

## **complaint**

Mr M's complained about a number of short term loans that he took out with Instant Cash Loans Limited (trading as "The Money Shop"). He's said these loans were unaffordable and the correct affordability checks would've shown this.

## **background**

I attach my provisional decision of 21 April 2017, which forms part of this final decision. In my provisional decision I set out why I intended to partially uphold Mr M's complaint. I invited both parties to make any further comments before I reached a final decision.

Following this, Mr M confirmed receiving my decision and that he had nothing further to add. The Money Shop didn't ask me to think about anything further either.

## **my findings**

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

As neither party has disputed my findings or asked me to look at anything else, I see no reason to alter the conclusions I reached in my provisional decision of 21 April 2017.

## **my final decision**

For the reasons set out above and in my provisional decision of 21 April 2017, I'm upholding Mr M's complaint.

Instant Cash Loans Limited (trading as "The Money Shop") should pay Mr M compensation in line with the instructions set out in my provisional decision of 21 April 2017.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 12 June 2017.

Jeshen Narayanan  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

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### **background**

As far as I can see Mr M's borrowing history with The Money Shop is:

- Loan one taken in December 2009 for £100
- Loan two also taken in December 2009 for £100
- Loan three taken in January 2010 for £100
- Loan four taken in February 2010 for £100
- Loan five taken in April 2010 for £100
- Loan six taken in also taken in April 2010 for £100
- Loan seven taken in July 2010 for £100
- Loan eight also taken in July 2010 for £100
- Loan nine taken in July 2011 for £100
- Loan ten taken in September 2011 for £100
- Loan eleven also taken in September 2011 for £100
- Loan twelve taken in October 2011 for £100
- Loan thirteen taken in November 2011 for £100

One of our adjudicators has already looked at some of Mr M's loans. She thought the checks The Money Shop carried out before agreeing to these loans were proportionate and so she didn't think Mr M's complaint should be upheld. Mr M disagreed and asked for an ombudsman to review the case.

### **my provisional findings**

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about short term lending on our website. And I've used this approach to help me decide Mr M's complaint.

When lending money to a consumer a lender should take proportionate steps to ensure a consumer will be able to repay what they're borrowing in a sustainable manner without it adversely impacting on their financial situation. A lender should gather enough information so that it can make an informed decision on the lending.

The guidance and rules don't set out compulsory checks but they do list a number of things a lender might wish to take into account before agreeing to lend. But any checks need to be proportionate and should take into account a number of things, including things such as how much is being lent and when what's being borrowed is due to be repaid.

Having carefully looked at everything provided, I'm intending to partially uphold Mr M's complaint. I'd like to explain why in a bit more detail.

#### *why I'm not intending to uphold Mr M's complaint about loans one to four*

Mr M was given loans where there was an expectation that the outstanding balance would be settled in full with a single payment. As a result, the checks The Money Shop carried out had to provide enough for it to be able to understand whether Mr M could afford to make the payments he was committing to make when they were due to be made.

The Money Shop hasn't been able to provide much at all in terms of what it recorded at the time of Mr M's first four loan applications. It has said that it would've asked Mr M for his income but it hasn't been able to provide anything to suggest what was recorded at the time.

I do think that The Money Shop would've at the very least asked Mr M to confirm his income before agreeing to these loans. But even if it didn't, I still need to think about what it would most likely found out and what it would most likely have done if it had asked for this information. I think that if Mr M had been asked for his income (or if he was) he would most likely have provided it. And I think that he would've provided an accurate figure too.

I've seen what Mr M's income was at the time of the first three loan applications. As these were the first loans that Mr M was taking with The Money Shop, I think it would've been reasonable, in this case, for The Money Shop not to have carried out any further checks given the proportion of the amount being borrowed in relation to what Mr M is likely to have declared as his monthly income. So I think that The Money Shop would've still given Mr M loans one, two and three if it had carried out proportionate checks.

By the time Mr M applied for loan four, I would've expected The Money Shop to have carried out further checks which would've extended past just finding out about Mr M's monthly income. At this stage, I think that it would've been proportionate to find out about Mr M's normal monthly living costs and regular financial commitments too.

Again I don't know if The Money Shop did ask for this information at the time. But I've got no reason to disbelieve or doubt that Mr M would've accurately provided this information if he'd been asked for it. And having looked at the information provided, I think that The Money Shop would still have most likely lent to Mr M if it had asked for this information and it had been provided. I say this because having looked at what Mr M was spending on his normal monthly living costs and regular financial commitments (other than any other short term lending he may have had) at this stage, I think he still had enough left over to have been able to repay what he owed for loan four.

I accept that Mr M's actual financial circumstances may not have been reflected through his expenditure on his normal monthly living costs and regular financial commitments. And the information I've seen does suggest that Mr M was in a difficult financial position. But The Money Shop only needed to carry out proportionate checks and base its decision to lend on the information it had (or it's likely to have had) available to it at the time.

And I don't think that proportionate checks would've extended into finding out about anything more than Mr M's normal monthly living costs and regular financial commitments at this stage. So I don't think The Money Shop would've seen anything to suggest that it shouldn't have given Mr M loan four if it had carried out proportionate checks before doing so. And I'm not intending to uphold Mr M's complaint about loans one, two, three and four as a result.

*why I'm intending to uphold Mr M's complaint about loans five to eight*

Our adjudicator was of the view that as the amount Mr M continued to borrow wasn't increasing and it was relatively low in comparison to his declared income, it was reasonable to continue relying on the same checks for Mr M's later loans. But I'm afraid I disagree with this analysis.

I think that our adjudicator and that The Money Shop have both failed to take into account that Mr M took out loan five not too long after he'd repaid loan four. And by this stage, Mr M was consistently going back to The Money Shop for short term lending. As this was Mr M's fifth loan in as many months, I think The Money Shop had reason to question whether Mr M was using this type of borrowing for its intended purpose - i.e. as a short-term solution to temporary cash flow problem rather than as a means of supplementing his income.

So I think that by the time of loan five proportionate checks would've extended into finding out more about any existing short-term financial commitments Mr M may have had. And I also think that The Money Shop needed to verify the information Mr M was providing too. I think that if The Money Shop had done this here, which I think it should've given what it knew by this stage, I don't think that it would've given Mr M loans five to eight.

To explain, I think that if The Money Shop had carried out proportionate checks before giving these loans it would've seen that Mr M was heavily reliant on short-term lending and other forms of unsustainable borrowing to meet his day to day commitments as well as repay similar loans with other lenders. I also think that proportionate checks would've also shown The Money Shop that a substantial portion of Mr M's income was going towards gambling.

Put simply, I think that proportionate checks would've shown Mr M was spending far more than her monthly income servicing short term credit commitments because he was borrowing from multiple lenders to repay previous loans and gamble. And I think that The Money Shop would also had reason to doubt that it would get back what it was lending Mr M.

So I think that proportionate checks would've clearly shown The Money Shop that Mr M was unlikely to be able to repay what he was being asked to commit to without it adversely affecting his financial position. And I don't think that it would've, or should've, lent to him in these circumstances.

As The Money Shop did give Mr M loans five to eight despite the financial position he was in at the time and what I think it would've found out if it had carried out proportionate checks, I think it's unlikely it did carry out proportionate checks before giving these loans. So I think The Money Shop did most likely do something wrong here and as Mr M went on to pay interest and charges on a number of loans he shouldn't have been given (i.e. loans five to eight), I also think he lost out as a result.

*why I'm not intending to uphold Mr M's complaint about loans nine and ten*

When Mr M applied for loan nine, he hadn't borrowed from The Money Shop for around a year. So while The Money Shop wasn't entitled to completely disregard what it would've seen if it had carried out proportionate checks earlier, I do think that the break in lending means that it would've been disproportionate to have expected it to have carried out the level of checks it should've done for loans five to eight.

Given the amount being borrowed, Mr M's monthly income and while keeping in mind Mr M's previous lending history, I think The Money Shop should've also found out about Mr M's normal monthly living costs and his regular financial living commitments too. And having looked at the information provided, I think The Money Shop wouldn't have seen any reason to suggest that Mr M wouldn't have been able to repay these loans if this information had been asked for and it had been provided at the time – Mr M would've had enough left over to repay these loans once his normal monthly living costs and regular financial commitments were deducted.

So overall I don't think that proportionate checks would've stopped The Money Shop from giving Mr M loans nine and ten. And I'm not intending to uphold the complaint about these loans as a result.

*why I'm intending to uphold Mr M's complaint about loans eleven to thirteen*

Mr M took out loan eleven in the same month he took out loan ten. And the amount he was borrowing remained the same. Given what proportionate checks would've shown The Money Shop for loans for loans five to eight, I think that The Money Shop would've had reason to be more cautious and carry out further checks once Mr M came back for a further loan in September 2011. And given what it would've learnt if it had carried out proportionate checks earlier, I think that checks of a similar level to those that should've been carried out for loans five to eight, should've been carried out for loans eleven to thirteen.

If The Money Shop had carried out proportionate checks for loans eleven to thirteen, it would've seen that Mr M was in a similar financial position to when he applied for loans five to eight i.e. that he was borrowing from a number of short term lenders in order to repay previous loans and gamble.

So I think that proportionate checks would've shown The Money Shop that Mr M was in a difficult financial position. And it would also have seen that it shouldn't have given Mr M loans eleven to thirteen as he wasn't in any sort of financial position to be able to sustainably repay them. As this is the case, I'm intending to uphold Mr M's complaint about these loans because I think that he lost out because The Money Shop didn't carry out proportionate checks before giving them to him.

Overall having taking everything into account and thought about what the parties have said, I'm not intending to uphold Mr M's complaint about loans one to four and nine and ten. But I am intending to uphold the complaint about loans five to eight and eleven to thirteen because I think Mr M lost out because of The Money Shop's failure to carry out proportionate checks before giving these loans to him.

### **putting things right - what I think The Money Shop needs to do**

To put things right for Mr M, I'm intending to say that The Money Shop should:

- refund all the interest and charges paid on loans five to eight and eleven to thirteen; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid (if they were) to the date of settlement †;
- remove any adverse information recorded on Mr M's credit file as a result of the interest and charges I've referred to above;

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

I understand there was an outstanding balance on loan thirteen at the time Mr M complained. If an outstanding balance remains after The Money Shop removes all the interest and charges from this loan (in other words the payments Mr M has made to this loan are less than the capital he borrowed), then it can deduct this from the amount it needs to pay Mr M.

### **my provisional decision**

For the reasons given above, I am intending to partially uphold Mr M's complaint. Instant Cash Loans Limited and say it should pay Mr M compensation as set out above.

If Mr M or The Money Shop have anything further to add before I issue my final decision, they should ensure anything they send reaches me by 5 May 2017.

Jeshen Narayanan  
**ombudsman**