

complaint

Mr M complains that MEM Consumer Finance Limited (trading as Payday UK) lent him money irresponsibly and shouldn't have recorded a default on his credit file.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 8 February 2016 – a copy of which is attached and forms part of my final decision. In my provisional decision I explained why I considered Payday UK had lent Mr M money irresponsibly and what it should do to put things right.

Mr M accepted my provisional conclusions but Payday UK doesn't. In summary it says

- credit search results showed Mr M wasn't bankrupt, had no county court judgments, and his overall outstanding debt was relatively small, so there was no indication Mr M was in financial difficulty;
- affordability was assessed in line with industry guidance at the time, which suggested the sorts of checks lenders *might* like to consider - such as income and expenditure. But it didn't *require* that all or any of those checks had to be undertaken – especially in the case of smaller, fixed term loans requested on-line or over the phone.

my findings

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

I acknowledged in my provisional decision that the relevant Office of Fair Trading (OFT) guidance allows lenders some choice about affordability checks. And I accept lenders aren't required to undertake any particular check - so Payday UK wasn't specifically obliged to do a credit check or ask Mr M about expenditure.

But Payday UK was required to do enough to ensure Mr M was likely to be able to pay back the money he borrowed here, in a sustainable way. And I find it difficult to see how a reasonable lender could satisfy itself Mr M could afford this loan without taking expenditure into account.

I appreciate Payday UK did a credit search, and considered the results as part of its assessment process. Payday UK has provided the information it took into account now in the format used internally. That's not readily interpreted manually, but I can see Payday UK had some information about Mr M's other credit commitments.

Payday UK accepts Mr M had other debts, but it considers the outstanding amount was relatively small. I don't agree. Given Mr M's income, I don't think his level of active debt was insignificant. Payday UK didn't ask Mr M about the related repayments or his other essential expenditure. And I'm not persuaded it had enough information to be sure Mr M's outgoings would allow him to pay back this loan within a month sustainably.

I can see Mr M's credit history also contains a number of late payments. I realise Payday UK may not have considered those indicated financial problems – in the same way as say CCJs or insolvency. But I think late payments are adverse indicators. At the very least, they

suggest Mr M didn't always manage his money well. And they could be a sign that Mr M was struggling financially – which I'm satisfied was the case here.

So, having re-considered the circumstances overall, I remain of the view it would have been reasonable, and relatively easy, for Payday UK to check Mr M's expenditure. If it had done so, I think Payday UK would have realised this loan was unaffordable. And, for the reasons I've explained, I am not persuaded there are grounds for me to depart from my provisional conclusions.

my final decision

My decision is I uphold this complaint. In full and final settlement I require MEM Consumer Finance Limited (trading as Payday UK) to

1. Refund any interest and charges applied to this loan, along with interest at 8% simple per year from the date of payment to the date of settlement;
2. Remove any information about this loan from Mr M's credit file.

HM Revenue & Customs may require Payday UK to take off tax from the interest paid. Payday UK must give Mr M 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 M to accept or reject my decision before 16 May 2016.

Claire Jackson
ombudsman

copy of provisional decision

complaint

Mr M complains that MEM Consumer Finance Limited (trading as Payday UK) lent him money irresponsibly and shouldn't have recorded a default on his credit file.

background

Late in 2010 Mr M borrowed £150 from Payday UK. He wasn't able to pay it back within the term and paid nearly £40 to defer payment for a month. But Mr M couldn't pay what he owed the following month either. He entered a debt management plan shortly after and repaid the debt over the next two years.

Mr M contacted Payday UK in 2014 and asked it to record the debt was settled on his credit file. Payday UK agreed to do so, but it recorded a default retrospectively as well. Mr M says that's unfair because he wasn't told about the default in advance. And Payday UK shouldn't have lent him this money in the first place because he was in financial difficulties. He considers Payday UK would have known that if it had reviewed his loan application properly.

Payday UK says it didn't have to provide notice of default (under ICO guidance¹) where a debt is included in an IVA or similar. And it was satisfied Mr M's loan was affordable after checking with a credit reference agency (CRA). So it wasn't wrong to lend under the regulatory framework in place at the relevant time.

Our adjudicator wasn't persuaded Mr M's irresponsible lending complaint should be upheld. But he says Payday UK should have recorded an arrangement to pay not a default – as Mr M was in a debt management plan, not insolvent. So Payday UK should rectify Mr M's credit file to reflect that.

Payday UK agrees to remove the default and report the plan in its place. But Mr M considers Payday UK should have done more than look at his income to ensure he could afford the loan. He says Payday UK didn't check properly and should have refused to lend.

my provisional findings

I've looked at all the evidence and arguments available so far to consider what's fair and reasonable in the circumstances of this complaint.

The Office of Fair Trading published guidance on irresponsible lending in March 2010 setting out the industry standards which applied when Payday UK agreed to lend Mr M this money. It requires a lender to vet any loan application sufficiently to make sure an individual borrower is likely to be able to repay what he owes, sustainably.

I accept the guidance allows lenders some discretion about what checks to carry out. And I acknowledge checks should be proportionate to circumstances - including for example the amount of the borrowing.

In this instance Mr M wanted to borrow £150. I realise that's not a large loan for Payday UK. But Mr M had to pay Payday UK over a fifth of his monthly income after 20 days. So I'm satisfied it was quite a lot of money, repayable fairly quickly, for him. And I consider Payday UK should have done enough to check Mr M was likely able to pay the money back in time without undue difficulty.

Payday UK considers it met the regulatory standards in place at the time. I can see it seems to have looked at a short form CRA search. But I'm not persuaded that did much more than confirm what Mr

¹ Data Protection Technical Guidance on filing defaults with credit reference agencies: Information Commissioner's Office

M earned and his identity. And I find it difficult to understand how Payday UK could reasonably assess if Mr M could afford this loan based on that information alone.

I think it would have been reasonable for Payday UK to ask Mr M about expenditure. I've seen his current account statements for three months before he borrowed the money. The account was overdrawn – often close to or over the £3,000 limit. Mr M had been taking out payday loans regularly – and borrowed over £800 from other payday lenders in the 10 days before he asked Payday UK for this £150.

I think that suggests Mr M had significant financial problems. Even a brief consideration of his disposal income suggests it was unlikely Mr M could afford this loan. And, at the very least, I think it would have alerted Payday UK that it might need to look more closely at Mr M's finances.

Mr M has provided a copy of his credit report from the relevant time. It shows Mr M was up to the limit on three of his four credit cards - owing about £3,000 and making only minimum monthly repayments. And he was taking cash advances on at least two credit cards, missing or making payments late and overdrawn on another current account (close to its £800 limit). I think that's further evidence Mr M was in serious hardship. And Payday UK would have been aware of that if it had done a proper credit search.

Overall, I don't think it would have been overly difficult or disproportionate for Payday UK to find out more about Mr M's expenditure and disposable income. The relevant information seems to have been available and easily accessible. So, for the reasons I've given, I'm not persuaded Payday UK carried out an appropriate affordability assessment in the particular circumstances here.

I can't see that this loan was ever affordable. On the evidence I've seen so far, I think it likely Payday UK was irresponsible to lend Mr M the money. It follows I'm minded to require Payday UK to refund interest and charges and remove any information about the loan from Mr M's credit file.

my provisional decision

Subject to any further submissions received from Mr M or Payday UK, I propose to uphold Mr M's complaint. And I intend to require MEM Consumer Finance Limited (trading as Payday UK) to

1. Refund any interest and charges applied to this loan along with interest at 8% a year from the date of payment to the date of settlement;
2. Remove any information about this loan from Mr M's credit file.