

complaint

Mr R complains that MEM Consumer Finance Limited (trading as Payday UK) gave him unaffordable payday loans.

background

Mr R had 12 loans from Payday UK between September 2011 and July 2013. He said he was borrowing increasing amounts from other short-term lenders and he couldn't afford his repayments. Payday UK said it had made appropriate checks that Mr R could afford the loans. But it offered to refund some interest on his last, defaulted, loan.

Our adjudicator recommended that the complaint should be upheld. He didn't think Payday UK had made sufficient checks that Mr R could afford to repay his loans. If it had, he thought it would have seen that he was borrowing to repay existing debts, these were increasing, and his finances were worsening. So he didn't think it should have given Mr R any loans. He thought it should refund the interest and charges Mr R paid, with interest, and remove adverse information from his credit file.

Payday UK replied that it thought the loans were affordable compared to Mr R's income. It said its credit checks didn't show anything adverse. It said it had checked Mr R's income and expenditure for the last two loans and these were affordable. It said there were gaps in the lending and no signs of dependency on payday loans.

However, it offered to refund interest, with interest, on loans seven to eleven and to remove these from Mr R's credit file. It would offset the refund against the balance still outstanding for his last loan. But Mr R declined this offer.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr R first borrowed £500 (including interest) from Payday UK. Three months later he borrowed a further £500. A month later, he borrowed £625 which he deferred once before repayment. There was then a six month gap before Mr R's fourth loan of £250. He then borrowed and repaid £500 three times back to back. Then he shortly afterwards borrowed £125. His last loans were taken back to back for £312.50, £750 (deferred once), £500 and £500. Mr R defaulted on the last loan and still owes a balance.

Payday UK was required to lend responsibly. It should have made checks to ensure Mr R could afford to repay the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr R was borrowing, and his lending history. But there was no set list of checks Payday UK had to do.

I can't see that Payday UK asked Mr R for his income for his first loan. For his second loan, he said his income was £1,700 a month after tax. Payday UK asked for his expenditure for the twelfth loan and recorded that he spent £499 on housing. It said it made a credit check for his first loan, but I can't see from its file what this found.

I can't see that Payday UK made sufficient checks on affordability for Mr R's first loan. This was a large loan. But it didn't even ask him for his income let alone his outgoings or regular commitments. So I can't see how it knew he could afford to repay this loan.

I've looked at Mr R's bank statements from the time to get this information, but Payday UK could easily have asked Mr R for it. I can see that Mr R's living expenses were £950 each month and his regular commitments were £550 a month.

Payday UK said it made a credit check and Mr R has provided his credit file so I can see what this would have found. This showed that he had many other payday loans when he first applied to Payday UK. His repayments in the first month of his borrowing were about £2,500.

So Mr R's outgoings clearly exceeded his income. I think that if Payday UK had made proportionate and sufficient checks on affordability it would have seen that this first loan was unaffordable for Mr R.

Mr R struggled to repay his second loan. But there was a six month break before his third loan and the loan was smaller. So I think it was reasonable for Payday UK to consider the loan afresh due to the time that had passed. But I still think it should have asked Mr R about his living expenses and regular financial commitments.

When Mr R asked for his fourth loan, I think it should also have asked about his other short-term lending. For Mr R's fifth loan, I think it should have made a full review of Mr R's circumstances, perhaps by asking for evidence of his income and expenses or by looking at his bank statements.

If made, these checks would have shown Payday UK that Mr R finances were worsening. He was increasing his borrowing to service existing debts and his gambling habit. It would have seen, as I have, that he couldn't afford to repay his loans. Mr R was borrowing regularly and often continuously from Payday UK. I think it should have been alerted by this to check that he wasn't dependent on payday loans.

So I think all of Payday UK's lending to Mr R was irresponsible because it didn't make proportionate or sufficient checks on affordability. If it had it would have seen, as I have, that Mr R couldn't afford to repay these loans. Payday UK has offered to refund interest on five loans. But I don't think this goes far enough.

my final decision

My final decision is that I uphold this complaint. I require MEM Consumer Finance Limited (trading as Payday UK) to do the following:

1. Refund Mr R the interest and charges he paid on all his loans, adding interest at 8% simple per annum from the date of payment to the date of settlement. This should be offset against any principal still owed on the last loan and the balance paid to Mr R.
2. HM Revenue & Customs requires Payday UK to withhold income tax from that interest. It must give Mr R a certificate showing how much it's taken off if he asks for one.
3. Remove any adverse information relating to these loans from Mr R's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 May 2017.

Phillip Berechree
ombudsman