

## **complaint**

Miss F complains that MEM Consumer Finance Limited trading as Payday UK was irresponsible to lend her money.

## **background**

Miss F took out nine loans with Payday UK between July 2012 and October 2013. She says she was caught in a spiral of debt.

The adjudicator recommended that Miss F's complaint be upheld in part. She said she wouldn't look in to loan one as Miss F cancelled it immediately after taking it out.

The adjudicator thought Payday UK should've carried out better checks before agreeing loans two to nine. But even with more proportionate checks, she thought Payday UK would've still agreed loan two. The adjudicator also thought loans eight and nine would've appeared affordable as Miss F received an inheritance payment shortly before taking out loan eight.

Payday UK agreed that it should've done more before granting certain loans. It offered to put things right by refunding interest and charges on loans four to six. It said Miss F cancelled loans three and seven (in addition to loan one) so didn't include these in its offer.

Payday UK said it would apply the refund to Miss F's outstanding principal balance, leaving about £209 to pay. Payday UK offered to look at an affordable repayment plan.

Miss F isn't happy that the adjudicator thinks loans eight and nine were affordable. She wants Payday UK to write off the remaining outstanding balance.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agreed some but not all of the adjudicator's recommendations.

Payday UK was required to lend responsibly. It needed to check whether Miss F could afford to pay the loans back before agreeing to lend. These checks had to be proportionate to things such as the amount borrowed, the length of the agreement and any borrowing history. But there wasn't a set list of checks that Payday UK had to carry out.

### *loan two*

I agree with the adjudicator that even if Payday UK had asked Miss F for details of her regular outgoings loan two would've still appeared affordable to her. So I don't require Payday UK to do anything about this loan.

### *loans one, three and seven*

As Miss F cancelled these loans immediately on taking them out, I don't consider I need to say anything more about them.

### *loans four to six*

Payday UK has already offered to refund all interest and charges paid on loans four to six and pay interest on the refund. It's agreed to remove any negative information about the loans from Miss F's credit file. It doesn't seem to me that these three loans are still in dispute so I don't feel I need to say anything further about them.

### *loan eight*

This was Miss F's eighth loan in five months. Like the adjudicator, I think this history of repeated borrowing should've prompted concerns that Miss F might be reliant on short term lending. At this point, Payday UK should've carried out a thorough review of Miss F's financial circumstances before agreeing to lend.

Loan eight was given when Payday UK was regulated by The Office of Fair Trading (OFT). The OFT's Irresponsible Lending Guidance states *"Assessing affordability is a borrower-focussed test which involves 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 goes on to say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defines *"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"*.

The adjudicator classed Miss F's inheritance as "income" when considering whether the loan would've still appeared affordable had Payday UK done more checks. However, I don't think I can reasonably include the inheritance as part of Miss F's income. And although it might be fair to class it as "savings", I can see from bank statements that Miss F quickly spent all the money before taking out loan eight. For example, she appears to have used more than £6,000 to repay various short term lenders including Payday UK.

Miss F also gambled heavily - paying out more than £4,100 to online gambling businesses within days of receiving the inheritance. And she continued to borrow from multiple short term lenders.

Overall, I don't consider Miss F was able to afford the repayment on loan eight without having to borrow elsewhere. If Payday UK had carried out more proportionate checks, it would've realised this. And as a responsible lender, I think it should've had concerns that Miss F was using short term lending to support her online gambling habit.

### *loan nine*

Although there was a significant gap between loans eight and nine, Miss F was due to repay more than £1,000 to Payday UK. This was almost 50% of her stated monthly income. I agree with the adjudicator that the lender should've done more checks to make sure she could repay the loan in a sustainable way.

If Payday UK had done more proportionate checks, it would've realised Miss F was gambling regularly. She sometimes spent more than £400 a day at online sites. Together with Miss F's

usual monthly outgoings and other short term lending commitments, she couldn't afford the repayment on loan nine.

As I thought Payday UK should do more than the adjudicator recommended, I asked her to put this to Payday UK. Although it hasn't replied by the deadline set, I still think it's fair to include loans eight and nine in my decision.

Miss F has had the benefit of the money lent, so I consider it fair that she repays the outstanding principal on loan nine. Payday UK has already offered to waive any unpaid interest on this loan but it should also write off any charges.

If after applying the refund to the outstanding principal balance, there's still anything to pay; I would expect Payday UK to treat any offer to repay this sympathetically and reasonably.

### **my final decision**

My decision is that I uphold this complaint in part. To put things right MEM Consumer Finance Limited trading as Payday UK should:

- refund all interest and charges Miss F paid on loans four to six, eight and nine
- pay interest on those refunds at 8% simple\* per year from the dates of payment to the date of settlement;
- write off any unpaid interest and charges on loan nine before applying the refund to any remaining principal balance;
- pay Miss F any remaining balance (if there is any) after carrying out the above steps; and
- remove any negative information about the affected loans from Miss F's credit file, including any records of searches carried out since she complained

\*HM Revenue & Customs requires Payday UK to take off tax from this interest. It must give Miss F a certificate showing how much tax it's taken off if she asks for one. If Payday UK intends applying the refund to any outstanding principal balance, it must do this after it's taken the tax off.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 8 December 2017.

Gemma Bowen  
**ombudsman**