

complaint

Mr T complains that DJS (UK) Limited, trading as PiggyBank, was irresponsible to have provided him with a number of payday loans.

background

Mr T was provided with 17 payday loans by DJS as follows:-

Number of loan	Date of loan	Amount repayable
1.	17/3/2014	£332.53
2.	17/4/2014	£441.05
3.	8/5/2014	£595.84
4.	11/6/2014	£703.19
5.*	7/7/2014	£832.90
6.	4/9/2014	£839.29
7.	17/9/2014	£863.84
8.	8/10/2014	£1,029.76
9.	31/10/2014	£1,221.81
10.*	27/11/2014	£1,153.21
11.*	5/1/2015	£1,241.49
12.*	3/4/2015	£1,054.92
13.	6/7/2015	£1,144
14.	1/8/2015	£1,192
15.	26/8/2015	£1,240
16.	29/9/2015	£1,200
17.	30/11/2015	£1,192

* These loans were deferred.

Mr T said that DJS had acted irresponsibly in lending Loans 5 to 17 to him. He is seeking compensation for Loans 5 onwards. All the loans have been repaid, although four were deferred (Loans 5, 10, 11 and 12).

DJS said that it asked Mr T for details of his income and expenses. It also added the credit commitments it saw on its credit check to Mr T's expenses in order to calculate Mr T's disposable income. DJS also noted from Mr T's early loans that he had usually paid back his loans before the due date. But it said that due to the increased regular borrowing and markers on Mr T's credit file, an investigation should have been undertaken to ascertain more details from Mr T for some of the loans. So, DJS offered to refund interest and charges on Loans 12 to 17.

The adjudicator said that the checks DJS made for Loans 1 to 4 went far enough. But, she didn't think sufficient checks had been made for Loans 5 to 11 due to the number of loans Mr T had taken out over a short period of time and the increasing loan amounts being borrowed. She thought that DJS should've completed a full financial review of Mr T's circumstances for Loans 5 to 11 to ensure that he could afford the loan repayments. She said that this could have been done by looking at Mr T's bank statements. She had reviewed Mr T's bank statements and noted that Mr T had insufficient disposable income to make the repayments on Loans 5 to 11. She also noted that DJS had offered to provide redress for Loans 12 to 17 in its final response letter. So the adjudicator recommended that DJS should:

- Refund all interest and charges that Mr T paid on Loans 5 to 17;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Remove any negative information about Loans 5 to 17 from Mr T's credit file.

*HM Revenue & Customs requires DJS to take off tax from this interest. DJS must give Mr T a certificate showing how much tax it's taken off if he asks for one.

Mr T said that he had no further points to add.

DJS didn't provide a response to the adjudicator's view.

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 asked the adjudicator to ask Mr T whether his complaint was just in regard to Loans 5 onwards and he said that this was the case. And I noted that DJS had offered to settle Loans 12 to 17. So, I shall only review Loans 5 to 11 below.

DJS is required to lend responsibly. It needed to make checks to see whether Mr T 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 T was borrowing, and his lending history, but there was no set list of checks DJS had to do.

The Financial Conduct Authority was the regulator at the time Mr T borrowed Loans 5 onwards from DJS. Its regulations require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*" The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the interest paid might have been low in comparison with Mr T's income, or that he managed to repay the loans in full, doesn't necessarily mean the loans were affordable for him and that he managed to repay them in a sustainable manner. In other words I can't assume that because Mr T managed to repay his loans, albeit some late, that he was able to do so out of his normal means without having to borrow further.

DJS has shown us the checks it did before lending to Mr T. It asked him each time about his monthly income and his expenditure. It also reviewed his credit file and added an amount representing Mr T's credit commitments to his expenses figure to ascertain Mr T's disposable income.

Loan 5 was Mr T's fifth loan from DJS in less than four months. Mr T applied for the loan a week after Loan 4 was repaid. The loan amounts to be repaid had significantly increased from £332.53 for Loan 1 to £832.90 for Loan 5. DJS's records show that Mr T had a disposable income of £2,000 when he borrowed Loans 5 to 11. But by the time of Loan 5,

I think Mr T's overall borrowing from DJS was being taken sufficiently regularly to show that Mr T was reliant on it to get by. I also note from DJS's credit check that it would have been aware that Mr T had unsecured loans and a payday loan totalling £16,855. So, I think DJS should have been on notice that it was unlikely Mr T's financial position was as good as he was declaring. I note that DJS relied on the income and expenditure figures it received from Mr T and it also took into consideration an amount representing his credit commitments. But whilst its assessment showed that Mr T had a significant amount of disposable income each month, I think DJS should still have been concerned that Mr T needed to borrow very regularly. I think Mr T's borrowing record had now reached the point where it would have been reasonable for DJS to question whether it could rely on the information Mr T had provided to it about his finances. So, I don't think that DJS made sufficient checks here.

So, by the time Mr T applied for Loan 5, I think DJS should have been looking to independently verify Mr T's income and expenditure so it could fairly assess the affordability of Loan 5. Loan 5 was deferred. After that Mr T regularly borrowed increasing repayment amounts of up to £1,241.49. So, I think the same level of checks would have been appropriate for the rest of the loans that Mr T borrowed from DJS. DJS could've done this in a number of ways. It could've asked for evidence of Mr T's income and expenditure such as payslips and bills or it could've looked at things like his bank statements. So, I agree with the adjudicator that DJS's checks weren't proportionate for Loans 5 to 11.

Although I don't think the checks DJS did on Loans 5 to 11 were sufficient, that in itself doesn't mean that Mr T's complaint should succeed. I also need to see whether what I consider to be proportionate checks would have shown DJS that Mr T couldn't sustainably afford the loans.

With regard to Loans 5 to 11, as I've said above, I think DJS should have been independently checking what Mr T was earning and spending each month. So I've tried to do this by looking at Mr T's bank statements at the time of these loans, and what he's told us about his financial situation, to see what better checks would have shown DJS. The bank statements may not have shown DJS everything it would've seen by carrying out proportionate checks. But the bank statements are the best indication of Mr T's ability to afford the loans at the time they were approved. So I don't think it's unreasonable to rely on these.

I've checked Mr T's bank statements for the month before Loan 5. His declared income of £3,800 is broadly supported by the statements. But his bank statements also show that his normal living costs and his long and short term credit commitments substantially exceed the expenditure amount he declared to DJS. Mr T had given this service an estimate of his monthly regular expenditure which was around £1,700. But I can see from the statements that Mr T's normal living costs and regular financial commitments were around £4,000. He also had other short term borrowing of £1,500 which would have required payment around the same time as Loan 5. In addition, if DJS had done what I consider to be proportionate checks, I think it would also have become aware that Mr T was gambling heavily. So, I think if DJS had done what I consider to be proportionate checks, it would have seen that the Loan 5 repayment of £832.90 wasn't sustainable.

The position is similar with regard to Loan 6. The bank statements show that Mr T continued to gamble heavily and Mr T's normal living costs and his credit commitments substantially exceeded the expenditure he declared to DJS. I can see from the statements that Mr T's normal living costs and regular financial commitments were around £3,700. But as his monthly income was around £3,800, I think if DJS had done what I consider to be

proportionate checks, it would have seen that the Loan 6 repayment of £839.29 wasn't sustainable.

With regard to Loans 7 to 11, having looked at Mr T's bank statements for the period these loans were taken out, I can't see that his financial circumstances improved during this time. And I think the real extent of Mr T's financial problems would have been clear to DJS if it had asked Mr T to provide independent evidence of his financial situation. And that would have showed that he didn't have sufficient disposable income to repay the loans he was asking to take.

In summary I don't think DJS did enough checks for Loans 5 to 11. I think proportionate checks would have shown DJS the state of Mr T's finances and that he couldn't afford to sustainably repay Loans 5 to 11. I think DJS needs to pay Mr T some compensation relating to these loans, along with what it has already offered in relation to Loans 12 to 17.

To settle the complaint, I think DJS should:-

1. Refund all interest and charges that Mr T paid on Loans 5 to 17;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about these loans from Mr T's credit file.

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

my final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order DJS (UK) Limited (trading as PiggyBank) to:-

1. Refund all interest and charges that Mr T paid on Loans 5 to 17;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about these loans from Mr T's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 March 2018.

Roslyn Rawson
ombudsman