

complaint

Mr S has complained MEM Consumer Finance Limited, trading as Payday UK, didn't check whether he could afford the loans he took out with them between 2010 and 2012.

background

In September 2010 Mr S took out a loan for £300 with Payday UK. Over the next eighteen months, he took out a further eight loans with Payday UK. All of his loans were repaid, although Mr S was in a debt management plan and paid off the last loan in 2013.

Mr S complained to Payday UK insufficient checks were carried out. Payday UK felt their checks were appropriate. Mr S brought his complaint to the ombudsman service.

Our adjudicator reviewed the evidence and felt initially Payday UK should pay back interest and charges from the third loan onwards. Payday UK then shared information with her about the checks they carried out. She noted checks on Mr S's credit record and income had been carried out. She felt it was fair Payday UK refund interest and charges on the last three loans.

As Payday UK never got back to our adjudicator, an ombudsman was asked to review Mr S's complaint.

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 initially considered the facts and got our adjudicator to let Payday UK and Mr S know my decision would be different to hers. I explained why. What follows is my reasoning.

When lending money to Mr S, Payday UK was required to ensure he could repay the borrowing in a sustainable manner, without it adversely affecting his financial situation. A lender should get enough information to make an informed decision about the lending. It's for the lender to decide how it does this within the relevant guidelines.

When I reviewed the evidence, I couldn't see anything which showed Payday UK ever asked about his expenditure – and whilst the guidelines at the time didn't say they had to, it's very difficult to assess affordability without knowing what someone's financial commitments are. Without having this knowledge, Payday UK were taking a risk they didn't have the full picture of whether Mr S could afford to repay his borrowing.

So I thought the evidence showed certain loans within the ten Mr S took out with Payday UK were unaffordable. I've also reviewed his bank statements.

The following factors were key:

- no evidence information on his expenditure was ever asked;
- there's a clear trigger for Payday UK to have asked more questions in February 2011 when Mr S's loan more than doubled to £630;
- by the end of March 2011 Mr S was clearly paying off borrowing by borrowing and deferring payment; and

- his statements show increasing unaffordability by April 2011.

Just because Mr S confirmed he could afford what he borrowed, Payday UK knows there's a greater responsibility placed on them to ensure this is the case. And by the time Mr S was borrowing larger amounts – like £630 – I can't see they did this. And whilst I appreciate Mr S was gambling, he was never asked about his expenditure so I don't know what he'd have said. I'm also aware his gambling had stopped when he found himself having difficulty affording his loans.

So Payday UK needs to put things right. This will mean repaying interest and charges on loans taken out on 31 March 2011 and then all loans on and after 2 July 2011.

I know Mr S struggled to repay the last loan and by that stage Mr S was in a debt management plan. So there may well be negative data on his credit record which Payday UK will also have to sort out.

my final decision

For the reasons I've given, my final decision is MEM Consumer Finance Limited, trading as Payday UK, must do the following to put things right:

- Repay all interest and charges Mr S paid on his loan taken out on 31 March 2011 and then all loans on and after 2 July 2011;
- Add 8% simple annual interest to all interest and charges payments from the dates Mr S made them until the date of settlement; and
- Remove any negative data on these loans from Mr S's credit record.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 December 2016.

Sandra Quinn
ombudsman