

complaint

Miss C complains that MEM Consumer Finance Limited (trading as Payday UK) gave her loans she couldn't afford to pay back.

background

Miss C took out five payday loans with Payday UK.

date taken	amount	deferrals/top ups	date repaid
16 December 2009	£100	1 deferral	29 January 2010
15 February 2010	£100	1 deferral	31 March 2010
6 April 2010	£200	1 deferral	28 May 2010
28 May 2010	£310	1 deferral	30 July 2010
16 August 2010	£120		n/a

Our adjudicator thought Miss C's complaint should be upheld in part. He didn't think Payday UK did enough to check the last three loans were affordable for Miss C. And he said that if Payday UK had done more, it would've seen the loans weren't affordable and wouldn't have lent to her.

Payday UK didn't agree with the adjudicator. It says its credit checks showed Miss C had a good credit rating and low level of indebtedness which wouldn't have prompted it to do any more than ask Miss C about her income. And it says there is nothing in the relevant industry guidance from the time which said it had to ask Miss C about her expenditure.

Miss C's complaint was then passed to an ombudsman.

my findings

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

Before agreeing to lend to Miss C, Payday UK had to check each time that she could afford to make the repayments. The checks it did had to be proportionate. What's proportionate depends on things like – but not limited to – the size of the loan repayments and the information Payday UK had about Miss C. But there's no set list.

Payday UK said it doesn't think we can look at Miss C's complaint about the first loan as she didn't make it within the time limits set out by our rules. And Miss C has agreed that we won't look at it. But I have thought about the loan in the context of its place in the loan chain and how information about it would have affected later lending decisions.

Payday UK says that it did a credit check before lending to Miss C in December 2009 which didn't show anything alarming and it used this information to make decisions on some of the later loans. It's also given us evidence showing that it asked Miss C about her monthly income before agreeing most of the other loans. It's recorded this as £867 each time.

I think these checks were proportionate for the second loan, given the relatively small sums involved compared to Miss C's income. And it was early in her relationship with Payday UK so there wasn't much to suggest for example that she was relying on short term lending to get by.

But by the time of the third loan I think Payday UK should've been more concerned about affordability. Miss C was asking to borrow twice as much as she had before and the repayment took up quite a big chunk of her monthly income. She'd also taken a loan or rolled one over in four consecutive months. So there were signs she might be relying on short term lending to supplement her income rather than using it (as it's intended) as a short term solution.

I think that Payday UK should've got at least some basic information about Miss C's expenses, including any payday loans she might have outstanding at the time. I recognise there is nothing within the relevant guidance which says it specifically had to do this. But as I've already explained, checks needed to proportionate. And with the information available to Payday UK (such as Miss C's borrowing frequency) I don't think it was disproportionate to get an idea of what Miss C was spending regularly or what she had to pay in the short term.

If it had done this, I think Payday UK would've seen that Miss C had to repay a substantial part of her income to more than one short term lender. And that didn't leave her with enough to repay the third loan and meet her normal living expenses.

So, with proper affordability checks I don't think Payday UK would've agreed to the third loan.

The fourth loan was for more again and Miss C continued her pattern of borrowing or deferring for a sixth consecutive month. This time the repayment was around £390 which was almost half of Miss C's declared monthly income. So by now I think Payday UK should've been getting the fullest possible understanding of Miss C's finances by verifying her income and expenditure with evidence – such as copies of bills or things like bank statements. And if it had done this it would again have seen the loan repayment was unaffordable. Miss C owed around £350 to other short term lenders and again she didn't have enough left over to meet all of normal living expenses and repay this loan.

Miss C asked for less the final time she borrowed from Payday UK. But I don't think it should've been any less concerned about her ability to repay it as there still hadn't been a break in her lending since December the previous year. So there was still a strong possibility she was relying on the loans to get by. And from what I've seen of Miss C's bank statements she was now gambling quite frequently in addition to borrowing from other payday lenders. So I don't see any reason why Payday UK would've agreed to this loan with a more complete picture of Miss C's finances.

Overall I don't think Payday UK did enough to check whether the third, fourth or fifth loans were affordable for Miss C. And if it had done this I don't think it would've lent to her, so she's lost out as a result. Payday UK should refund all interest and charges on the loans and remove any adverse information about them from Miss C's credit file. Miss C had the benefit of any capital she borrowed so I think it's fair for Payday UK to offset any capital still due (but not interest) or any capital that it has written off from the total compensation.

my final decision

My final decision is that I uphold Miss C's complaint in part. To put things right MEM Consumer Finance Limited must:

- refund all interest and charges paid by Miss C on the loans taken from (and including) 6 April 2010.
- pay interest on these refunds at 8% simple* per year from the dates of payment to the date of settlement;
- deduct any outstanding capital balance or any capital that has been written off from the total compensation and pay the remainder to Miss C.
- remove any adverse information about these loans from Miss C's credit file.

*HM Revenue & Customs requires MEM Consumer Finance Limited to take off tax from this interest. MEM Consumer Finance Limited must give Miss C a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 13 July 2017.

Michael Ball
ombudsman