

## complaint

Mr S complains about two payday loans he took out with MEM Consumer Finance Limited, trading as Payday UK, ("MEM"). He said that MEM shouldn't have given him the loans as they were unaffordable.

## background

Mr S took out two payday loans with MEM as follows:-

Loan number	Date of Loan	Loan amount including interest	Repayment date
1.	17 March 2012	£258	16 April 2012
2.	16 May 2012	£193.50	16 July 2012

Loan 2 was deferred and paid a month late.

Mr S said that MEM didn't do appropriate checks before he took out the loans. If it had, it would have seen that he was under a tremendous amount of financial pressure and had other debts that would have made Loans 1 and 2 unaffordable. He also had other loan accounts with companies in the same group as MEM. If appropriate checks had been done, MEM would have seen that he had multiple loans. He also had several defaults on his credit file at the time. And if MEM had checked his bank statements, it would have seen that he was gambling.

MEM said that the loan repayments were low value and appeared to be affordable based on the information Mr S had declared to it. MEM had also carried out a credit search before Loan 1. It said that there didn't appear to be any particular issues with other lenders which concerned it. MEM had taken details of Mr S's monthly income before Loans 1 and 2 which he'd declared to be £1,200. It deducted an allowance for general living expenses of around £261 based on statistical information, which left a disposable income of around £939. It then considered if Mr S had sufficient surplus income to repay the loans.

### *our adjudicator's view*

The adjudicator didn't recommend that the complaint should be upheld. She said that MEM's checks went far enough bearing in mind that the repayments were relatively low compared to Mr S's declared monthly income.

Mr S responded to say that he'd had other loans from companies in the same group as MEM. So MEM should have known about these if it had checked its records. It also should have known that he'd had a default on his credit file.

The adjudicator responded to say that the companies which had granted him other loans weren't in the same group as MEM. So MEM wouldn't have had access to those companies' records. She also noted that the default was three years before the loans were granted and that a default on his credit history wouldn't mean that MEM shouldn't lend to him. She said that it would've been more likely to consider his current financial circumstances at the time he took out the loans, rather than what had happened three years previously.

Mr S responded to say that he understood that MEM was part of the same group as the other lenders from whom he'd had loans. Given the numerous loans he had with lenders in

the same group as MEM, and that he had defaults on his credit file at that time, he said that it would have been irresponsible for MEM to have given him loans at that time.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to MEM on 27 July 2018. I summarise my findings:

I'd noted that MEM needed to lend responsibly. It needed to make checks to see whether Mr S 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 S was borrowing, and his lending history, but there was no set list of checks MEM had to do.

I explained that the guidance in place at the time of all of Mr S's loans was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower can *sustainably* repay their loans. The Office of Fair Trading's (OFT) Irresponsible Lending Guidance said that assessing affordability is a borrower-focussed test which involved a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties. The guidance also said that repaying credit in a sustainable manner meant being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty*." And it defined "*undue difficulty*" as being able to repay credit "*while also meeting other debt repayments and normal/reasonable outgoings*" and "*without having to borrow further to meet these repayments*".

I didn't think that the fact that Mr S was able to repay all the loans in full necessarily meant they were affordable for him or that he managed to repay them in a sustainable manner. I also couldn't assume that Mr S was able to do so out of his normal means without having to borrow further.

I noted what Mr S had said about his other loans with companies he said were in the same group as MEM. So, I asked the adjudicator to ask MEM to provide more information about this and whether it knew about his previous loans. MEM responded to say that the separate brands operated separately prior to February 2015 when they were amalgamated. So prior to February 2015, Payday UK didn't conduct cross brand checks at the point of loan application.

I'd thought about whether MEM's checks were proportionate for all the loans. MEM told us that before lending Loans 1 and 2 to Mr S, it had asked him about his income. Mr S had declared a monthly income of £1,200 before both loans. MEM didn't ask Mr S for details of his regular expenditure before the loans.

MEM had also told us that it carried out a credit check before Loan 1, but I hadn't seen the results of that search. I noted that Mr S referred to his defaults. I'd seen a letter Mr S provided relating to a bank account in 2009, although it wasn't clear if this was a formal default. Even if it was, the default was over two years before Loan 1. I'd also seen information about a default in 2013. But I noted that this had occurred after the loans were made.

The repayment amount for Loan 1 was £258. I'd thought about whether MEM's checks were proportionate for this loan. On the one hand, this was Mr S's first loan with MEM and there was little to suggest that he wasn't using the loan in the way it was intended – as a

short term solution to a temporary cash flow problem. But, on the other hand I thought the loan repayment amount was a relatively large proportion of Mr S's income. So, I thought MEM should've gathered some further financial information here, such as Mr S's normal living expenses and regular financial commitments. I couldn't see that it had done this. So I didn't think MEM had gathered enough information here about Mr S to reasonably assess if he could afford to repay the loan.

The repayment amount for Loan 2 was £193.50. I noted that Mr S had repaid Loan 1 promptly and he was taking the loan almost two months after borrowing Loan 1. But, again I thought the loan repayment amount was a relatively large proportion of Mr S's income. So, again I thought MEM should've gathered some further financial information here, such as Mr S's normal living expenses and regular financial commitments. I couldn't see that it did this. So I didn't think MEM had gathered sufficient information here about Mr S to assess if he could afford to repay Loan 2.

Although I didn't think the checks MEM did on Loans 1 and 2 were sufficient, that in itself didn't mean that Mr S's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have suggested to MEM that Mr S couldn't have sustainably afforded the loans.

As I'd said above, I would have expected MEM to ask about Mr S's regular expenditure for both loans. To find out what, if any, regular expenditure Mr S had, I'd reviewed his bank statements for the month before Mr S took each of the loans.

With regard to Loan 1, I could see that the transactions in Mr S's account showed normal living costs and regular financial commitments of around £638. As Mr S's declared income was £1,200, I could see that proportionate checks would have suggested to MEM that Mr S was able to sustainably repay this loan, while meeting his other regular expenditure.

With regard to Loan 2, I could see that the transactions in Mr S's account showed normal living costs and regular financial commitments of around £656. As Mr S's declared income was £1,200, I could see that proportionate checks would have suggested to MEM that Mr S was able to sustainably repay this loan, while meeting his other regular expenditure.

I appreciated that Mr S would be disappointed with my decision. I'd noted that he'd said that he was under a tremendous amount of financial pressure, that he had other debts and was gambling. But that wasn't something he'd told MEM about or something that MEM would have discovered from what I considered to be proportionate checks.

So, overall I didn't think MEM was wrong to give Mr S any of the two loans he'd taken.

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

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

Mr S responded to say that he disputes that MEM didn't share information with its sister company. He didn't think his multiple defaults had been considered. He also disputes that he had around half his income left after his living costs and regular financial commitments. He said that his income was taken up by his other debts.

## **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 note that Mr S disputes that MEM didn't share information with companies in the same group as it. But as I'd said above, I had already considered this in my investigation and I asked the adjudicator to specifically raise this point with MEM. I have no reason to doubt MEM's response that the separate brands operated separately prior to February 2015. So prior to February 2015, when Mr S's loans were granted, I understand that Payday UK didn't conduct cross brand checks at the point of loan application.

I note that Mr S believes that I didn't consider his defaults. I noted from Mr S's credit file that there were a number of defaults but these all occurred after Loans 1 and 2 were made. So MEM wouldn't have known about these. Otherwise I'd not seen evidence of any defaults prior to the loans other than the letter Mr S provided relating to a bank account in 2009, although it wasn't clear if this was a formal default. Even if it was, as I'd said above, the default was over two years before Loan 1. I would have reasonably expected MEM to be more concerned by defaults closer in time to the loans.

I also note that Mr S said that his income was taken up by his other debts. As I explained above, I would have expected MEM to ask about Mr S's regular expenditure for both loans. Regular expenditure would include normal living costs and regular financial commitments. At the time of Loans 1 and 2, I wouldn't have expected MEM to have asked about short term loans and gambling expenditure. To find out what, if any, regular expenditure Mr S had, I'd reviewed his bank statements for the month before Mr S took each of the loans and I'd recorded his regular expenditure above. I'd also noted that in the month before Loan 1 that a large proportion of Mr S's income was taken up by gambling expenditure and in the month before Loan 2 by the repayment of a short term loan. But these weren't something Mr S told MEM about or something that MEM would have discovered from what I consider to be proportionate checks.

So I don't think MEM was wrong to give these loans to Mr S and I'm satisfied that the proposed resolution in my provisional decision is fair in all the circumstances. I find no basis to depart from my earlier conclusions.

## **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 Mr S to accept or reject my decision before 24 September 2018.

Roslyn Rawson  
**ombudsman**