

**complaint**

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

**background**

Mr F took out a total of four loans with Payday UK between March and September 2009.

<b>Loan no.</b>	<b>Loan amount</b>	<b>Borrowing date</b>	<b>Repayment date</b>	<b>Number of deferrals</b>
1	£130	12.03.09	21.04.09	0
2	£260	22.04.09	21.08.09	3
3	£390	25.08.09	21.09.09	0
4	£150	28.09.09	18.12.09	2

Mr F has repaid all his loans. But he deferred repayment of two of the loans, as shown in the table. When he deferred repayment, he had to pay additional interest.

Mr F says his missed payments and deferrals were clear evidence that he was in difficulty. So he thinks Payday UK should have refused to continue lending to him. He says he was trapped in a debt spiral, and that the repayments took such a large proportion of his earnings that he had to borrow again to cover the next month's expenses.

In its final response to Mr F's complaint, Payday UK accepted that it should have carried out more thorough checks before making loans 2 and 3. But it said it wasn't able to tell whether further checks would have shown the loans to be unaffordable without sight of Mr F's bank statements from the time and his credit report.

Our adjudicator recommended that the complaint should be upheld in part. In summary, he thought that Payday UK should have carried out more thorough affordability checks from loan 2 onwards. And he thought that if it had done so, it would have realised that Mr F would have little or no disposable income after meeting his deferral payments on loan 4. So he thought Payday UK should have realised that those deferrals were unsustainable for Mr F.

So the adjudicator recommended that Payday UK refund all interest and charges that Mr F paid on the deferrals of loan 4, with interest on the refund. And he said that it should remove any negative information about those deferrals from Mr F's credit file.

Mr F accepted the adjudicator's view. But Payday UK disagreed. It said that loan 4 was affordable when Mr F took it out, and there was no requirement for it to undertake further checks when Mr F asked to defer the loan. So it said it would have been unaware of Mr F's change in circumstances in the intervening period.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr F and to Payday UK on 21 June 2018. I summarise my findings:

- Payday UK was required to lend responsibly. It needed to make checks to see whether Mr F 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 F was borrowing and his lending history. But there was no set list of checks Payday UK had to do.
- The Office of Fair Trading (OFT) was the regulator at the time Mr F was borrowing from Payday UK. The OFT 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 went on to say 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”*.
- The fact that Mr F ultimately managed to repay his loans in full doesn’t automatically mean they were affordable for him, or that he managed to repay them in a sustainable manner. In other words I couldn’t assume that because Mr F managed to repay his loans, he was able to do so out of his normal income without having to borrow further.
- Payday UK’s told us that it asked Mr F for details of his monthly take-home pay before making the loans.
- When he applied for loan 1, Mr F told Payday UK that his monthly take-home pay was £1,510. The repayment due on loan 1 was around £160. That was a relatively small proportion of Mr F’s declared monthly expenditure. And I didn’t think it was unreasonable of Payday UK to go ahead and make the loan without carrying out further affordability checks.
- Loan 2 was for twice as much as loan 1, with a total repayment due of £325. And Mr F applied for the loan the day after he’d repaid the first loan. Bearing that in mind, I thought that Payday UK should have asked for more information from Mr F before agreeing to the loan. As a minimum, I thought that it should have asked him about his regular monthly expenditure.
- But even if Payday UK had asked Mr F about his regular monthly expenditure, I wasn’t convinced that it ought to have concluded that loan 2 was unaffordable for him. And while I could see from Mr F’s bank statements that he was making repayments to other short-term lenders around the time, I wouldn’t have expected Payday UK to ask specifically about other short-term borrowing at this stage. So I didn’t think it was irresponsible to make loan 2 without carrying out further checks.
- Mr F applied for loan 3 just a few days after repaying loan 2. Again, the amount he asked to borrow had increased. And he told Payday UK that his net monthly income had reduced to £1,130. The repayment due on loan 3 was £487 – well over a third of Mr F’s declared take-home pay. I thought that these factors, combined with the fact that Mr F had deferred repayment of loan 2 three times, should have prompted Payday UK to carry out a full review of Mr F’s financial situation before agreeing to lend further.

- I'd looked at Mr F's bank statements to see what it's likely that more detailed checks would have shown Payday UK. I could see that his earnings were around the figure that he told Payday UK about. And from what it's likely it would have discovered about Mr F's regular monthly expenditure and other credit commitments, I didn't think that it would have been unreasonable of Payday UK to conclude that Mr F would be able to afford the repayment on loan 3. So I didn't think Payday UK was at fault in making loan 3.
- Only a week passed between Mr F repaying loan 3 and applying for loan 4. It was true that loan 4 was for much less than loan 3. But this was the fourth loan Mr F had applied to Payday UK for in just over six months. And given that he'd deferred repayment of one of his previous loans, I thought it would, again, be reasonable to expect Payday UK to have looked thoroughly into Mr F's financial circumstances before lending further.
- But even if Payday UK had looked as carefully at Mr F's financial situation as I thought it should have done, I didn't think loan 4 would have appeared to be unaffordable for Mr F. It was true that he'd taken out two short-term loans totalling £340 with another lender in the weeks before he applied for loan 4. And it looks as if those loans remained outstanding. But even taking into account the likely repayments on those loans, and Mr F's regular monthly expenditure, I didn't think it would have been unreasonable of Payday UK to conclude that he'd be able to afford the repayment of around £187.
- So up to the point when Mr F took out loan 4, my provisional view was the same as the adjudicator's and for similar reasons. But I'd reached a different conclusion about the deferrals on loan 4.
- The first deferral increased Mr F's outstanding balance by £37.50. And the second deferral increased it by £25. I could see that in October 2009 Mr F told Payday UK that he'd left his job and changed to temporary employment. And I could see that his salary was amended on Payday UK's system to £1,000. But I wouldn't have expected Payday UK to carry out a fresh affordability check before agreeing to the rollovers. And on the basis of the information it had, I didn't think that it was unreasonable of it to conclude that Mr F would be able to afford the extra interest which was added to the loan. I'd also borne in mind that it's likely that deferring repayment, rather than requiring repayment of the loan in full straight away was helpful to Mr F.
- So taking everything into account, I wasn't convinced that I could fairly say that Payday UK was at fault in agreeing to roll over Mr F's final loan. And my provisional view was that the complaint shouldn't be upheld.

#### *further submissions*

Payday UK says it agrees with my provisional decision. It's pointed out that deferrals didn't increase the repayment expected of Mr F. He was simply expected to pay the interest only on each occasion, in order to defer the balance to the following month.

But Mr F isn't happy with my provisional findings. He says, in summary:

- I painted a "clear picture" that Payday UK should have recognised that loan 4 was unaffordable. But then I go on to say that I didn't think it would have been unreasonable of Payday UK to conclude that Mr F would be able to afford the repayment of £187.

- I commented that Mr F applied for loan 4 a week after repaying loan 3. This clearly suggests that loan 4 was completely unaffordable.
- He was making regular payments in 2009 to a debt management company. This would have been clear from his bank statements, and was a clear indication that he was in serious financial difficulty.
- He's provided evidence of his high level of debt in 2009.
- His bank statements show that he was gambling frequently and taking loans from a large number of payday lenders. This shows that he was using the loans to fund his gambling addiction.
- If Payday UK had carried out proper checks, it would have seen that he was in serious financial difficulty and his borrowing was increasing to pay back his loans.

### **my findings**

I've considered all the available evidence and arguments, including the further points that Mr F has made to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not convinced that I should depart from the findings I reached in my provisional decision.

It's true that I pointed out that Mr F applied for loan 4 just a week after repaying loan 3. But I didn't (as Mr F has suggested) say that Payday UK should have recognised that loan 4 was unaffordable. I said that it should have looked thoroughly at his financial circumstances before agreeing to the loan. But for the reasons I set out, I thought that even if it had done so, I *didn't* think loan 4 would have appeared to be unaffordable for Mr F.

I acknowledge that Mr F's bank statements show payments to what appears to be a debt management company in the first half of 2009. But they don't show any payments to that company in the three months before he applied for loans 3 and 4. And although I accept that the payments he'd previously made to the company earlier in the year would have shown that he'd previously sought help with repaying his debts, I don't think this should have led Payday UK to conclude that he couldn't afford loan 3 or 4.

While Mr F's level of debt might have been relatively high, I would have expected Payday UK to consider whether the *repayments* due on Mr F's existing debt would leave him with enough money to take on further borrowing. And from the evidence that's been provided, I'm not convinced that Payday UK ought to have concluded that loans 3 and 4 would have appeared to be unaffordable to Mr F even if it had carried out what I consider to be proportionate checks before lending.

I accept that Mr F's bank statements show a large number of gambling transactions around the time that he was borrowing from Payday UK. But his gambling appears to be focussed on the few days after he was paid each month. I wouldn't have expected Payday UK to conclude from that that Mr F's gambling was out of control. And I'm not convinced that Payday UK ought to have concluded from Mr F's gambling that he was borrowing unsustainably, or that it would mean that he couldn't afford the repayments on loan 3 or 4.

So I'm sorry to disappoint Mr F, but for the reasons I've set out, I don't accept that proper checks would have shown Payday UK that Mr F was in serious financial difficulty, or that he couldn't afford the loans. So I can't fairly uphold his complaint.

**my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 16 August 2018.

Juliet Collins  
**ombudsman**