

complaint

Mr W complains that MEM Consumer Finance Limited (trading as Payday UK) gave him loans that he couldn't afford to repay.

background

Mr W was given eight loans by Payday UK between April 2013 and April 2014. He needed to defer his repayment on four of the loans by paying some additional interest. But Mr W has now repaid all his borrowing from Payday UK.

When Mr W first complained to Payday UK it didn't accept that it had done anything wrong so Mr W brought his complaint to this service.

Mr W's complaint about the loans has been assessed by one of our adjudicators. He didn't think the checks Payday UK had done before agreeing any of the loans had been sufficient. And he thought better checks would have shown Payday UK that Mr W was unable to afford all of the loans with the exception of the first one. So he asked Payday UK to pay Mr W some additional compensation.

Payday UK hasn't responded to that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr W accepts my decision it is legally binding on both parties.

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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Payday UK was required to lend responsibly. It needed to make checks to see whether Mr W could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr W was borrowing, and his lending history, but there was no set list of checks Payday UK had to do.

Even though Mr W ultimately managed to repay his loans in full it doesn't automatically mean the loans were affordable for him or that he managed to repay them in a sustainable manner. In other words I can't assume that because Mr W managed to repay his loans it means that he was able to do so out of his normal income without having to borrow further.

Payday UK has told us about the checks it did before lending to Mr W. It asked him for details of his normal income and his expenditure before agreeing each loan. And it checked his credit file in May 2013. I've seen the results of that credit check and they don't show anything that I think should have caused additional concern to the lender.

When Mr W asked for his first loan the amount he needed to repay was relatively large compared to the income he'd declared to Payday UK. So I think Payday UK should have wanted to know far more about his circumstances than just his income and outgoings. Although I don't think Payday UK needed to independently verify Mr W's financial situation I think it should have been asking him for further information about his expenditure, including details of any other short term loans he was already committed to repaying.

And I think the same applies for the rest of the loans Mr W took from Payday UK. Mr W wasn't able to repay his first loan as planned and needed to defer his repayment. And his second loan was for a similar amount taken out the same day as loan 1 was repaid. I think that by the point of loan 3 which was his largest loan to date Payday UK needed to be verifying what Mr W was saying about his finances. One way it could have done that was by looking at his bank statements for proof of his income and outgoings.

But although I don't think the checks Payday UK did before agreeing any of the loans were sufficient, that in itself doesn't mean that Mr W's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Payday UK that Mr W couldn't sustainably afford the loans. So I've looked at what Mr W has told us about his financial situation, to see what better checks would have shown Payday UK.

I have looked at Mr W's bank statements during the period that he was borrowing from Payday UK to verify his short term lending and other expenditure.

Looking at Mr W's normal expenditure it was broadly what he had declared to Payday UK. However, throughout the whole time he was borrowing from Payday UK, Mr W was borrowing heavily from other short term lenders. At the point of loan 2 the total amount he needed to repay to other lender was nearly all the income he declared to Payday UK. So Mr W was simply unable to sustainably afford any additional borrowing.

Looking at Mr W's bank statements, alongside the extensive payday lending, there are a significant amount of gambling transactions. These would have been apparent to Payday UK when looking more closely at Mr W's finances. As a responsible lender I don't think it would have made loans 3 – 8 if it had seen the extent of Mr W's difficulties.

If Payday UK had done what I consider to be proportionate checks it would have seen that Mr W wasn't able to afford the repayments on loans 2 to 8 in a sustainable manner. So, as a responsible lender, it wouldn't have agreed to lend to him. Payday UK needs to pay Mr W some compensation.

putting things right

I don't think Payday UK should have agreed to lend to Mr W loans 2-8. So for each of the loans Payday UK should;

- Refund any interest and charges applied to the loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr W's credit file in relation to the refunded loans.

*HM Revenue & Customs requires Payday UK to take off tax from this interest. Payday UK must give Mr W a certificate showing how much tax it's taken off if he asks for one.

my final decision

My final decision is that I uphold Mr W's complaint and direct MEM Consumer Finance Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 October 2018.

Emma Boothroyd
ombudsman