

## **complaint**

Miss C has complained that Instant Cash Loans Limited (trading as Payday UK) shouldn't have given her three loans, as she couldn't afford to repay them.

## **background**

Loan one was taken out in November 2015 for £110. This was a payday loan and the principal plus interest (£124.96) was due to be repaid at the end of that month.

Loan two was taken out in early December 2015 for £280. This was an instalment loan which was due to be repaid in four instalments. Miss C made three repayments of £111.34 and the final repayment of £97.08 in March 2016 which Payday UK has said she repaid early.

On the same day as repaying loan two, Miss C took out loan three. This was for £480 and Payday UK has said that this loan was structured to be repaid in five instalments. Miss C appears to have made one repayment on this loan of £158.34.

Two of our adjudicators have looked into Miss C's complaint already. The most recent adjudicator thought that Payday UK didn't complete proportionate checks before agreeing any of the loans. And they thought that had Payday UK completed proportionate checks, it would've seen that Miss C couldn't have afforded any of the loans it gave to her.

Payday UK didn't agree with our adjudicator so the complaint has been passed to me for 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. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Payday UK was required to lend responsibly. It needed to check that Miss C could afford to repay her loans sustainably. As Payday UK has highlighted, there was no prescribed list of checks it needed to do, but the relevant regulations said the checks should be proportionate to the circumstances of each loan which might include considerations about the amount borrowed, Miss C's borrowing history, when what was owed was due to be repaid and so on.

In making this decision I have first considered whether Payday UK did everything it should have when assessing Miss C's loan applications. And, following on from this, I have thought about whether or not any assessment failings resulted in Payday UK agreeing to lend to Miss C when it should have known that it would be difficult for her to repay.

Having done so, I am upholding Miss C's complaint and directing Payday UK to refund the interest, fees and charges she's paid for all three loans. I appreciate that this will be a disappointing outcome for Payday UK, but I hope my explanation makes it clear why I have come to this conclusion.

*the checks Payday UK completed*

Payday UK has said before Miss C's first loan it took details of her monthly income and expenditure. Payday UK has also said it completed a credit search. And before agreeing loans two and three, Payday UK has said it again took details of Miss C's monthly income and expenditure.

I've looked carefully at all the information I have available and I don't think Payday UK completed proportionate checks before agreeing any of Miss C's three loans. I say this because in the month before loan one was agreed, I can see Miss C applied for another loan with Payday UK which was declined. At this time Miss C declared a monthly income of £595 and expenditure of £1,000. However, when applying for loan one, Payday UK has said she declared a monthly income of £575 against a declared expenditure of £305. Given the significant variation in the amounts Miss C was declaring as her expenditure, I think Payday UK had reason to question the information Miss C was providing. And, in order to complete proportionate checks, I think that Payday UK needed to do more such as independently verifying the information Miss C was providing.

I can see Payday UK has argued that a consumer's expenditure can vary and that it assessed each loan application on its own merits. Whilst I appreciate there might be some variation in expenditure, Miss C declared an expenditure of £1,000 and then under a month later she declared £305 which is less than a third of what she previously declared. So I don't agree it was reasonable for Payday UK to accept that Miss C's expenditure had varied by this extent, in such a short period of time, without completing further checks.

And given Payday UK already had reason to question the information Miss C was providing when she applied for loan one, I think it also had reason to complete further checks to verify the information Miss C was providing when she applied for loans two and three. In addition to this, I can see that Miss C was applying for increasingly larger amounts. Whilst I appreciate these loans were structured as instalment loans, Miss C was still returning for increased borrowing. And she was returning within very short periods of time. In particular loan three was agreed on the same day as loan two was repaid. I think these factors should've also alerted Payday UK to the need to complete further checks before agreeing additional loans.

*what I think proportionate checks were most likely to have shown*

As proportionate checks weren't completed, I can't say for sure what they would've revealed. But Miss C has told us about her circumstances at the time and she's provided a copy of her bank account statements. I appreciate that this isn't conclusive as different checks will show different results. But this information gives me a picture of what her financial circumstances were like at the time. And so in the absence of anything else, I think it's reasonable to rely on it.

I can see that in the months leading up to loan one, and during the time she was borrowing from Payday UK, Miss C was gambling regularly. And at times Miss C was gambling a significant portion or in excess of her monthly income. Together with this, I can also see she was regularly borrowing from another short term lender. And I can't see her circumstances improved during the time she was borrowing from Payday UK. So taking all of this into consideration, I think that had Payday UK completed proportionate checks it would've seen that Miss C didn't have the capacity to take on any additional borrowing and that she couldn't

have afforded these loans. And so I think Miss C has lost out as a result of what Payday UK did wrong.

### **what Payday UK should do to put things right**

To put things right for Miss C, Payday UK should:

- refund all the interest, fees and charges Miss C has paid on all three loans; 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 Miss C's credit file as a result of the interest, fees and charges on all three loans;

†HM Revenue & Customs requires Payday UK to take off tax from this interest. Payday UK must give Miss C a certificate showing how much tax it's taken off if she asks for one.

I understand that there was an outstanding balance on loan three. If after removing all the interest and charges from this loan an outstanding balance remains then Payday UK can deduct this from what it needs to pay Miss C. But it can only do this if it still owns any debt. If it doesn't then it needs to buy it back, or it isn't entitled to make any deduction for it from the amount it needs to pay Miss C.

### **my final decision**

For the reasons explained, I uphold Miss C's complaint against Instant Cash Loans Limited. And I direct it to put things right for Miss C in the way I've described above.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss C to accept or reject my decision before 5 June 2017.

Claire White  
**ombudsman**