

complaint

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

background

The background to this complaint was set out in my provisional decision dated March 2018. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to uphold part of the complaint. I invited both parties to let me have any further comments and evidence. I haven't received anything further from either Mr F or Payday UK.

my findings

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

Given that neither Mr F nor Payday UK has responded to my provisional decision I see no reason to alter the conclusions that I reached. I don't think Payday UK should have given Mr F loans 1 to 3, or loan 7. It needs to pay him some compensation.

putting things right

I don't think Payday UK should have agreed to give Mr F loans 1 to 3, or loan 7. So for each of those loans Payday UK should;

- Refund any interest and charges paid by Mr F on the loans.
- 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*.
- Remove any adverse information recorded on Mr F's credit file in relation to the loans.

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

Mr F didn't repay any of his final loan to Payday UK. That debt has now been sold to a third party debt collection company. I understand that Mr F hasn't repaid any of this debt to the debt collection company.

It seems reasonable that if Mr F still owes the capital he borrowed that the refund due to him should be used to reduce that debt. But to do so Payday UK must first take the debt back into its own books and reduce it to reflect just the capital that Mr F borrowed. If Payday UK is unable, or unwilling, to do this it must ensure that its interest and charges, and any other interest and charges added by the debt collection company, are refunded to Mr F so he can choose whether to use the compensation to settle his debt directly.

If it does take the debt back and, as seems likely, some of that debt still remains Payday UK should endeavour to reach a mutually agreeable repayment arrangement with Mr F, bearing in mind the need to continue to treat him positively and sympathetically in those discussions.

my final decision

My final decision is that I partly uphold Mr F's complaint and direct MEM Consumer Finance Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 June 2018.

Paul Reilly
ombudsman

EXTRACT FROM PROVISIONAL DECISION**complaint**

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

background

Mr F was given seven loans by Payday UK between June 2012 and May 2013. He repaid his first six loans as planned, but was unable to repay the seventh. The outstanding balance on that loan has since been sold to a third party debt collection company. A summary of Mr F's borrowing from Payday UK is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	25/06/2012	27/07/2012	£ 190
2	14/08/2012	28/08/2012	£ 200
3	20/11/2012	28/11/2012	£ 100
4	13/01/2013	30/01/2013	£ 100
5	25/03/2013	28/03/2013	£ 100
6	15/04/2013	26/04/2013	£ 200
7	03/05/2013	-	£ 400

Mr F's complaint has been assessed by one of our adjudicators. She thought that Payday UK should have done more checks before agreeing each of the loans. And she thought that better checks would have shown Payday UK that Mr F couldn't sustainably afford loan 7. So she asked Payday UK to remove any interest and charges from the outstanding balance on that loan. Payday UK agreed with that recommendation.

But Mr F didn't accept that recommendation. He still thought that Payday UK shouldn't have given him the rest of the loans either. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Payday UK was required to lend responsibly. It needed to make checks to see whether Mr F could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr F was borrowing, and his lending history, but there was no set list of checks Payday UK had to do.

The Office of Fair Trading (OFT) was the regulator at the time Mr F borrowed from Payday UK. The OFT Irresponsible Lending Guidance states *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

The guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit *“out of income and/or available savings”* and without *“undue difficulty.”* And it defines *“undue difficulty”* as being able to repay credit *“while also meeting other debt repayments and normal/reasonable outgoings”* and *“without having to borrow further to meet these repayments”*.

Even though Mr F managed to repay most of his loans in full it doesn't automatically mean the loans were affordable for him or that he managed to repay them in a sustainable manner. In other words I can't assume that because Mr F managed to repay his loans it means that he was able to do so out of his normal income without having to borrow further.

Payday UK has told us about the checks it did before lending to Mr F. Each time it asked him for details of his normal income. And it checked his credit file before giving him the first loan. I can't see anything in the results of that credit check that I think might have caused additional concerns to the lender.

When Mr F asked for his first loan, his repayment was a reasonable proportion of his normal income. So I think Payday UK should have gathered some additional information about Mr F's finances to ensure he could afford the loan. I think it would have been reasonable here to ask him for some basic details of his normal expenditure.

A couple of weeks after repaying his first loan, Mr F asked for another, slightly larger, loan. So I think it would have been proportionate for Payday UK to gather the same sort of information about Mr F's finances here. And I think the same applies to the third loan Mr F took. This was his third request in a relatively short space of time. And although the amount he was asking to borrow had decreased, I still think Payday UK should have wanted to know more about his circumstances.

And I think this level of checks would have been appropriate when Mr F took his fourth loan too. There had been a gap of around six weeks between him repaying loan 3 and asking for another. But I think by now a pattern of borrowing was beginning to form and Payday UK should have been on notice that Mr F's finances might be under some pressure.

Mr F was two days late repaying his fourth loan. It appears from Payday UK's notes that this might have been because Mr F needed to update his bank card details with the lender. But even so, when he asked for his fifth loan I think Payday UK had reached the point where it should have realised that Mr F's financial position was not as good as it might have seemed. I think it would have been proportionate at this time to have independently reviewed the true state of Mr F's finances.

Mr F took two further loans from Payday UK. Both times the amount he asked to borrow increased. And the gap between repaying a loan and asking for another got shorter each time too. So I think independently verifying Mr F's financial position would have been proportionate for these loans too.

But although I don't think the checks Payday UK did on any of the loans were sufficient, that in itself doesn't mean that Mr F's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Payday UK that Mr F couldn't sustainably afford the loans. So I've looked at Mr F's bank statements, and what he's told us about his financial situation, to see what better checks would have shown Payday UK.

At the time of the first three loans Mr F was paying his normal living expenses such as rent, utility bills, travel costs and buying food. But he was also making repayments on a number of other debts. He had a bank loan outstanding and he was making regular monthly repayments to three different credit cards. The sum of these costs left him with little, if any, disposable income that he could use to repay any loans from Payday UK.

By the time of the fourth loan Mr F was paying a similar amount each month on his living costs. But he was no longer making as many credit card repayments. And by the time of the fifth loan he'd finished repaying his bank loan too. So for loans 4, 5 and 6 it seems that Mr F had enough money left over to afford to repay the loans he took from Payday UK.

But when Mr F asked for his final loan his finances were in a much worse state. He'd recently borrowed heavily from another short term lender. So was committed to making that repayment around the same time as he'd need to repay Payday UK. And the last loan he took from Payday UK was much larger – so Mr F's repayment took up almost half of his normal income. He didn't have enough disposable income to afford that loan.

If Payday UK had done what I consider to be proportionate checks it would have seen that Mr F couldn't afford to repay loans 1 to 3, or loan 7. So, as a responsible lender, I don't think it should have given these loans to him. Payday UK needs to pay Mr F some compensation.