complaint

Mr S complains about seven loans he took out with MEM Consumer Finance Limited (trading as Payday UK). He believes he should never have been lent to as he couldn't afford to repay the loans because of his existing commitments.

background

Between March 2010 and October 2012 Mr S took out seven payday loans with Payday UK. The loans varied in amounts between £230 and £560. Although the loans were all repaid Mr S says this was only possible because he took out further loans with different payday lenders. Mr S argues that it was not responsible to lend him the money and that it should have been clear to Payday UK that he couldn't afford to repay them.

Payday UK, in its final response letter, offered Mr S £1,377.19 as a refund of interest and charges that he paid when he deferred on his last loan. It says, at this point it had signed up the to the payday and short terms loans charter and was applying the principles; setting out that a lender should carry out a sound, proper and appropriate affordability assessment before extending the term of a loan. Payday UK says it made the above offer because Mr S rolled over/deferred several times on his last loan.

Mr S rejected this offer saying all the loans were unaffordable and not just the last loan.

The adjudicator who looked at the complaint thought the checks Payday UK carried out for the first loan were proportionate. But because this loan was deferred on six monthly occasions Payday UK should've carried out more checks when deciding to lend to Mr S a second time. Mr S went on to defer on all of the following loans and on more than one occasion. The adjudicator said if Payday UK had carried out additional checks, it would've seen from Mr S's statements that the funds were being used to fund gambling and it wouldn't then have decided to provide further loans to Mr S.

Payday UK didn't respond to the view and the complaint was passed to me to issue a final decision. I contacted Payday UK and asked if it would consider the view by the adjudicator and let me have its responses. Payday UK made a revised offer, as well the original offer, to include interest and charges on loans three and five. Mr S rejected this offer, saying that all the lending was unaffordable. And at the point of the first loan, he believed he already had defaults on the account which Payday UK would've seen and so the offer didn't go far enough.

Payday UK, in its response, also included information about the checks it made when deciding to lend to Mr S. It added that there was a decrease in the lending for the fourth loan and there is a two month gap between the fifth and six loans followed by another two month gap between the sixth and seventh loans. And it says that at the time of lending there was no specific regulation in place concerning the recommended number of extensions a consumer could make. Payday UK didn't make any comments on the second loan. I have considered this additional information when reviewing the complaint.

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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered. Having done so, I have come to the same conclusions as the adjudicator for largely the same reasons. I will explain in more detail.

When lending money to a consumer Payday UK is required to ensure the consumer can repay the borrowing in a sustainable manner without it adversely impacting on his financial situation. A lender should obtain sufficient information to make an informed decision about the lending. Exactly what the lender should consider is for each lender to decide and the guidance and rules lists a number of things each lender may wish to consider. Any checks should be proportionate, based on the size of the borrowing.

Mr S initially borrowed £230. Payday UK says, when deciding to lend to Mr S, it ran identity and credit checks and, Mr S, on his application form, had provided information about his personal details and net income. Payday UK considered this information and says the loan provided was in line with its regulatory framework. And I agree, I think the checks carried out for this loan were proportionate.

I appreciate that Mr S says that when he took the first loan he already had defaults on his credit card and many missed and late payments. I have reviewed several different credit checks provided by Mr S and the information provided from Payday UK. From what I've seen I can't see that Mr S did have any current late payment markers on his credit searches at this time or any defaults. It looks as though the first default was in October 2011 with some late payments (just before this) but further defaults aren't added until mid-2012 onwards. So having considered this information and the results of the checks, provided from Payday UK, I don't think there was any adverse information that would've prompted Payday UK to make further checks at this point and so it wasn't irresponsible for it to lend this first loan to Mr S.

But Mr S deferred repayment of this first loan six times and eventually repaid the loan in September 2010. On the same day he took a new loan for a higher amount. Payday UK says that there is no required criteria for the checks that it makes when deciding to lend. But just to remind Payday UK, the OFT guidance was in place setting out what a lender may wish to check when assessing affordability and deciding to lend. And at this point it was aware that Mr S hadn't been able to repay the previous loan on time and had deferred it several times. So considering the circumstances of this particular complaint I'm not persuaded that Mr S's circumstances were considered appropriately. I think the lending history with Payday UK should've prompted it to carry out further checks at this point. And I feel that had Payday UK made further enquiries it would have been apparent that Mr S could not afford to repay the loans. At around this time Mr S had a net income of around £1,400 but his monthly outgoings were exceeding this, this included payments to other short term lenders with an increasing amount each month being spent on gambling.

Although Payday UK says it carried out checks when deciding to lend I think that from loan two it was clear Mr S was in a cycle of debt and pattern of dependant lending on short terms loans. I haven't seen anything to show there was a significant change in Mr S's circumstances that would suggest the lending would then be affordable or responsible from this point forward. I think that the lending from Payday UK, and other parties, was used to fund his gambling or other existing commitments, which he couldn't afford because he'd already spent money on gambling. It seems as though he was in pattern of dependant lending at this point and I think all loans beyond this point weren't affordable.

fair compensation

Had Payday UK acted responsibly and declined the second loan and then following loans, Mr S wouldn't have incurred the significant interest and charges applied to the borrowing.

So I'm partially upholding Mr S's complaint on the basis that Payday UK shouldn't have lent loans two to seven (inclusively) to Mr S. And Payday UK will need to:

- refund Mr S the interest and charges on these loans;
- pay 8% simple interest per year* added to each of the refunded amounts from the date they were paid to the date of settlement; and
- remove any adverse information it recorded about these loans on Mr S's credit file.

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

my final decision

So for the reasons I've given, I partially uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 October 2016.

Sophia Smith
ombudsman