

complaint

Mrs S complains that MYJAR Limited gave her a loan that she couldn't afford.

background

Mrs S was given an instalment loan for £2,450 by MYJAR on 19 November 2017. It was repayable by 12 monthly instalments. The first instalment was £371.02 followed by ten instalments of £369.93 and a final instalment of £369.84. Mrs S said that sheer desperation had pushed her to seek the loan from MYJAR. The loan compounded her debt spiral. She said that if MYJAR had carried out a credit check, it would have seen her numerous payday loans and debts, that every credit card was maxed out and that she was £5,000 overdrawn. She had a significant online gambling issue which she used her payday loans for. Mrs S repaid the loan early in January 2018, but only because she sold her house to repay her debts.

MYJAR said that before granting the loan, it had asked Mrs S for information about her monthly net income, housing costs, monthly credit commitments (including payments on credit cards, personal loans and car loans) and other monthly expenses (including food, travel, utilities and other regular outgoings). It also conducted other checks, including a credit check with a credit reference agency and credit scoring. It also said that it checks that customers do not have excessive levels of unsecured debt at the time of their loan applications. MYJAR said that it relied on the information Mrs S had provided about her budget and personal circumstances and based on the information it held, the loan would have been affordable.

our adjudicator's view

The adjudicator concluded that MYJAR's checks didn't go far enough. She noted that Mrs S had declared to MYJAR that she had a monthly income of £3,000 and regular expenditure of £750. But because of the large loan amount and the duration of the repayments, she said that it would have been proportionate to gather more information from Mrs S about her short term lending. If MYJAR had done this, it would have seen that Mrs S had £2,455 in existing short term lending commitments to five other lenders that month. So the adjudicator said that Mrs S was unable to sustainably meet the repayments and recommended that MYJAR should:

- Refund all interest and charges that Mrs S paid on her loan;
- 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 loan from Mrs S's credit file.

*HM Revenue & Customs requires MYJAR to take off tax from this interest. MYJAR must give Mrs S a certificate showing how much tax MYJAR has taken off if she asks for one. If MYJAR intend to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

MYJAR disagreed. It said that it used statistical data which showed that Mrs S would have needed £436 each month in order to provide herself with a minimum standard of living after paying her bills. It calculated Mrs S's net disposable income which it reduced by 40% to achieve an overall affordability score. It then calculated Mrs S's monthly affordable amount to be £577.60. So Mrs S's highest loan instalment of £371.02 was within this amount.

MYJAR also said that it checked that its customers didn't have excessive levels of unsecured debt. It noted that the adjudicator had said that Mrs S's existing payday loans totalled £2,455 and that its loan amount was around the same amount. So MYJAR said that it was more manageable for Mrs S to have its instalment loan to consolidate her debts over a longer term and with lower interest. There was no reason for it to refuse the loan as Mrs S could easily afford it.

The adjudicator responded to say that MYJAR's evidence showed that it didn't ask Mrs S about her outstanding payday loans and so it wouldn't have known what Mrs S would be using the money for. She noted that within two weeks of MYJAR's loan, Mrs S had asked for four more loans from other lenders totalling over £2,100. She said that MYJAR would have been aware of Mrs S's reliance on short term lending if it had asked her about this and not lent to her.

Mrs S responded to say that she hadn't borrowed from MYJAR to consolidate her other loans.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs S and to MYJAR on 7 December 2018. I summarise my findings:

I explained that MYJAR was required to lend responsibly. It needed to make checks to make sure Mrs S could afford to repay the loan before it lent to her. Those checks needed to be proportionate to things such as the amount Mrs S was borrowing, the length of the loan agreement and her lending history. But there was no set list of checks MYJAR had to do.

I noted that the Financial Conduct Authority ("FCA") was the regulator at the time Mrs S took her loan from MYJAR. Its regulations for lenders are set out in its consumer credit sourcebook. These regulations require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*" The FCA defines 'sustainable' as being able to make repayments without undue difficulty. It says this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

I noted that the loan needed to be repaid in 12 monthly instalments. So the amounts that Mrs S needed to repay each month were smaller than if she'd taken a normal payday loan. But she was committing to making those repayments over a far longer period.

MYJAR had told us about the checks it did before lending to Mrs S. I noted that MYJAR had taken details of Mrs S's income (£3,000) as well as details about her housing costs, (£400), other monthly expenses (£200) and monthly credit repayments (£150).

I also noted that MYJAR had carried out a credit check. It had summarised this and it appeared that Mrs S had taken eight new accounts in the previous three months, her balances had increased on 11 accounts in the previous three months, her unsecured debt was almost £20,000 and her monthly debt repayments appeared to be £720.

I also noted MYJAR's affordability report which showed that Mrs S had four loans totalling

£850.

So, in view of the information provided by the credit check, I didn't think MYJAR could be confident that the information Mrs S had provided reflected her true financial position, especially relating to her other debt and her monthly credit repayments. I also thought that further checks were reasonable as the loan was to be repaid over 12 months. So, I thought it would have been proportionate for MYJAR to have asked Mrs S some more questions about what the credit checks showed.

I couldn't see if MYJAR did ask Mrs S any more about her outstanding credit. So I'd tried to find out more about this by looking at Mrs S's bank statements for the month prior to MYJAR's loan, to see what better checks would have shown it. I could see that Mrs S received payday loans totalling £498 which would have required repayment around the same time as MYJAR's loan. I could also see Mrs S was paying regular financial commitments of around £826. I noted that Mrs S had told MYJAR that she made monthly credit repayments of £150. But, taking into account Mrs S's disposable income of £2,250, I didn't think the loan and credit card repayments shown in the statements were sufficient for me to conclude that MYJAR's loan wasn't affordable. So, if MYJAR had carried out what I considered to be proportionate checks before the loan, I thought it was likely that MYJAR would have still concluded that this loan was affordable. So I didn't think it was wrong to give Mrs S this loan.

I appreciated that Mrs S's financial situation was actually much worse than she'd told MYJAR. She'd said she had gambling issues. But Mrs S hadn't told MYJAR about these and I didn't think this was information that, what I considered to be proportionate checks on this loan, would have uncovered. So I didn't think it was reasonable for Mrs S to have expected MYJAR to have factored her gambling into its assessment of the affordability of the loan.

Subject to any further representations by Mrs S or MYJAR my provisional decision was that I didn't intend to uphold this complaint.

MYJAR hasn't provided any further information in response to my provisional decision.

Mrs S responded to say that she disagreed. She said, in summary, that MYJAR hadn't carried out proportionate or appropriate checks before lending to her. The loan amount was significant and she had to repay the loan over a whole year. Mrs S said that MYJAR should have asked her for her bank statements to demonstrate her financial situation. If it had done this, it would have uncovered her gambling issues.

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 have carefully thought about Mrs S's response to my provisional decision, and I'm sorry to read about her personal and health issues.

I note that Mrs S said that MYJAR hadn't carried out proportionate checks and that it should have asked for her bank statements. In my provisional decision I'd considered that Mrs S's loan was a first loan with MYJAR and noted the amount of her 12 loan repayments and the amount of her income. I'd also considered the results of MYJAR's credit check. And I'd concluded that MYJAR's checks weren't sufficient and it should have asked Mrs S more

about what the credit checks showed. I thought that it should have asked Mrs S more about her credit commitments. But I didn't think that at that stage of MYJAR's relationship with Mrs S that it needed to independently check the true state of Mrs S's finances by asking to see her bank statements.

I'd tried to find out more about Mrs S's credit commitments by looking at her bank statements for the month prior to MYJAR's loan. But MYJAR wouldn't have been obliged to check Mrs S's bank statements to find out more about her credit commitments. It could have, for example, asked Mrs S specifically about these. I'd noted the credit commitments shown on Mrs S's bank statements in the month before the loan. And as set out in my provisional decision, I didn't think it would be reasonable for me to conclude from what I'd seen that Mrs S didn't have enough left over from her normal income to repay her loan from MYJAR. The loan repayments appeared affordable based on Mrs S's declared disposable income and the credit commitments shown on her bank statements. So I still don't think that carrying out what I consider to be proportionate checks would've uncovered anything that would've stopped MYJAR from giving the loan to Mrs S.

I appreciate that Mrs S says that her financial situation was very poor. She was borrowing from a number of short term lenders and she was using some of that money to support her gambling. But the gambling wasn't something Mrs S had told MYJAR about when she applied for the loan. And I don't think it was something that what I consider to be proportionate checks would have discovered either.

So, I find no basis to depart from my earlier conclusions, and overall I don't think that MYJAR was wrong to provide the loan to Mrs S.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 1 March 2019.

Roslyn Rawson
ombudsman