and aside from the credit search carried out in March 2011, there were no additional checks done. I can see that the credit search didn't reveal any County Court Judgements (CCJs) or defaults. But given Miss L's lending history, I think Payday UK should have wanted to understand her full financial circumstances including any short term lending she had at the time. By loan seven, the amount Miss L was borrowing increased and I think that as Miss L had deferred the full repayments of these loans, it would have been reasonable for Payday UK to take into account what it knew about Miss L's borrowing before agreeing to lend to her further. At this stage, further checks were necessary.

Payday UK has said that the deferrals alone weren't enough evidence that the loans were unaffordable and it based its lending decision on what Miss L told it. This may be the case and I accept that Miss L may not have given Payday UK wholly accurate information about her circumstances, but I think the broader circumstances known to it at the time should've alerted it to do more.

So I don't think the checks Payday UK carried out on loans six onwards were sufficient.

why did this matter?

The fact that I think that Payday UK should have carried out further checks before agreeing these loans doesn't automatically mean that the complaint should be upheld. If sufficient checks would've shown that Miss L could repay the loans in a sustainable manner then Payday UK would still have reasonably lent to her.

Miss L has provided copies of her bank statements and she has also given some explanation for her circumstances at the time. Had Payday UK done proportionate checks - a full review of Miss L's circumstances, it would've established that she was gambling significant sums through online gambling sites (in December 2010 I can see transactions amounting to at least £350). She was also borrowing from other payday lenders and paying two monthly direct debits to debt recovery firms – in respect of earlier credit problems she'd had. On top of this, Miss L had all the usual regular living and household expenses. Had Payday UK done proportionate checks it would've seen that Miss L's financial situation was very fragile and that in those circumstances it was unlikely she'd be able to repay the loan in a sustainable way.

Payday UK would have also seen that Miss L's circumstances didn't improve through to the ninth loan. As a matter of fact, her circumstances got worse as her living costs and short term borrowing increased during the period. She continued to gamble and make payments to the debt recovery firms. In the month before the ninth loan for example, Miss L repaid around £1,800 in short term loans and without taking into account her other expenses, this loan was unaffordable.

If Payday UK carried out proportionate checks, it would have found that in Miss L's circumstances, she couldn't afford to repay loans six to nine and that she was supporting her income with short term lending – a position that wasn't sustainable. And as a responsible lender it wouldn't have given her those loans.

putting things right

I don't think that Payday UK should have given Miss L any of the loans from January 2011 (loan six) onwards. So for each of those loans, Payday UK should;

- refund any interest and charges applied to these loans
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- remove any adverse information recorded on Miss L's credit file in relation to the loans.

*HM Revenue & Customs requires Payday UK to take off tax from this interest.

Payday UK must give Miss L a certificate showing how much tax it's taken off if she asks for one.

my final decision

I uphold Miss L's complaint and require MEM Consumer Finance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 2 October 2017.

Oyetola Oduola
ombudsman