complaint

Miss G complains that MYJAR Limited gave her loans that she couldn't afford.

background

Miss G took out three short term loans with MYJAR. Loans 1 and 2 were repayable by three monthly instalments. Loan 3 was repayable by 12 monthly instalments. Loan 3 hasn't been repaid. Miss G's loan history is as follows:-

Loan number	Date of Loan	Loan amount	Highest monthly repayment amount	Repayment date
1.	12/6/2015	£300	£146.59	20/10/2015
2.	27/2/2018	£425	£222.07	15/3/2018
3.	7/4/2018	£3,600	£530.42	Unpaid

Miss G said that she had other payday loans and was gambling at the time of Loan 1. She said that she was in a debt management plan at the time of Loan 2. And she had just repaid the loans in her debt management plan before Loan 3.

MYJAR said that it had asked Miss G for her income and regular expenditure and conducted a credit check. It also took into account a minimum amount for household expenditure and Miss G's borrowing from other lenders. MYJAR said that it concluded from its affordability checks that repaying the loans wouldn't have become difficult for Miss G.

our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld. He couldn't see that MYJAR's credit checks showed a debt management plan.

Miss G disagreed. She said that her credit report showed that she was on a debt management plan. She couldn't afford the repayments on Loan 2 and this led her to borrow Loan 3. As Loan 3 was for a high amount, further checks should have been carried out including asking for her bank statements. Miss G said that MYJAR should have taken into account the number of other loans she had and the amounts of those loans which were shown on her credit file.

The adjudicator responded to say that the checks carried out by MYJAR were proportionate to the amount Miss G had borrowed taking into account her income and expenditure.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss G and to MYJAR on 7 October 2019. I summarise my findings:

I'd noted that I noted that when MYJAR lent to Miss G the regulator was the Financial Conduct Authority (FCA) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

I said that MYJAR needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure

Miss G could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I thought less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that MYJAR should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors included:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer had been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There might even come a point where the lending history and pattern of lending itself clearly demonstrated that the lending was unsustainable.

I thought it was important to say that MYJAR was required to establish whether Miss G could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

I explained that the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it didn't automatically follow this was the case. This was because the CONC defined sustainable as being without undue difficulties and in particular the consumer should be able to make repayments, while meeting other reasonable commitments, as well as without having to borrow to meet the repayments. And it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Miss G's complaint.

MYJAR had told us about the checks it did before lending to Miss G. I noted from MYJAR's records that it had details of Miss G's income as well as details about her housing costs, other monthly expenses and other credit commitments. MYJAR had used statistical expenditure data and revised Miss G's stated outgoings upwards to take account of these. I also noted that MYJAR had carried out a credit check and had seen a summary of the credit checks for all the loans.

I'd also seen Miss G's credit report. This showed that Miss G had other short term loans and a recent defaulted account with another lender before Loan 3. I was aware that when a lender carried out a credit search, the information it saw didn't usually provide the same level of detail that a consumer's credit search would and it wasn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I was also aware that not all payday and short term lenders reported to the same credit reference agencies. So, Miss G's defaulted account and other short term loans might not have been identified by MYJAR's credit check. So, this might have explained any differences between the information provided by MYJAR's credit check and Miss G's actual situation.

I'd also noted that Miss G had said that she was in a debt management plan before Loan 2. But although the summary of MYJAR's checks I'd seen had a column headed debt management plan probability, the column contained no entries. So I couldn't safely conclude that MYJAR was aware that Miss G was in a debt management plan.

I'd thought about whether MYJAR's checks were proportionate for the loans. I'd noted that for Loan 1, Miss G needed to make three monthly repayments of varying amounts up to £146.59 to repay it. I could see that the repayments were relatively modest compared to the income of £2,500 Miss G had declared to MYJAR. I also noted that Miss G's adjusted expenditure was £1,190.

I'd noted that MYJAR's credit check showed she'd opened seven new accounts in the previous three months and that her unsecured loan balances were estimated to be £3,200. I could see that Miss G's other borrowing might have suggested to MYJAR that her finances were under pressure. But I didn't think the repayment amounts were so large that it was obvious they would've caused Miss G financial difficulty.

On balance, I thought that the checks MYJAR carried out before agreeing Loan 1 were proportionate. And given Miss G's repayment amounts for Loan 1, what was apparent about her circumstances at the time, and that this was her first loan with the lender, I didn't think it would've been proportionate for MYJAR to have asked her for the amount of information that would have been needed to show the lending was unsustainable.

And at that stage there wasn't anything in the information Miss G had provided or the information MYJAR should've been aware of, which meant it would've been proportionate to start verifying what she was saying. So I didn't think MYJAR was wrong to give Loan 1 to Miss G.

Loan 1 was repaid around seven weeks late. Nevertheless as Loan 2 was taken out around 28 months later, I thought it was reasonable for MYJAR to treat Miss G as a new customer before Loan 2.

The loan amount for Loan 2 was £425 but was still repayable by three monthly instalments with a highest monthly repayment amount of £222.07. Miss G's declared income had increased to £3,000. But her declared expenditure had decreased as she hadn't declared any housing costs. I'd also noted that MYJAR's credit check showed that Miss G had taken out one new credit account in the previous three months. It also appeared that her unsecured debt had increased to an estimated amount of £9,060. Nevertheless, I thought that the repayments that Miss G needed to make on Loan 2 were still relatively modest compared to the income that she'd declared to MYJAR. And I didn't think the repayment amounts were so large that it was obvious they would've caused Miss G financial difficulty.

So given Miss G's repayment amounts for Loan 2 and what was apparent about her circumstances at the time, I didn't think it would've been proportionate for MYJAR to have asked her for the amount of information that would have been needed to show the lending was unsustainable.

And at that stage there wasn't anything in the information Miss G provided or the information MYJAR should've been aware of, which meant it would've been proportionate to start verifying what she was saying. So I didn't think MYJAR was wrong to give Loan 2 to Miss G.

I'd appreciated that Miss G had said that she was gambling heavily before her loans. But that wasn't something she'd told MYJAR about when she'd asked for her loans. So unless Miss G had disclosed her gambling problem, I couldn't say that MYJAR would have found out about it with the proportionate checks it had made before Loans 1 and 2 which I thought were fair.

Loan 2 was repaid early. I thought this might have caused MYJAR some concerns about Miss G's finances. And Loan 3 was taken out around three weeks later. The loan amount and monthly repayment amounts had increased significantly to £3,600 and around £530.42 respectively. I'd noted that Loan 3 was repayable over 12 months. So the amount that Miss G needed to repay each time was smaller than if she'd taken a normal payday loan. But I'd noted that she was committing to making those repayments over a far longer period than her previous loans. And I thought there was a greater possibility of Miss G finding the loan repayments unsustainable. I'd also noted that MYJAR's credit checks before Loan 3 showed that she'd taken five new credit accounts in the previous three months and the balances on five accounts had increased in the previous three months. Moreover her estimated unsecured debt had again increased to £10,920. I thought all this should have suggested to MYJAR that Miss G was having problems managing her money.

I'd appreciated that MYJAR had asked Miss G for her income and expenditure. But I thought for the reasons set out above that it wasn't reasonable for MYJAR to have relied on that information. So I thought this should have prompted MYJAR to have made some additional checks such as asking Miss G for more information about her short term borrowing commitments.

Had it done so, MYJAR would have discovered that Miss G was borrowing from at least three other short term lenders and was committed to repaying them at the same time as she'd be repaying Loan 3. I had seen these loans on Miss G's credit report and bank statements.

So I thought it would have been clear to MYJAR if it had made proportionate checks that Miss G was facing problems managing her money and unlikely to be able repay Loan 3 in a sustainable manner. So I didn't think MYJAR should have provided Loan 3 to Miss G.

Subject to any further representations by Miss G or MYJAR my provisional decision was that I intended to uphold this complaint in part. I intended to order MYJAR to put things right as follows.

putting things right – what MYJAR needs to do

- Refund all interest and charges Miss G paid on Loan 3 and pay interest of 8% simple a year on such refunded interest and charges from the date they were paid to the date of settlement*;

- Write off any unpaid interest and charges from Loan 3;

- Apply the refunds referred to above to reduce any capital outstanding on Loan 3 and pay any balance to Miss G;

- Remove all adverse entries about Loan 3 from Miss G's credit file;

*HM Revenue & Customs requires MYJAR to take off tax from this interest. MYJAR must give Miss G a certificate showing how much tax it's taken off if she asks for one. If MYJAR intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Miss G responded to my provisional decision to say that she was happy with my findings and had no further information to add.

MYJAR responded to my provisional decision to say that it agreed with it. It also said that it was more than willing to set up an affordable repayment plan towards the outstanding balance.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Given that both Miss G and MYJAR have accepted my provisional decision and given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require MYJAR to pay Miss G some compensation as set out below.

I understand that there is a large balance outstanding on Loan 3 and note that MYJAR has said that it is willing to set up an affordable repayment plan. I would remind MYJAR of its responsibility to treat Miss G in a positive and sympathetic manner about the amounts she should repay.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order MYJAR Limited to:

1. Refund all interest and charges Miss G paid on Loan 3 and pay interest of 8% simple a year on such refunded interest and charges from the date they were paid to the date of settlement*;

2. Write off any unpaid interest and charges from Loan 3;

3. Apply the refunds referred to above to reduce any capital outstanding on Loan 3 and pay any balance to Miss G; and

4. Remove all adverse entries about Loan 3 from Miss G's credit file;

*HM Revenue & Customs requires MYJAR to take off tax from this interest. MYJAR must give Miss G a certificate showing how much tax it's taken off if she asks for one. If MYJAR intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 30 November 2019.

Roslyn Rawson
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