Financial Ombudsman Service

complaint

Mr H complains that MEM Consumer Finance Limited, trading as PaydayUK, (Payday) gave him loans he couldn't afford to repay.

background

Mr H took out eight loans with Payday between 2010 and 2013 for amounts ranging between £200 and £640. He rolled over each of them, apart from the first, a number of times. The final loan (loan eight) was rolled over five times and the account eventually defaulted in December 2013. Payday say Mr H still owes them £543.61.

Before contacting our service Mr H complained directly to Payday. Their response was that they only lent to customers who met their lending criteria. But they did accept that allowing Mr H to rollover loans six, seven and eight more than three times wasn't right. Payday say that in November 2012 they signed up to a charter containing guidance that a customer shouldn't be allowed to rollover their loan more than three times in a row. As a result of not following this guidance, Payday offered to refund the interest and charges amounting to £716.34 generated when Mr H rolled over loans six, seven and eight. They proposed that this refund would be used to cover the outstanding balance Mr H had with them leaving him with £172.73. Mr H was unhappy with this response and so contacted our service.

As the complaint couldn't be resolved informally, it's been passed to me.

my findings

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

The rules and guidance applicable to short term lending when each of the loans were taken required Payday to lend to Mr H responsibly. This meant that before giving Mr H the loans, Payday had to make sure he could afford to repay them. There was no set list of checks they had to perform, but any checks needed to be proportionate to things like the size of the loan and Mr H's circumstances.

Payday have said that every time Mr H applied for a loan with them they completed a credit check, found out what he earned and undertook an identity check. I think initially these checks were enough. The first three loans Mr H took out in July, August and December 2010 were for £200. I can see that around that time, Mr H had a salary of £1500 a month so in proportion to his income what he was asking to borrow was relatively small. Mr H did rollover the second loan twice but he repaid what he owed within two months. So I don't think at this point Payday would have had a reason to think they needed to complete more checks.

By the time Mr H applied for the fourth loan in March 2011, things had changed. Mr H was asking for £400 - double what he had previously requested. Also, he had not been able to pay loan three back on time, so again he needed to rollover the loan. I think the increase in borrowing, together with what was an emerging pattern of rolling over loans should have prompted Payday to find out more about Mr H's circumstances, by, for example, asking him what his outgoings were.

I've looked through Mr H's statements. When he took out the fourth loan his income from his salary remained within the region of £1500 but he was typically spending large amounts of money gambling. In February 2011, the month before he took out the fourth loan, Mr H had paid around £6500 to various gambling companies. Had Payday enquired about Mr H's outgoings, I think they would have realised that it was irresponsible to lend him the money he was requesting.

The remaining four loans were for amounts ranging between £400 and £640. They were taken out between September 2011 and July 2013. On average Mr H rolled each of them over six times. Loan six was rolled over seven times. Payday don't seem to have increased the checks they were doing when he applied for these loans or the rollovers. I think they should have done more checks as by this stage it was apparent Mr H was having problems paying back the money he was asking for. Looking through Mr H's statements, I can see that he continued to use much of the money he was being lent to gamble. Payday would have been able to detect this if they had done more checks when he asked for those loans.

Also, there was guidance which recommended that lenders didn't roll over loans more than three times. This guidance; The Addendum to the Codes of Practice and the Good Practice Charter agreed by the Consumer Finance Association and the Finance & Leasing Association, came into force in 2012. The guidance represented good industry practice and as Payday have acknowledged, should have been followed by them.

Overall I think it was irresponsible of Payday to lend Mr H loans four to eight.

putting things right

For the reasons outlined, I don't think Payday should have lent Mr H loans four, five, six, seven and eight. So they should:

- refund all interest and charges added to loans four, five, six, seven and eight.
- pay interest at 8% simple per year on any refund from the date of payments to the date of settlement†;and
- remove any adverse information about those loans from Mr H's credit file.

†HM Revenue & Customs require Payday to take off tax from this interest. Payday must give Mr H a certificate showing how much tax it's taken off if he asks for one.

As Mr H still owes Payday money I think it's fair that they use the refunded interest and charges to clear his outstanding capital balance. Payday should then give Mr H the money that remains. Payday should make it clear to Mr H how they have calculated this part of the refund.

my final decision

I partly uphold Mr H's complaint against MEM Consumer Finance Limited trading as PaydayUK and direct that they pay him compensation as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 October 2016.

Tope Adeyemi
ombudsman