

complaint

Mr D complains that Instant Cash Loans Limited (trading as Payday UK) gave him loans irresponsibly

background

During 2016 Mr D borrowed two loans from Payday UK, as follows:

Loan No	Amount	Date lent	Date repaid	No of monthly instalments	Monthly repayment
1	£950	23.2.16	7.6.16	4	£379
2	£2,000	24.6.16	28.6.16	12	£306

Mr D had also borrowed three loans from Payday UK between 2012 and 2013 - although, at that time, the Payday UK business was owned by a different entity. As such, those earlier loans have been dealt with, by this service, as a separate complaint against that other entity. Whilst I will not be considering the complaint about the earlier loans, I will still take into account the circumstances of it insofar as this may have a bearing upon these later two loans.

Mr D has instructed a third party company to bring this complaint on his behalf but I will refer to Mr D throughout the complaint.

Mr D complains that he had several other loans and low disposable income but, despite this, Payday UK continued to approve loans to him without further assessing their affordability. He became stuck in a cycle of borrowing as a consequence.

Payday UK feels that it did carry out adequate checks before providing the loans and was satisfied that they were affordable to Mr D.

Our adjudicator didn't think that payday UK had been wrong to provide these loans. Mr D didn't agree. He feels that Payday UK should've seen from his credit file that he was borrowing from several lenders at the time and that the borrowings were unaffordable. He's therefore asked, as he's fully entitled to do, that the complaint be passed to an ombudsman for a 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. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Payday UK needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr D could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that Payday UK should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think it's important for me to start by saying that Payday UK was required to establish whether Mr D could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow that this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments.

So it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr D's complaint.

The gap between Mr D's earlier loans from Payday UK and these two later loans was well over two years. I think that this is sufficient time for it to be reasonable for the lender to have assumed that Mr D's financial circumstances may well have changed in the intervening period. As such, I don't regard these two loans as forming part of a continued chain of lending by Payday UK.

Payday UK has shown us that, before offering to give both loans, it asked Mr D for details of his monthly income and expenditure – including amounts to be paid under credit agreements.

I can see that, when he applied for loan one, Mr D declared his income to be £1,900 and his expenditure to be £470. For loan two, he reported his income to be £2,500 and his monthly expenditure to be at a reduced level of £110. He's subsequently said to us that his monthly expenditure was closer to £1,600 – but that's not what he'd told Payday UK at the time.

Loan one was the first transaction between Mr D and Payday UK for some considerable time. I think that, compared with the income and expenditure details that Mr D had declared, the required loan repayments would've appeared to Payday UK to be affordable to him. And I think that it was reasonable for Payday UK to have relied upon the information he'd given to it.

Loan one was repaid earlier than scheduled. Whilst there had been an issue whereby the penultimate repayment was rejected when it fell due, it was settled just a couple of days later.

Loan two was for a significantly higher value and was provided just over two weeks after loan one had been repaid. However, it was for an extended term of 12 months and the monthly repayments were actually less than had been required for loan one. And Mr D declared his income to be higher at that time.

I think that the information sought by Payday UK was proportionate to the circumstances of both of these loans. I do think that Payday UK ought to have questioned why Mr D's expenses had reduced from what had been declared four months previously – but I can't see that it did so. However, I think it's most likely that, if he had been questioned further about the disparities in declared expenses for housing and credit, he'd have cited figures similar to those previously given (notwithstanding they are now described as having been understated at the time).

I don't dispute Mr D's suggestion that his credit file, at the time, would've shown that he had other borrowings. But I don't believe it would've been proportionate to expect Payday UK to carry out credit checks given the circumstances of these two loans.

In these circumstances I don't think that it was wrong of Payday UK to provide these loans and so, whilst I'm sorry to disappoint him, I don't uphold Mr D's complaint.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 August 2019.

Richard France
ombudsman