

complaint

Mr C complains that Instant Cash Loans Limited (trading as Payday UK) gave him loans he couldn't afford to pay back.

background

Mr C took out 10 loans with Payday UK between 24 March 2015 and 26 October 2016.

Mr C hasn't yet paid back the last loan.

Our adjudicator thought that Mr C's complaint should be upheld. He said that Payday UK didn't do enough to check the loans were affordable for Mr C. And he said that if it had done more it would've seen they weren't affordable and wouldn't have lent to him. He asked Payday UK to refund interest and charges on all of Mr C's loans and to remove any adverse information about them from Mr C's credit file.

Payday UK didn't agree with the adjudicator. It says in summary:

- Mr C never borrowed more than half of his income.
- It didn't have to get information about Mr C's expenditure or check his bank statements every time it lent to him.
- There were gaps between some of the loans of up to four months.
- The adjudicator shouldn't have considered gambling transactions as part of Mr C's expenditure as it's not essential.

Payday UK did offer to refund interest and charges on some of the loans Mr C took out when it was owned by a different company and to apply that refund to reduce the amount Mr C still owed it. Mr C didn't accept this offer.

The complaint was then referred to an ombudsman to look at.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Payday UK was required to lend responsibly. It needed to make checks to see whether Mr C could afford to pay back the loan each time it lent to him. Those checks needed to be proportionate to things such as the amount Mr C was borrowing and his lending history, but there was no set list of checks that Payday UK had to do.

From the evidence Payday UK has given us it looks like it asked Mr C about his income and expenditure each time it lent to him.

I've thought about whether these checks were proportionate. I've had to keep in mind that the first loan in this sequence is in fact in the nineteenth loan Mr C had taken with Payday UK. He took the previous loans when it was owned by another company – the last one being two months beforehand. And I think that Payday UK should (if it had carried out appropriate checks on those earlier loans) have known by now that Mr C had a recent history of frequent short term loan use and gambling. So I think Payday UK should've been very concerned whether Mr C could sustainably afford to repay what he was borrowing.

I think Payday UK should've been getting a full understanding of Mr C's circumstances before lending to him. It could've done this by getting evidence of his expenses such as payslips and copies of bills, or by looking at his bank statements for example. I recognise that there were gaps between some of the loans – the longest being four months. But I don't think in the circumstances this was long enough to assume Mr C had sorted out his finances. So I think Payday UK should've continued with this detailed level of checking each time it lent to him.

Mr C's bank statements show that in most of the months he borrowed from Payday UK he was running out of money not long after he was paid. After this he was relying on a combination of short term loans and money from his family. There are some months when Mr C receives large sums of money into his account (again from his family) which he uses to pay off some of his debts. But the money is usually gone by the time he is paid again and the whole cycle of borrowing from short term lenders begins again. Mr C was also spending quite a large chunk of his income on gambling too.

So, if Payday UK had seen this I don't think it would've lent to Mr C on any occasion. I think it would've been clear enough that he couldn't sustainably afford to repay any of the loans he took out. Payday UK should refund interest and charges on all loans taken from 24 March 2015 and remove any adverse information about them from Mr C's credit file.

Mr C had the benefit of the capital he borrowed so I think it's fair that he pays this back. Payday UK can deduct any capital sum (not interest or charges) still owed to it from the total compensation.

my final decision

My final decision is that I uphold Mr C's complaint. To put things right Instant Cash Loans Limited should:

- refund all interest and charges Mr C paid on the loans taken from (and including) 24 March 2015;
- pay interest on these refunds at 8% simple* per year from the dates of payment to the date of settlement;
- write off any interest and charges Mr C hasn't yet paid
- deduct the total compensation from any capital sum still owed to it and pay the balance to Mr C;
- remove any adverse information about these loans from Mr C's credit file.

*HM Revenue & Customs requires Instant Cash Loans Limited to take off tax from this interest. Instant Cash Loans Limited must give Mr C a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 May 2017.

Michael Ball
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