

complaint

Mr D has complained about a number of loans he took out through a company called MYJAR Limited. Mr D says he was lent to irresponsibly and the loans caused him financial problems.

background

We now know that Mr D took out 2 instalment loans from MYJAR between May 2017 and October 2017. I've enclosed a summary of Mr D's borrowing with MYJAR, based on the information it provided to us. It can be found in the appendix at the end of this decision.

One of our adjudicators looked into the complaint and said they thought loan number 2 should be upheld. MYJAR said it didn't agree with this and that it hadn't done anything wrong so the complaint has come to me for an ombudsman's 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. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website. I've followed this approach when thinking about Mr D's complaint.

MYJAR needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure that Mr D could repay the loans he was given, in a sustainable manner. These checks ought to have taken account of a range of different factors, such as the amount being lent, the total repayment amount and the consumer's income and expenditure.

With this in mind, in the early stages of a lending relationship, I think less thorough checks might normally be reasonable and proportionate. However, it's also very important to say that certain factors might point to the fact that MYJAR should have fairly and reasonably done *more* to establish that any lending was sustainable for the consumer.

These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable. So MYJAR was required to establish whether Mr D could sustainably repay his loans, not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis *might* be an indication that Mr D could sustainably make the repayments. But it doesn't automatically follow that this is the case. This is because the relevant regulations define sustainable as being without '*undue difficulties*' and in particular, the customer should be able to make repayments on time, while meeting other reasonable commitments as well as without having to borrow to meet the repayments. So, it follows that a lender should realise, or it ought to have fairly and reasonably realised, that a borrower won't be able to make their repayments sustainably if they are unlikely to be able to make them without borrowing further.

MYJAR told us it carried out certain checks before agreeing to lend to Mr D, including assessing his income and expenditure. It says it also carried out a credit check to assess his creditworthiness. It says that all this information showed that he would be able to make the loan repayments he was committing to. Given what I've said about the length of the lending relationship, I think this was fine for Mr D's first loan which was for an affordable amount and spread out over 6 months. I therefore don't uphold this part of the complaint.

However, our experience of short-term lending tells us that consumers who have difficulty managing their money are less likely to be able to sustainably repay a loan. For Mr D's situation, I've considered what MYJAR told us it would have seen from its own checks when it granted him loan 2.

I accept that at this point in time, it was still in the early stages of a lending relationship with him. Nevertheless, there were important differences in the 2 loans that Mr D was given. The first was payable over 6 months whilst the second was over 12. Given that these were high-interest loans designed mainly for the short-term, I think this makes a difference. I think for loan 2, for example, the 12 month instalment period meant he was becoming indebted for a much longer period to MYJAR. It therefore ought to have carried more comprehensive financial checks to establish that this loan was sustainable for him over that length of time.

I think proportionate checks for loan number 2 would have justified things like carefully verifying his declared income and expenditure, looking at his credit history in more detail and looking at his bank statements, all to check the lending was sustainable and that Mr D really was able to manage the repayments over the 12 instalments. It doesn't look to me like MYJAR did this level of checking and if it had, it would have seen he was indebted in other ways and frequently gambling – signs that he was having difficulties managing his financial affairs.

With this information, I think it would have become obvious that it was irresponsible to lend Mr D any more money. I've looked at what MYJAR says about this only being Mr D's second loan and that he'd previously paid off the first one. But I think MYJAR should have considered the type of loan and length of time Mr D was required to pay it back over. If the right sorts of checks had been carried out by MYJAR it would have seen the clear risks that existed in lending Mr D more money. This why I'm upholding the loan 2 part of this complaint.

putting things right

In order to put things right for Mr D, MYJAR should:

- A. refund all interest and charges Mr D paid on loan 2;

- B. pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†;
- C. Pay Mr D the total of A plus B.
- D. Remove any adverse information MYJAR has recorded on Mr D's credit file in relation to this loan. (If it sold any debt on, it should ensure this is done).

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

my final decision

I partially uphold Mr D's complaint and I direct MYJAR Limited to put things right for him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 March 2020.

Michael Campbell
ombudsman

Appendix

Loan	Taken Out	Repaid	Instalments	Amount	Monthly Cost
1	5 May 2017	31 October 2017	6	£450.00	£141
2	31 October 2017	6 January 2019	12	£1,100.00	£165