

complaint

Mr B complains that loans he had from MEM Consumer Finance Limited (trading as Payday UK) were unaffordable.

background

Mr B had eight loans from Payday UK between October 2011 and March 2014 as follows:

<u>Loan</u>	<u>Date</u>	<u>Amount</u>	<u>Due</u>	<u>Repayment</u>	<u>Repaid</u>
1	28 Oct 2011	£100	30 Nov 2011	£125	On time
2	15 Jan 2012	£250	31 Jan 2012	£312.50	Deferred - 29 Feb 2012
3	2 May 2013	£250	31 May 2013	£312.50	On time
4	16 Jul 2013	£350	31 Jul 2013	£437.50	Deferred – 30 Aug 2013
5	13 Sep 2013	£700	30 Sep 2013	£875	Cancelled – 16 Sep 2013
6	25 Nov 2013	£400	31 Dec 2013	£500	Deferred – 31 Jan 2014
7	20 Feb 2014	£100	27 Feb 2014	£129.95	On time
8	15 Mar 2014	£300	27 Mar 2014	£389.85	26 Oct 2017

Mr B says the loans weren't affordable based on his income and expenditure. He says his financial history should have indicated to Payday UK that he was not creditworthy.

Payday UK says it asked Mr B for information about his income and expenditure and checked his credit file. It says the loans were affordable, it found Mr B to be creditworthy and it did not believe he was reliant on the borrowing.

Our adjudicator did not recommend the complaint should be upheld. He was satisfied that Payday UK did enough checks before approving the first loan, but didn't think the checks went far enough for the remaining loans. Our adjudicator considered Payday UK should have asked Mr B about his expenditure before it approved loans 2, 3 and 4. As Mr B hadn't provided any evidence of his financial circumstance at the time of loan 2, our adjudicator was unable to say what such a check would have shown. But he said it was reasonable to assume Mr B would have declared expenditure that was similar to what he declared for loan 5 had he been asked about his expenditure for loans 3 and 4. He found that loans 3 and 4 would have been affordable on that basis. Our adjudicator did not consider loan 5 as it was cancelled with no interest charged.

Because of Mr B's borrowing pattern, our adjudicator said Payday UK should have carried out a detailed assessment of his financial circumstances before it approved loans 6, 7 and 8. But, as Mr B hadn't provided any evidence of his circumstances at the time, our adjudicator was unable to say what such a review would have shown and, therefore, could not recommend the complaints about these loans should be upheld.

Mr B responded to say, in summary, that the complaint should be upheld because Payday UK didn't carry out enough checks.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to Payday UK on 10 April 2019. I summarise my findings:

- For loans 1 and 2, I found the repayments were a small proportion of Mr B's declared income and there was nothing in the information available to Payday UK that should have prompted it to decline the applications.
- Loans 3 and 4 were taken out after a gap in borrowing of over a year so I was satisfied it was reasonable for Payday UK to consider the loans as a new chain. As the repayments were not a significant proportion of Mr B's income, I didn't find Payday UK was wrong to approve them.
- As loan 5 was cancelled, with no interest paid, I didn't consider it further.
- It was almost three months after Mr B repaid loan 4 that he applied for loan 6 and with the exception of one deferral on loan 4, he had a good repayment history. As his scheduled repayment wasn't a very large proportion of his income. I didn't see there was anything in the information available to Payday UK that should have suggested the borrowing was unsustainable at this point.
- When Mr B applied for loan 7, the requested amount was a lot lower than previous loans. I considered it reasonable for Payday UK to assume Mr B was bringing his short-term lending requirements under control and approve the loan on that basis.
- But by the time Mr B applied for loan 8 his borrowing had increased again so he wasn't making any real inroads to the amount he owed Payday UK. Loan 8 was taken out ten months after Mr B's first in the loan chain. And it was for a larger amount. Mr B had paid large amounts of interest to, in effect, service a debt to Payday UK over an extended period.
- I was satisfied, therefore, that loan 8 was the point at which Payday UK should reasonably have seen that further lending was unsustainable.

My provisional decision was that Payday UK should refund interest and charges on loan 8 (plus 8% statutory interest) and removed all entries about loan 8 from Mr B's credit file.

Payday UK accepted my provisional decision.

Mr B responded to say that he needed to continually borrow from Payday UK in order to maintain payments on other accounts. He says he was precluded from obtaining credit elsewhere due to his reliance on short-term lending and the effect it had on his credit rating.

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 accept what Mr B says in response to my provisional decision, but I need to consider when it was reasonable for Payday UK to realise the borrowing was unsustainable. As there were gaps between each of Mr B's loans and loans 5 to 7 were reducing, I don't think this would necessarily have indicated Mr B was reliant on the lending. Indeed, his pattern of borrowing suggested Mr B may have been bringing his short-term lending requirements under control.

However, when Mr B's application for loan 8 was three times as much as loan 7, I consider this should have indicated to Payday UK that Mr B's financial position was not improving and, based on his borrowing history, it should have seen he was not using the loans as short-term remedies. Instead, by continuing to offer Mr B loans, Payday UK caused him to have to pay short-term interest rates on loans that had spanned over ten months by loan 8.

But I can't conclude that Payday UK was wrong to approve any of the earlier loans for the reasons stated above. So I see no reason to depart from my provisional decision.

my final decision

My decision is that the complaint should be upheld in part. MEM Consumer Finance Limited (trading as Payday UK) should:

- Refund all interest and charges that Mr B paid on loan 8;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Remove all entries about loan 8 from Mr B's credit file.

*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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 June 2019.

Amanda Williams
ombudsman