

complaint

Mr C has complained about payday loans he took out with MEM Consumer Finance Limited (trading as Payday UK). He says Payday UK didn't check whether the loans were affordable, and had it done so, it wouldn't have lent to him.

background

Mr C borrowed 8 loans from Payday UK between June 2008 and May 2013. Mr C's borrowing history is as follows;

Loan number	Loan amount	Received date	Repayment date
1	£200.00	04/06/2008	27/06/2008
2	£200.00	09/07/2008	24/01/2009
3	£300.00	04/01/2013	01/02/2013
4	£350.00	01/02/2013	28/02/2013
5	£400.00	28/02/2013	28/03/2013
6	£650.00	28/03/2013	30/04/2013
7	£600.00	07/05/2013	31/05/2013
8*	£800.00	31/05/2013	

**Mr C didn't make any repayments to loan number eight and there is currently an outstanding balance of £1,369.80.*

Payday UK original felt we wouldn't be able to look into the first two loans but we explained why we should be able to and Payday UK agreed.

After some discussions with this service, Payday UK said it would refund the interest and charges and add 8% simple interest for loans six and seven. It would then waive all interest and charges from loan 8 (leaving just the amount borrowed) and then use the refund from loans 6 and 7 to reduce Mr C's outstanding balance.

The adjudicator felt the offer Payday UK had made was fair, and so she wouldn't ask Payday UK to do anything further. Mr C disagreed with her recommendation. In response he made the following the points;

- Payday UK should've known something was wrong when he kept rolling over his loans in 2008,
- Mr C disputed the amount of income Payday UK recorded for him in 2008,
- Payday UK didn't ask for wage slips or bank statements,
- He disputed that a credit search was carried out – had one been carried out Payday UK would've seen that he had a substantial amount of debt,
- For the lending in 2013, Payday UK didn't ask for proof of outgoings and had it done so it would've realised that he had a gambling problem and,
- Mr C provided a list of defaults that showed his financial situation at the time of the borrowing.

No agreement could be reached so the case has been passed to me to me for a final decision.

Payday UK has already agreed to make an offer on loans 6, 7 and 8 so in this decision I've only considered loans 1, 2, 3, 4 and 5.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having carefully thought about everything I've been given, I think the offer Payday UK has made to resolve the complaint is fair and I've explained my reasons below.

Payday UK had to gather enough information to be able to make an informed decision as to whether it was going to lend and it needed to conduct enough checks to make sure the loan was affordable. And these could've considered a number of factors such as the size of the loan and when the loan was due to be repaid.

Payday UK says that for each loan it asked for Mr C's income and then used its own commercial judgement to decide whether it was going to lend. Payday UK also says for the first loan it conducted credit checks, but it's not able to provide the full results of this check due to the amount of time that has passed. Payday UK also says that it is entitled to rely on the information given to it by Mr C.

So Payday UK says that based on the information it gathered about Mr C, it was reasonable to lend to him. But I've thought about what Payday UK says and Mr C's circumstances at the time each loan was approved. And having done so, for the loans I'm looking at, I don't think the checks Payday UK carried out were proportionate for some of the borrowing.

Payday UK says that Mr C told it that his income was £2,500 per month in June 2008 when he applied for his first loan. Give this was Mr C's first loan it wasn't wrong of Payday UK to rely on the information given to it. I appreciate that Mr C says he wasn't earning that much, but based on the information I've seen, it appears to have been the amount of income declared to Payday UK. Payday UK also says a credit check would've been conducted, but it can't provide me with the results. I don't find this surprising considering the amount of time that has passed since the loan was agreed. So taking into account Mr C's declared income – I think the checks for this loan went far enough. So I won't be asking Payday UK to take any further action.

Mr C repaid his first loan without any problems and shortly after repaying it he borrowed the same amount again. Payday UK says it relied on the income Mr C provided when he applied for this loan and again I don't think that was unreasonable. So I think the checks carried out on the second loan went far enough, so I won't be asking Payday UK to take any further action.

There is then a gap of almost five years before Mr C borrows again. Payday UK says that at this point he was treated as new customer, which I think is reasonable because there is a significant amount of time between the two periods of borrowing. As per the Office of Fair trading guidance Payday UK had to carry out proportionate checks to make sure Mr C could afford to sustainably repay what he'd borrowed. There was no set list of checks it needed to do, but the checks should've been proportionate to the circumstances of each loan which might include considerations about the amount borrowed or Mr C's borrowing history.

But even if the checks Payday UK carried out weren't proportionate, that alone doesn't mean Mr C's complaint should be upheld. I say this because, it's possible, had further checks been carried out by Payday UK they would've shown Mr C was able to afford his loans. So Payday UK wouldn't have been wrong to lend him the money.

For loans three and four Mr C told Payday UK his earnings and it carried out a credit check when he applied for the third loan. I don't know exactly what Payday UK searched on Mr C's credit file so I can't be sure exactly what it saw. But Mr C has given me a list of adverse information he believes would've been recorded on his credit file. But I can't be sure that Payday UK was aware of this at the time. But, I still don't think the checks went far enough because given how much Mr C was borrowing, I think Payday UK would've wanted to have known about his regular spending and his monthly living costs.

I can't say for sure what questions Payday UK would've asked or the answers it would've been given, so I've used Mr C's bank statements as the best indication of Mr C's ability to repay his loans. So I don't think it's unreasonable to rely on these.

After looking at Mr C's bank statements I think he had enough money to be able to afford his repayments for loans three and four. Mr C told Payday UK he was earning £2,000 and his bank statement shows he earned £1,800 in January 2013 – but Payday UK wouldn't have been aware of the difference in income. And Mr C has told us his living costs were around £1,000 per month – which doesn't seem unreasonable. So given the amount that Mr C had to repay, I think that had Payday UK asked Mr C about his regular outgoings it still would've lent to him.

I can see from Mr C's bank statements that at this point in time he was gambling significant amounts of money each month – which would've made the loans unaffordable. But, I don't think Payday UK would've been aware of this, by carrying out what I consider to be proportionate checks.

For the fifth loan I don't think the checks carried out by Payday UK went far enough. Mr C was borrowing increasing amounts each month and so I think Payday UK would've wanted some additional information about Mr C's regular financial commitments as well as any other short term lending commitments he may have had.

Again, I've at Mr C's bank statements from around the time the fifth loan was approved. But I can't see anything to show he was borrowing from other short term lenders. So although Payday UK didn't carry out what I'd consider to be proportionate checks, I think given what it ought to have known about Mr C's regular living costs, Payday UK would've still lent to him.

I've not considered the final three loans because even if I concluded that Payday UK hadn't carried out proportionate checks, and shouldn't have lent to Mr C, Payday UK has already agreed to put things right in line with the approach this service takes. So having taken everything into account, I think the offer that Payday UK has already made is reasonable in the circumstances.

what Payday UK should do to put things right

To put things right and in line with Payday UK's offer it should:

- refund all the interest and charges applied to loans 6 and 7;
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- rework loan 8 as if no interest and charges had been applied – leaving only the principal outstanding
- Apply the refund from loans 6 and 7 to Mr C's current outstanding balance and
- remove any adverse information recorded on Mr C's credit file because of these loans.

†HM Revenue & Customs requires Payday UK to take off tax from this interest. Payday UK must give Mr C a certificate showing how much tax it's taken off if he asks for one.

I'm also going to ask Mr C and Payday UK to come to a mutually agreeable repayment plan for the outstanding balance. But Payday UK should keep in mind its obligation to treat Mr C positively and sympathetically.

I appreciate that my decision will come as a disappointment to Mr C and he's raised a number of points in response to the adjudicator's recommendation, I've thought very carefully about what he says and whether I think Payday UK would've been aware of his gambling problem or the defaults he says were recorded on his credit file. And while I can understand why given Mr C's situation at the time he feels all the loans should be refunded, I can't agree with him given what I think about what proportionate checks would've shown.

my final decision

For the reasons given above, I think the offer made by MEM Consumer Finance Limited is fair and reasonable in the circumstances.

MEM Consumer Finance Limited should pay Mr C compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 June 2017.

Robert Walker
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