

complaint

Mr E complains that Instant Cash Loans Limited (trading as PaydayUK) lent him money that he couldn't afford to repay.

Mr E wants PaydayUK to refund the interest and charges that he paid and remove the loans from his credit file.

background

Mr E took out five instalment loans with Instant Cash Loans Limited trading as PaydayUK between July 2015 and December 2015. Mr E had previously taken out other loans with PaydayUK but a different company was responsible for these. I will refer to the loans that form part of this current complaint as loans five to nine.

The adjudicator recommended that Mr E's complaint be upheld in part. She didn't think that PaydayUK carried out adequate checks before agreeing any of the loans. However, the adjudicator thought that better checks would've only made a difference to PaydayUK's decision to lend loan nine.

The adjudicator thought that before agreeing loan nine PaydayUK should've tried to independently verify the financial information that Mr E gave. And that if it had done this, it was likely that PaydayUK would've discovered that Mr E had a number of gambling transactions on his bank statements.

PaydayUK agreed to put things right for loan nine. It said it would refund interest and charges and remove the loan from Mr E's credit file.

Mr E didn't accept the adjudicator's recommendation and PaydayUK's offer. He explained that his ability to work and his mental health were severely affected by an accident that he had about three years ago. Mr E said he didn't realise that he'd been taking out so many loans. Mr E said he was in debt and living on a reduced income.

my provisional findings

After considering all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, I was minded to require PaydayUK to do more than the adjudicator recommended and that it had agreed to do so far.

PaydayUK was required to lend responsibly. It needed to carry out checks to decide whether Mr E could afford to pay each loan back. These checks needed to be proportionate to things such as the amount to be repaid, the length of the agreement and any borrowing history. But there wasn't a set list of checks it had to do.

loan nine

PaydayUK had already agreed to put things right for loan nine so I didn't think I needed to say much more about this loan.

loans five to seven

Given the amount that PaydayUK expected Mr E to repay each time, I considered a proportionate check should've included asking about his income, living costs and regular financial credit commitments.

As far as I could see, PaydayUK only recorded details about Mr E's income and then relied on the Office of National Statistics living expenses data to decide whether each loan was affordable. So I didn't think the checks PaydayUK carried out were adequate.

Just because I didn't think that PaydayUK's checks went far enough didn't necessarily mean that I must go on to uphold Mr E's complaint about any of the loans. I would need to have been persuaded that with better checks, PaydayUK would've discovered that some or all of the loans weren't affordable for Mr E.

Mr E's representative told us that Mr E's monthly outgoings were around £750 each month. Mr E's representative subsequently told us that it had sent us the figures by mistake but didn't ask me to consider any others in their place.

As we had some of Mr E's bank statements from around the time, I could see some of the payments that he was making for things such as insurance, credit card payments and utilities. It also looked as though Mr E was transferring money from one bank account in to another.

Overall, I couldn't say that loans five to seven would've appeared unaffordable had PaydayUK asked more questions than it did.

loan eight

By the time that Mr E took out loan eight, PaydayUK could see a history of regular borrowing. I thought that PaydayUK should've done more to make sure that Mr E hadn't become reliant on short term lending. So in addition to asking Mr E about his living costs and regular credit commitments, I thought that PaydayUK should've also asked about his other short term lending commitments.

Mr E applied for loan eight in mid-November 2015. As we had bank statements and were also dealing with some of Mr E's other complaints, I could that he owed money to other short term lenders. I thought that with better checks, PaydayUK would've discovered that Mr E didn't have enough disposable income to be able to afford loan eight.

I was sorry to hear about the problems that Mr E encountered as a result of his accident but I didn't have any evidence to suggest that Mr E made PaydayUK aware of these before agreeing the loans. This meant I couldn't reasonably say that PaydayUK should've taken Mr E's medical history into account at the time.

further submissions

Mr E said he had nothing further to add and PaydayUK accepted my provisional decision.

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 Mr E hasn't asked me to consider anything further and PaydayUK accepts my provisional decision, it follows that I make my final decision along the same lines.

putting things right

I don't think that Instant Cash Loans Limited (trading as PaydayUK) should have agreed loans eight and nine. To put things right PaydayUK should:

- Refund any interest and charges applied to loans eight and nine;
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*; and
- Remove any negative information about loans eight and nine from Mr E's credit file.

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

my final decision

My final decision is that I uphold Mr E's complaint in part. I require Instant Cash Loans Limited (trading as PaydayUK) to put things right as detailed in the above bullet points.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 2 June 2019.

Gemma Bowen
ombudsman