

complaint

Mr B complains about instalment loans he took out with Instant Cash Loans Limited (trading as Payday UK) which he says shouldn't have been given to him because the loans weren't affordable.

background

A summary of Mr B's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date	contractual monthly repayment	number of payments
1	£480.00	30/04/2015	30/07/2015	£249.96	3
2	£500.00	31/07/2015	18/08/2015	£207.13	4
3	£700.00	19/08/2015	30/09/2015	£256.45	4
4	£700.00	30/09/2015	16/12/2015	£252.17	5
5	£530.00	17/12/2015	outstanding balance	£247.30	3

Mr B had a number of previous loans – which formed part of the same chain of borrowing, when Payday UK had a difference parent company, and I've kept this in mind when coming to my final decision.

An adjudicator looked at the complaint and considered the checks carried out by Payday UK didn't go far enough, considering Mr B's loan history. The adjudicator felt that had proportionate checks been carried out, Payday UK wouldn't have lent to Mr B because he was borrowing from other short term lenders and was gambling. So he recommended that Payday UK refund all the interest and charges applied to all of the above loans.

Payday UK didn't agree with the adjudicator's recommendation. In response it made a number of points, including;

- the loans were under 50% of his stated net income,
- Mr B provided details of his income and expenditure for each loan – and this showed he could afford the loans and
- Payday UK wasn't required to carry out a credit search before each loan or ask for Mr B's bank statements.

However, Payday UK did agree to refund the interest and charges applied to loan five – and this refund would be put towards Mr B's outstanding balance. Mr B didn't accept the offer so the case has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I think Mr B's complaint should be upheld. And I've explained my reasons below.

Payday UK had to gather enough information to be able to make an informed choice as to whether it was going to lend. But the guidance and rules don't set out what checks must be done before lending is approved. But Payday UK needed to conduct enough checks to make

sure the loans were affordable to Mr B. And these checks needed to be proportionate to a number of things such as the size of the loan and when the loan was due to be repaid.

But even if the checks Payday UK carried out weren't proportionate, that alone doesn't mean Mr B's complaint should be upheld. I say this because, it's possible, had further checks been carried out by Payday UK they would've shown Mr B was able to repay his loans. So Payday UK wouldn't have been wrong to lend him the money.

Payday UK says that based on the information it gathered about Mr B, it was reasonable to lend to him. But I've thought about what Payday UK says and Mr B's circumstances at the time each loan was approved. And having done so, I don't think the checks Payday UK carried out were proportionate for all of the borrowing.

I can see that Payday UK took income and expenditure details from Mr B. But I think by this point, considering Mr B's borrowing history, Payday UK should've been doing more to verify the information Mr B was giving it. So I don't think relying on Mr B's declared income and expenditure was proportionate.

I think Payday UK should've wanted a full understanding of his financial situation. It could've done this a number of ways such as asking to see evidence of his outgoings, or it could've asked to see his bank statements, as I've done here. Mr B's bank statements are the best indication of his ability to afford the loans at the time, so I don't think it's unreasonable to rely on these.

Having reviewed Mr B's bank statements throughout his borrowing history with Payday UK, I don't think he could afford to repay his loans. The income Payday UK had recorded was broadly correct but when Payday UK approved the loans Mr B was regularly spending more than his income each month – with a significant amount of his expenditure going on gambling and Mr B also had to repay his other short term credit commitments. And I think that had Payday UK carried out proportionate checks this would've been brought to its attention and as a responsible lender it wouldn't have lent to Mr B.

what Payday UK should do to put things right

To put things right for Mr B, Payday UK should:

- refund all the interest and charges paid by Mr B on all of his borrowing;
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- I understand Mr B still owes Payday UK some money on his last loan. I think it's fair that it should be allowed to deduct any principal sum outstanding from the final compensation it pays to him and
- remove any adverse information recorded on Mr B's credit file because of these loans.

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

my final decision

For the reasons I've explained above, I'm upholding Mr B's complaint.

Instant Cash Loans Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 21 August 2017.

Robert Walker
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