

complaint

Mr H complains about loans he took out with Instant Cash Loans Limited (trading as Payday UK) which he says he shouldn't have been given because the loans weren't affordable.

background

Mr H's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date
1	£730.00	01/03/2015	02/05/2015
2	£1,000.00	02/05/2015	28/08/2015
3	£1,000.00	28/08/2015	16/10/2015
4	£1,000.00	02/11/2015	01/02/2016
5	£1,000.00	01/02/2016	12/02/2016
6*	£1,000.00	05/03/2016	

**loan six currently has an outstanding balance*

Loans two to six were instalment loans but Payday UK has only supplied the credit agreements for loans two and six.

But Mr H had previous loans when Payday UK had a difference parent company, so the loans above were actually loans 28-33 in his chain of borrowing. And I've kept this in mind when coming to my final decision.

An adjudicator looked at the complaint and considered the checks carried out by Payday UK didn't go far enough, considering Mr H's increase borrowing and that he had previously deferred repayments on a number of loans. The adjudicator felt that had more checks been carried out Payday UK wouldn't have lent to Mr H. So he recommended that Payday UK refunds all the interest and charges applied to Mr H's borrowing.

Payday UK didn't respond to the adjudicator's assessment, so the case has been passed to me for a final 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. Having done so, I think Mr H's complaint should be upheld.

Payday UK had to gather enough information to be able to make an informed choice as to whether it was going to lend. But the guidance and rules don't set out what checks must be done before lending is approved. But Payday UK needed to conduct enough checks to make sure the loan was affordable to Mr H. And these checks needed to be proportionate to a number of things such as the size of the loan and when the loan was due to be repaid.

But even if the checks Payday UK carried out weren't proportionate, that alone doesn't mean Mr H'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 H was able to repay his loans. So Payday UK wouldn't have been wrong to lend him the money.

Payday UK says that it would've conducted internal and external checks – it went on to say that it used its commercial discretion when to lend and it would've checked multiple factors such as Mr H's employment status. But it did take details of Mr H income and expenditure – which Payday UK says it could rely on to show the loans were affordable.

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

I can see that Payday UK took income and expenditure details from Mr H. But I think by this point in his borrowing history Payday UK should've been doing more to check the information Mr H was giving it. I think Payday UK should've wanted a full understanding of Mr H's financial situation. It could've done this a number of ways such as asking to see evidence of his outgoings, or it could've asked to see his bank statements, as I've done here. Mr H's bank statements are the best indication of his ability to afford the loans at the time, so I don't think it's unreasonable to rely on these.

I haven't got every month's bank statements for the entire period of borrowing, but from what I've seen in Mr H's bank statements throughout his borrowing history with Payday UK, I don't think he had enough money to be able to repay what he was borrowing. When Payday UK approved the loans Mr H was regularly spending more than his income each month – with a significant amount of his expenditure going on repaying other short term credit commitments as well as also spending a significant amount each month on gambling. And I think that had Payday UK carried out sufficient checks this would've been brought to its attention and as a responsible lender it wouldn't have lent to Mr H.

what Payday UK should do to put things right

To put things right for Mr H, Payday UK should:

- refund all the interest and charges paid by Mr H on all of his borrowing;
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- I understand Mr H still owes Payday UK some money on his last loan. I think it's fair that it should be allowed to deduct any principal sum outstanding from the final compensation it pays to him. But for the avoidance of doubt the arrears should be recalculated, removing any interest and charges from the loan but including any repayments that Mr H has made towards it and
- remove any adverse information recorded on Mr H'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 H a certificate showing how much tax it's taken off if he asks for one.

If any outstanding balance remains after the refund of interest and charges than I would remind Payday UK of its obligation to treat Mr H positively and sympathetically.

my final decision

For the reasons I've explained above, I'm upholding Mr H's complaint.

Instant Cash Loans Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 7 August 2017.

Robert Walker
ombudsman