

## **complaint**

Mr T complains that MEM Consumer Finance Limited (trading as Payday UK) gave him loans he couldn't afford to repay. He asks for compensation and a full refund. Mr T is represented by a claims management company.

## **background**

Mr T took out nine loans with Payday UK between July 2010 and June 2014. Mr T's representative says his expenditure exceeded his income when he took out the loans. He borrowed from a number of short term lenders and was dependant on short term loans. The representative says Payday UK would have known this if it had carried out sufficient checks.

The adjudicator recommended that the complaint should be upheld, saying:

- Payday UK did credit checks and asked Mr T for information about his income. He said his monthly income was £2,100 when he took out the first loan, increasing to £2,460 before the last loan.
- These checks were proportionate for the first loan. But when Mr T asked for the second loan, which was double the amount of the first loan, Payday UK should have asked about his normal monthly outgoings and regular financial commitments. Mr T's normal monthly outgoings were £1,630. This didn't leave enough disposable income for the loan repayment of £625.
- The amounts of the third and later loans were large relative to Mr T's income. Mr T was also taking out loans with other short term lenders. This suggests financial difficulty or reliance on short term loans. The adjudicator said this should have prompted Payday UK to make further checks, such as reviewing Mr T's bank statements to assess whether the loans were affordable. Mr T's bank statements show that for all but one loan he didn't have enough disposable income for the repayment.
- In March 2011, when Mr T took out the fourth loan, he received about £6,850 from his employer. However, this was not a regular payment. And Mr T took out over £1,000 of loans that month with other short term lenders.
- There was a gap of about a year between Mr T taking out the sixth and seventh loans. But, given Mr T's borrowing history and the amount of the loans, Payday UK should have carried out further checks. While Payday UK asked about Mr T's income and outgoings, this wasn't enough.

The adjudicator said Payday UK should refund interest and charges on the loans from August 2010, with interest at 8%, and remove negative information about the loans from Mr T's credit file.

Payday UK didn't agree. It said its credit checks showed no defaults or judgements against Mr T. It said it was entitled to rely on information provided by Mr T and wasn't required to ask for more information or to request bank statements to verify the information Mr T provided. Payday UK said Mr T's borrowing was less than 50% of his monthly income, indicating the loans were affordable. The gaps between the loans suggest Mr T wasn't reliant in them.

Payday UK said its checks for loans 5, 8 and 9 were proportionate. It said further checks could have been made for loans 2, 3, and 4. It offered to refund interest and charges on these loans as a gesture of goodwill. Payday UK had already offered to refund interest and charges on loans 6 and 7. Mr T didn't accept.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

#### *My approach:*

Lenders have to assess whether a loan is affordable using suitable information. Checks must be proportionate depending, for instance, on the size of the loan, the repayments and what the lender knows about the customer.

I think Payday UK should have asked about Mr T's outgoings before the second loan and asked for copies of his bank statements before the third loan. I've explained why below. Mr T's bank statements would have given Payday UK more information about his income and expenditure. During the period that Mr T took out the loans, his expenditure was generally more than his income. He took out large amounts in cash every month and made payments to online gambling businesses. He borrowed from a number of short term lenders on a regular basis. This could suggest a possible problem, such as financial difficulties or reliance on short term loans.

Mr T's pattern of borrowing from Payday UK – such as taking out a loan shortly after repaying the previous loan – could also suggest a possible problem. The loans were often for large amounts relative to his income. And he deferred repayment of some of the loans a number of times. Payday UK agreed a repayment plan for the sixth loan.

This doesn't mean that Payday UK couldn't lend to Mr T. But it should have been aware of a possible problem and taken this into account when deciding what checks to carry out.

#### *Loans 1 to 3:*

Mr T's first loan, taken out in July 2010, was for £250. Payday UK did a credit check. Mr T said his monthly income was £2,100. I think, given the amount of the loan and Mr T's stated income, these checks were proportionate.

Mr T repaid the loan on 30 July 2010. He took out a £500 loan on 4 August 2010. This required a repayment of £625. I think, given the amount of the loan and Mr T's income, Payday UK should have asked for more information about Mr T's outgoings, including his normal living expenses and regular financial commitments.

Mr T repaid the second loan on 31 August 2010. He took out a £700 loan the next day. This was the second time Mr T had taken out a larger loan shortly after repaying the previous loan. I think, given this pattern of borrowing and the amount of the loan, Payday UK should have asked for information to gain a full understanding of Mr T's financial situation. There

are a number of ways it could have done this. One is to look at Mr T's bank statements, as I've done.

Mr T's bank statements for mid 2010 show his monthly income was about £2,100. Mr T says his normal living expenses (such as housing, utilities, council tax, media, travel and food) were about £1,600. This didn't leave enough income to repay the second or third loan.

I usually check a borrower's estimate of expenses against their bank statements. Mr T's bank statements show regular monthly debt repayments of £717. He made payments to other short term lenders of about £400 in July 2010, £410 in August 2010 and £375 in September 2010.

Mr T made cash withdrawals totalling £1,600 in July, £820 in August and £1,780 in September 2010. This spending pattern was consistent throughout the period he took out loans with Payday UK, and reasonably consistent with what Mr T says about his living costs. Mr T's representative says he had a gambling problem. I can't know whether Mr T used the cash he withdrew for living expenses or gambling (or a combination). But I can see that he didn't have enough income left to repay the loans from Payday UK. I think if Payday UK had made sufficient checks it would have known these loans weren't affordable.

#### *Loans 4 to 6:*

Mr T deferred repayment of the third loan a number of times, finally repaying it on 31 March 2011. These deferrals could suggest financial difficulties. Mr T took out the fourth loan, for £740, on 8 April 2011. This required a repayment of £925. I think, given the time taken to repay the third loan and the amount of the fourth loan, Payday UK should have carried out further checks. I think it should have asked about Mr T's normal living expenses, regular financial commitments and short term loans and asked for copies of his bank statements.

In March 2011 Mr T received £6,844 instead of his usual income of £2,150. But this didn't mean the loan taken out on 8 April 2011 was affordable. By 4 April 2011 Mr T's account was overdrawn by over £800. He took out a £1,000 loan with another short term lender before borrowing from Payday UK. He had regular monthly financial commitments of about £540. Mr T withdrew cash totalling over £2,800 in March and over £2,500 in April 2011. I don't think Mr T had enough income left to repay the loan.

Mr T deferred payment of the fourth loan, repaying it in August 2011. There was a gap of about three months before he took out the fifth loan, which was for a smaller amount (£300). Mr T said his monthly income had increased to £2,305. But given Mr T's pattern of borrowing and the time he'd taken to repay the last two loans, I think Payday UK should have carried out checks similar to those it should have made in April 2011.

Mr T paid nearly £2,000 to short term lenders in November 2011. He borrowed £1,140 from short term lenders in November 2011 before taking out the loan with Payday UK. Mr T made a number of cash withdrawals and there are payments to online gambling businesses. I don't think this loan was affordable.

Mr T deferred repayment of the fifth loan until May 2012. In early June 2012 Mr T took out a £800 loan, requiring a repayment of £1,000. Given the amount of the loan and Mr T's borrowing history, Payday UK should have carried out checks similar to those it should have made in April 2011. Had it done so, it would have seen that Mr T's circumstances hadn't improved. In the week before he took out the fifth loan, Mr T borrowed nearly £1,200 from

other short term lenders. I don't think this loan was affordable and Payday UK would have known this if it had carried out proportionate checks.

Payday UK agreed a repayment plan for this loan when Mr T said he had financial difficulties. The loan was repaid in December 2012.

#### *Loans 7 to 9:*

Mr T didn't borrow from Payday UK again until December 2013, when he took out a loan for £800. But I think given Mr T's borrowing history, the amount of the loan and Mr T's income, Payday UK should have asked for information about his outgoings, including his normal living expenses, regular financial commitments and short term commitments.

Mr T's monthly income was £2,460. He borrowed £735 from another short term lender shortly before taking out the loan with Payday UK. He made payments to short term lenders of over £1,200 in December 2013. Mr T made payments of about £500 to an online gambling business and withdrew over £2,000 in cash during December 2013. This was consistent with spending in previous months. I don't think the loan was affordable.

The £1,000 repayment was due at the end of December 2013, but Mr T deferred repayment a number of times before repaying the loan in April 2014. He took out the next loan, for £700, about a week later. Mr T said his income had increased to £2,450 and his monthly expenditure on housing, credit commitments, utilities and food was £1,300. This would leave disposable income of about £1,150. Mr T took out the last loan, for £800 in June 2014. At this time, Mr T said his income had increased to £2,600.

Generally, lenders are entitled to rely on information provided by a customer. But given Mr T's borrowing history and the amounts of the loans, I don't think it was proportionate to rely on the information he provided. I think Payday UK should have asked to review Mr T's banks statements.

At the end of March 2014 Mr T received £6,494 from his employment instead of his usual income of £2,460. But this didn't mean the loan taken out in April 2014 was affordable. Mr T made payments of more than £5,200 to short term lenders and his account was overdrawn by early April 2014. He borrowed nearly £3,000 from other short term lenders before taking out the loan with Payday UK. I don't think the loan affordable.

In mid 2014 Mr T's income was £2,500. Between receiving his income at the end of May and taking out the loan with Payday UK in mid June 2014, Mr T took out loans of £1,385 with other short term lenders. He made payments to short term lenders of more than £2,400 in the same period. I don't think the loan was affordable.

#### *What should happen now?*

I don't think Payday UK should have agreed to lend to Mr T from, and including, the loan that he took out in August 2010. So for each of these loans Payday UK should:

- Refund all interest and charges that Mr T paid on the loans from 4 August 2010;
- 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 the loans from Mr T's credit file.

**my final decision**

My decision is that I uphold this complaint. I order MEM Consumer Finance Limited to pay the compensation described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 July 2017.

Ruth Stevenson  
**ombudsman**