

complaint

Mr H complains that MEM Consumer Finance Limited (trading as Payday UK) gave him loans he couldn't afford to repay. He asks that it refunds interest and charges.

background

Mr H took out four loans with Payday UK between April 2011 and November 2011. He says Payday UK didn't do proper checks. If it had, it would have known he was in financial hardship and using the loans to repay other debts.

The adjudicator recommended that the complaint should be upheld, saying:

- Payday UK says it did a credit check but can't provide the results. Mr H's credit report shows three defaults in the six months before he took out the first loan. The adjudicator said it's likely Payday UK would have been aware of at least one of these defaults from its credit check.
- Payday UK couldn't provide evidence it asked about Mr H's income before the first loan. There's no evidence it asked about Mr H's outgoings.
- Payday UK didn't do proportionate checks. Had it done so, it would have known that the loans were not affordable.

The adjudicator said Payday UK should refund interest and charges on all the loans plus 8% interest and remove any negative information about the loans from Mr H's credit files.

Payday UK didn't agree. It said it did required checks. It said its credit check didn't show insolvency or county court judgements against Mr H. And while it did show defaults, this didn't mean it shouldn't lend to him. It said given Mr H's stated income and the low value of the first loan, its checks were sufficient. It didn't ask for bank statements or expenditure from customers at that time. Payday UK said it could have done further checks before the third loan. It offered to refund interest on the third and fourth loans, with 8% interest. Mr H didn't accept the offer.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr H took out the first loan, of £200, in April 2011. Payday UK did a credit check, which showed Mr H had delinquent accounts. While this doesn't mean that Payday UK can't lend to Mr H, I think it should have alerted it to a possible problem and the need for further checks. I think it should have asked about his income, normal living expenses and regular financial commitments.

Mr H deferred repayment of the loan. He repaid it at the end of May 2011 and took out a second loan, of £400, on the same day. Mr H told Payday UK his monthly income was £1,700.

Deferring repayment, taking out a loan on the same day as repaying a previous loan and increases in loan amounts can indicate financial difficulties. Payday UK also knew Mr H had defaults recorded on other accounts. I think Payday UK should have been alerted it to a possible problem. I think Payday UK should have asked for information to gain a full understanding of Mr H's financial circumstances. While there are different ways of doing this, one is to look at his bank statements.

Mr H's bank statements show his monthly income varied. It was about £1,600 in March and £1,900 in April 2011. There are a number of payments to gambling businesses in March 2011 (totalling over £1,500). Mr H withdrew over £1,810 in cash in April. He says he was making loan repayments in cash to an unregulated lender which continued over two years. Mr H made bank transfers in April and May of £592 and £1,800 respectively, which he says were for loan repayments. Mr H spent about £150 in March and £140 in April on groceries, utilities and insurance. Earlier in 2011 Mr H had made payments to bailiffs and debt collection businesses. In May and June 2011 Mr H made transfers of £100 and £500 to another account which he said were for food and for his children.

Where Mr H made cash withdrawals and bank transfers I can't know for certain how he spent the money, although I have no reason to doubt what he's said. And, as Payday UK didn't ask Mr H about his outgoings in April 2011, I can't know what information he'd have provided if it had asked. But the available evidence suggests Mr H had financial difficulties at this time. I don't think the first and second loans were affordable and I think it's likely Payday UK would have known this if it had carried out proportionate checks.

I think Payday UK should have made similar checks before the later loans. Had it done so, I think it would have known the loans weren't affordable. Payday UK said it could have done more checks and offered to refund interest (plus 8% interest), waive unpaid interest and apply this to reduce Mr H's outstanding balance. It said it would remove these loans from Mr H's credit files. I think it should also refund or waive any charges applied to these loans.

I don't think Payday UK should have agreed to lend to Mr H. So I think it should:

- Refund all interest and charges that Mr H paid on the loans;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Write off any unpaid interest and charges, apply the refund to reduce any capital outstanding and pay any balance to Mr H;
- Remove any negative information about the loans from Mr H's credit file.

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

my final decision

My decision is that I uphold this complaint. I order MEM Consumer Finance Limited to amend Mr H's credit file and pay the compensation as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 July 2017.

Ruth Stevenson
ombudsman