

## complaint

Ms C complains about four instalment loans she took out with Instant Cash Loans Limited, trading as Payday UK, ("ICL"). She said that ICL shouldn't have given her the loans as they were unaffordable.

## background

Ms C took out four instalment loans with ICL as follows:

Loan number	Date of Loan	Loan amount	Instalments	Date repaid
1.	18/5/2015	£250 plus interest	5 monthly instalments of £94.23	30/10/2015
2.	5/11/2015	£400 plus interest	5 monthly instalments of £135.73	27/5/2016
3.	30/5/2016	£200 plus interest	5 monthly instalments of £70.45	19/8/2016
4.	12/10/2016	£300 plus interest	6 monthly instalments of £83.37	28/10/2016

Ms C said that ICL had acted irresponsibly in allowing her to take out the loans. She said that she had numerous other payday loans, mortgage arrears, and had been on an individual voluntary arrangement ("IVA") since 2010. The IVA completed in 2017. Ms C said that the charges and interest on the loans had put her into financial hardship and contributed to her debts spiralling out of control. She said that if ICL had carried out correct credit checks, it would have refused her credit.

ICL said that the loan repayments were low value and appeared to be affordable based on the information Ms C had declared. It said that there didn't appear to be any particular issues with other lenders which concerned it. ICL had taken details of Ms C's income and regular expenditure. It deducted the declared expenditure from Ms C's income and also deducted an allowance for general living expenses based on statistical information. It then considered if Ms C had sufficient surplus income to repay the loan. ICL had also carried out a credit search before Loans 1 and 2.

## *our adjudicator's view*

The adjudicator didn't recommend that the complaint should be upheld. He said that ICL's credit checks went far enough bearing in mind that the repayments were relatively small compared to Ms C's declared monthly income.

Ms C disagreed. She said that ICL had acted irresponsibly. It should have seen that her credit file showed that she had mortgage arrears and was on an IVA. She'd also missed a payment on Loan 2. Ms C also referred to an earlier loan in 2012 she'd taken out with Payday UK when the lender was known by another name. She said that the lender had

appointed a debt collection agency to chase her for payment of the 2012 loan. Ms C also said that there were gaps between the loans as she had to pay off outstanding arrears before being given another loan.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Ms C and to ICL on 29 June 2018. I summarise my findings:

I explained that ICL was required to lend responsibly. It needed to make checks to see whether Ms C could afford to pay back each loan before it lent to her. Those checks needed to be proportionate to things such as the amount Ms C was borrowing, and her lending history, but there was no set list of checks ICL had to do.

I noted that the Financial Conduct Authority was the regulator at the time Ms C borrowed from ICL. 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 means 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.

So, the fact that the amounts borrowed and the interest paid might have been low when compared to Ms C’s income, or that she was able to repay the loans, didn’t necessarily mean the loans were affordable and that she was able to repay them in a sustainable manner. So, I couldn’t assume that because Ms C was able to repay the loans that she was able to do so out of her normal income without having to borrow further.

I noted that Ms C had taken two loans previously from Payday UK in 2008 and 2012, and that Ms C had payment problems with the 2012 loan. But I noted that the 2012 loan was made over three years before Loan 1. And I thought that was a significant gap, and long enough to have made ICL think that Ms C’s finances had returned to a more secure footing. So I thought that ICL could have approached the first loan I’m considering here as though it was lending to Ms C for the first time.

ICL told us that before lending to Ms C, it had asked her about her income and expenditure. And it had carried out a credit check before the first two loans.

When Ms C applied for Loan 1 in May 2015, Ms C told ICL that she was earning a monthly income of £2,450. And she said her monthly expenditure was £1,248, including her rent/mortgage, other creditors, utilities, travel, food and other expenditure. So it appeared that Ms C had around £1,202 left over each month that she could use to make her five monthly repayments of £94.23. So that would have seemed easily affordable based on what she’d told ICL about her expenditure.

But I’d also seen the results of ICL’s credit check before Loan 1 which it provided to us. It showed that her total monthly payments on active fixed term accounts were £1,579 and that she had 18 delinquent accounts. I thought ICL should have been concerned about the results of its credit check. And I thought it should also have taken into account that the loan was to be repayable over five months. So, I thought that it would have been proportionate for ICL to have asked Ms C some more questions about what the credit checks showed as the

entries on the check suggested that her finances might have been in a fragile state. I couldn't see that it did this.

With regard to Loan 2, the five monthly repayments had increased to £135.73. Ms C's declared income was the same as before Loan 1, but her declared expenditure had increased to £1,400. ICL had again carried out a credit check and it had provided us with the results of this. This showed that Ms C owed over £29,000 on other credit accounts. It also showed that her total monthly payments on active fixed term accounts were £2,495 (more than her income) and she had 16 delinquent accounts. So, again I thought ICL should have been concerned about the results of its credit check. And I thought that it would have again been proportionate for ICL to have asked Ms C some more questions about what the credit checks showed. I couldn't see that it did this.

Ms C missed several payments on Loan 2 and ICL had stopped adding interest in mid-March 2016. It appeared that Ms C had entered into a hardship plan. Ms C applied for Loan 3 three days after repaying Loan 2. I couldn't see that ICL had carried out a credit check before Loan 3. But in view of the results of its previous credit checks, Ms C's unsatisfactory repayment history on Loan 2, and the frequency of the loans, I thought that by the time of Loan 3, ICL should have looked in much more depth at Ms C's true financial situation to assess the affordability of Loan 3. It could've done this in a number of ways. It could've asked for evidence of Ms C's income and expenditure such as payslips and bills, or it could've looked at things like her bank statements. I couldn't see that it did this. For the same reasons, I thought ICL should have carried out similar checks before Loan 4.

Although I didn't think the checks ICL did on Loans 1 to 4 were sufficient, that in itself didn't mean that Ms C's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown ICL that Ms C couldn't sustainably afford the loans.

I couldn't see if ICL did ask Ms C any more about what its credit check showed before Loan 1. So, I'd tried to find out more about Ms C's outstanding short and long term credit situation by looking at her bank statements for the month prior to Loan 1, to see what better checks would have shown ICL. In the month before Loan 1, Ms C's short term borrowing from other lenders amounted to around £915. Her short term borrowing from other lenders would have required repayment around the same time as her loan from ICL. I also noted that Ms C's regular long term financial commitments amounted to around £1,500. So, I'd thought that if ICL had done what I considered to be proportionate checks here, that it would have seen that Loan 1 wasn't sustainable.

In the month before Loan 2, Ms C's bank statements showed that her short term borrowing from other lenders alone amounted to around £1,750. Her short term borrowing from other lenders would have required repayment around the same time as her loan from ICL. I also noted that Ms C's regular long term financial commitments amounted to around £2,300. So, I'd thought that if ICL had done what I considered to be proportionate checks here, that it would have seen that Loan 2 wasn't sustainable.

With regard to Loans 3 and 4, as I'd said above, I thought ICL should have been independently checking what Ms C was earning and spending each month. So I'd tried to do this by looking at Ms C's bank statements at the time of these loans, to see what better checks would have shown ICL. The bank statements might not have shown ICL everything it

would've seen by carrying out proportionate checks. But I thought they were the best indication of Ms C's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to rely on these.

In the month before Loan 3, Ms C's statements showed her regular income was around £2,280. But, Ms C's normal living costs and regular financial commitments shown on her statements totalled more than her income. She was also gambling heavily by the time of Loan 3. So, I'd thought if ICL had done what I considered to be proportionate checks here, that it would have seen that the repayments for Loan 3 weren't sustainable. And in the month before Loan 4, Ms C's normal living costs and regular financial commitments shown on her statements totalled more than £2,200 and her short term borrowing amounted to around £450. Her short term borrowing from other lenders would have required repayment around the same time as her loans from ICL. But her income was around £2,300, and she'd continued to gamble heavily. So, I'd thought if ICL had done what I considered to be proportionate checks here, that it would have seen that Loan 4 wasn't sustainable.

So, I'd thought that ICL needed to pay some compensation relating to Loans 1 to 4. To settle the complaint, I'd thought ICL should refund all the interest and charges applied to Ms C's accounts for all these loans, and pay 8% simple interest on those refunds from the date of payment to the date of settlement. Any adverse information recorded on Ms C's credit file with regard to those loans should also be removed.

I'd also seen a copy of the Notice of Completion of the IVA which referred to IVA assets which were realised after completion of the IVA. The Notice said that these would be realised by the former supervisor of the IVA ("Mr H") and distributed to creditors. So, I had directed that the compensation should be paid to Mr H if the refund was considered to be an IVA asset. I asked the adjudicator to check this with Mr H and said that I would provide more information about this in my final decision.

Subject to any further representations by Ms C or ICL my provisional decision was that I intended to uphold this complaint. I intended to order Instant Cash Loans Limited, trading as Payday UK, to:

1. Refund to Mr H (or Ms C depending on the response from Mr H referred to above) all the interest and charges applied to Ms C's accounts for Loans 1 to 4;
2. Pay 8% simple interest\* on those refunds from the date of payment to the date of settlement; and
3. Remove any adverse information recorded on Ms C's credit file with regard to those loans.

\*HM Revenue & Customs requires ICL to take off tax from this interest. ICL must give Ms C a certificate showing how much tax it has taken off if she asks for one.

Ms C responded to say that she was happy for me to make a final decision based on the information received. She didn't provide any further information.

Mr H (the former supervisor of Ms C's IVA) responded to say that any compensation should be paid to him for distribution to Ms C's creditors.

ICL hasn't provided a response 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 Ms C and ICL have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision, save to order that the compensation should be paid to Mr H as requested by him. It follows that I uphold Miss C's complaint and require ICL to pay compensation as set out below.

### **my final decision**

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Instant Cash Loans Limited, trading as Payday UK, to:

1. Refund to Mr H all the interest and charges applied to Ms C's accounts for Loans 1 to 4;
2. Pay 8% simple interest\* on those refunds from the date of payment to the date of settlement; and
3. Remove any adverse information recorded on Ms C's credit file with regard to those loans.

\*HM Revenue & Customs requires ICL to take off tax from this interest. ICL must give Ms C a certificate showing how much tax it has taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 7 September 2018.

Roslyn Rawson  
**ombudsman**