Financial Ombudsman Service

complaint

Ms C has complained about several loans granted to her by MEM Consumer Finance Limited trading as Payday UK ("Payday UK"). She's said the loans were unaffordable for her.

background

I issued my provisional decision in September 2017, a copy of which is attached and forms part of this final decision. In my provisional decision I explained why I was intending to partially uphold Ms C's complaint. I asked everyone to send me any further comments and information before I reached a final decision.

Both Ms C and Payday UK responded to say they'd received my provisional decision. And neither side said they had anything they wanted to add.

my findings

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable. And in the absence of any new arguments, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

what Payday UK should do to put things right

Payday UK should:

- refund all interest and charges applied to loans 1 to 5 (including any late fees and default interest).
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Ms C's credit file.

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

my final decision

For the reasons I've explained above and in my provisional decision I uphold Ms C's complaint in part. MEM Consumer Finance Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms C to accept or reject my decision before 6 November 2017.

Adam Golding
ombudsman

extract of provisional decision

background

Payday UK says it agreed 6 loans for Ms C during the period September 2011 to December 2013. Ms C deferred the repayment on her fourth loan several times. This is where she paid the interest and charges only, and extended the amount of time she had to repay the principle. The following table summarises some of the information Payday UK provided about these loans:

Loan number	Date	Amount	Deferred date	Repayment amount
1	13/09/2011	£280.00		£350.00
2	06/10/2011	£280.00		£350.00
3	04/11/2011	£280.00		£350.00
4	15/12/2011	£280.00	23/01/2012 20/02/2012 17/03/2012	£350.00
5	27/04/2012	£280.00		£350.00
6	17/12/2013	£150.00		£195.00

Our adjudicator didn't think Payday UK carried out proportionate affordability checks for loans 2 to 6. So she looked into Ms C's financial circumstances at the time of the loans. She thought that had Payday UK carried out proportionate checks, it would've discovered that Ms C wasn't able to afford those loans. So she recommended that Payday UK should refund the interest and charges associated with those loans to put things right.

Payday UK disagreed with our adjudicator's assessment. It said it asked Ms C about her income and expenditure, and carried out credit checks before each loan. It said that based on the information it had, the loans appeared affordable. So it didn't agree that it was wrong to lend. Because no agreement has been reached, the complaint has been passed to me.

my provisional 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.

At the time of Ms C's borrowing Payday UK was regulated by the Office of Fair Trading ("OFT"). The OFT required businesses to lend responsibly, which means Payday UK needed to check that Ms C could afford to repay her loans sustainably. The guidance states that "*creditors should take reasonable steps to assess borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner*". It also states that *"this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question"*.

The guidance says that meeting repayments in a sustainable manner means repaying credit out of existing income and/or savings while also meeting other debt repayments and normal outgoings. And it also lists examples of sources of information to assess affordability – these include: record of previous dealings with the borrower, evidence of income, evidence of expenditure, a credit score, a credit report from a credit reference agency and information obtained from the borrower.

There was no set list of checks that Payday UK was required to complete before lending. But it needed to complete affordability checks that were proportionate. Deciding what checks would be proportionate might include considerations about the amount borrowed, the associated cost and risk to Ms C, her borrowing history including any indications that she might be experiencing (or had experienced) financial difficulty, and so on.

Ms C took out loan 1 in 2011 for £280 and agreed to repay £350, including interest, the following month. At this stage Payday UK took details of her income, which she gave as £800 per month, and ran a credit check. Payday UK says the credit check didn't show anything of concern, so it doesn't feel it was wrong to approve this loan.

As this was Ms C's first loan I think it was reasonable for Payday UK to rely on the figure she gave for her income without needing to verify it. And I agree that the credit check results I've seen don't appear show anything that makes me think Payday UK should've been concerned about Ms C's financial circumstances. But given that the amount Ms C needed to repay was almost half of her stated income, I think it Payday UK's affordability checks should've gone further. I think it would've been proportionate to ask Ms C about all of her regular monthly outgoings, including any other short term loans she might've had outstanding, in addition to the checks it completed.

I note that Payday UK asked Ms C for her outgoings for the final loan in December 2013 and at that stage she told it her outgoings were only £300. But this was over two years *after* she took out loan 1. And so I'm not sure she'd have given similar figures at the time of this loan.

I've thought carefully about what I think she would've declared if Payday UK had asked at the time of loan 1. Ms C has told us that her regular outgoings at the time were £100 towards her rent, between £360 to £400 per month for groceries for her and her family, between £80 to £100 for utilities and around £80 on her mobile phone

Given what I've seen about Ms C's circumstances I don't think the figures she's provided our service seem implausible. And even if I were to only take the minimum figures she's provided for her rent, food and utilities, her expenses would still have been £540 per month.

If Payday UK had carried out proportionate checks and asked about Ms C's regular outgoings and other short term lending commitments, I think it would've discovered that her regular outgoings appeared to be at least £540 per month. And considering she declared her income as £800, and the repayment on loan 1 was £350, I don't think it would've concluded that she could afford to repay the loan sustainably. So as a responsible lender, I don't think it would've approved loan 1.

Ms C took out loan 2 around a week after she settled loan 1. She again borrowed £280 meaning she had to repay £350. Payday UK completed the same checks as it did for loan 1, but for the same reasons I've already given I don't think these checks went far enough. And for this loan I think it would've been proportionate for Payday UK to ask Ms C about all of her regular outgoings, including any outstanding short term credit she might've had.

From what I've seen of Ms C's circumstances, she hadn't borrowed from another short term lender in the two months before she took out this loan. But as with loan 1, if Payday UK had asked about her regular outgoings, I think it would've discovered that she was spending at least £540 per month on her essential living costs. So I don't think it would've concluded that she could afford to repay this loan sustainably either.

Ms C took out loan 3 around a week after she repaid loan 2. She again borrowed the same amount. This was now her third loan in quick succession, so I think by this stage Payday UK should've been concerned that she might be becoming dependent on the loans it was providing. Taking that into account I don't think the checks Payday UK completed, which were the same as with the previous two loans, were proportionate.

At this stage I think it would've been proportionate for Payday UK to build a full picture of Ms C's financial situation before it agreed to lend. There are many ways it could've done this, such as by asking for payslips and/or bank statements to verify the information Ms C was providing.

I've had a look at Ms C's bank statements from around the time of this loan. From what I've seen from Ms C's bank statements, her income was actually significantly higher than she declared. In addition to her salary, which seems to have been around £600 per month, she also received child tax credits, child benefit and in some months housing benefit. So taking into account her additional benefits at the time of loan 3, her actual income was around £2,500 - £2,900 per month.

I haven't been able to verify the figures Ms C provided for her expenditure on her bank statements. But that isn't surprising as she's explained that her rent and utilities were paid using a payment card at a pay point. The figures Ms C gave for her regular expenses don't seem to me to be implausible given her circumstances. And I can see that the value of her monthly cash withdrawals each month always exceeds the total amount she says she regularly paid. So I've accepted the figures she provided for her rent, food, utilities, travel and her mobile phone.

In addition to the figures she's provided us, I can see from her bank statements that she was regularly spending around £60 for satellite TV, £12 for her TV licence, £25 for internet, £100 for a debt management plan and around £70 for an insurance product. She also repaid around £275 to another short term lender and borrowed a further £450 from the same lender in the month before she took out this third loan. And on top of this, she also regularly spent several hundred pounds each month on online gambling. This averaged around £900 per month in the three months before she took out loan 3.

If Payday UK had carried out proportionate checks I think it would've discovered some if not all of this. And I think Ms C's regular gambling would've raised concerns about her ability to repay her loans sustainably. I say this because in the three months before she took out loan 3 her regular expenses, including gambling and other short term credit, exceeded her actual income, including benefits, on two out of the three months. So taking that into account, I think Payday UK would've concluded that Ms C wasn't able to repay this loan sustainably and as a responsible lender wouldn't have agreed this loan.

My finding is the same for loans 4 and 5. I say this because Ms C continued to borrow regularly from other short term lenders. And she continued to spend large amounts on gambling each month sometimes exceeding her available income. So again if Payday UK had completed proportionate affordability checks by fully assessing Ms C's financial circumstances, I think it would've discovered this. And as a responsible lender I don't think it would've agreed these loans.

Ms C didn't take out loan 6 until December 2013. This was over 18 months after she repaid loan 5. At this stage Payday UK asked Ms C about her income and her regular outgoings, as well as completing a credit check. And given the length of time that had passed between loans 5 and 6, I think it was reasonable for Payday UK to think that Ms C's reliance had lessened and it could again rely on the figures Ms C provided without needing to verify them.

When Ms C took out loan 6, Payday UK recorded her declared income as £750. It recorded her rent as £100, her credit commitments as £0 and other commitments as £200. This meant that based on the figures she provided her disposable income would've been £450 per month. Loan 6 was for £150, meaning Ms C needed to repay £195. Based on the figures Ms C provided, the loan would've appeared affordable for her. So I don't think Payday UK was wrong to provide it.

In summary, I don't think the checks Payday UK carried out for loans 1 to 5 were proportionate. If it had carried out proportionate checks, I think it would've discovered that Ms C wouldn't be able to repay these loans in a sustainable way. And based on that, I don't think it would've approved those loans. But I think the checks it carried out for loan 6 were proportionate. So I don't think it was wrong to approve this loan.

It follows that I think Ms C has lost out because of what Payday UK did wrong in respect of loans 1 to 5.