complaint

Mr K has complained about a series of payday loans he took out with MYJAR Limited (trading as “MYJAR”).

He’s said MYJAR lent to him irresponsibly as it provided him with a number of loans over a period of almost five years. He’s also said that he had several other debts to pay and was continually borrowing to pay off debts and borrowing again, week after week.

background

Mr K started borrowing from MYJAR in December 2009. In total, he went on to take a total of 68 loans up until January 2014.

When it looked at Mr K’s complaint, MYJAR refused to look at the first 37 of Mr K’s loans on the basis he complained too late. MYJAR also didn’t agree that it lent the remaining 31 loans irresponsibly to Mr K.

MYJAR said that the checks it carried out, amongst other things, included:

- Mr K’s monthly income;
- Mr K’s employment status;
- whether Mr K had any dependents;
- whether Mr K had any other monthly costs;

MYJAR said that it considered all of this information before approving Mr K’s loans. And that it didn’t think it had done anything wrong on any occasion. So MYJAR didn’t uphold any part of Mr K’s complaint.

One of our adjudicator’s initially reviewed whether we were able to look at Mr K’s complaint about his first 37 loans. Having reviewed the information provided, she thought that Mr K complained more than six years after the loans were provided AND crucially also more than three years after he was aware, or ought reasonably to have been aware, he had cause to complain. So she thought Mr K’s complaint about the first 37 loans was made too late. Mr K accepted our adjudicator’s assessment on that matter.

The remainder of Mr K’s complaint was then reviewed by another of our adjudicators. For the sake of clarity, I’ve set out the loan history for the loans we’ve looked at in a table at the end of this decision. Our adjudicator thought that none of the remaining 31 loans should’ve been given to Mr K. So she upheld the complaint about those loans. Despite being chased, MYJAR didn’t respond to our adjudicator’s assessment. As a result, the complaint has been referred to me for a final decision.

In reaching this final decision, I have taken into account the relevant law and regulations; relevant regulators’ rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. I think that it would be useful for me to start by setting all of this out.

the legal and regulatory framework

regulation by the Office of Fair Trading

MYJAR gave Mr K all of his loans in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> *(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
>
> > *(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
> >
> > *(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
> >
> > *(c) practices and procedures that the applicant proposes to implement in connection with any such business;*
> >
> > *(d) evidence of the kind mentioned in subsection (2A)*
>
> (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
>
> > *(a) committed any offence involving fraud or other dishonesty or violence;*
> >
> > *(b) contravened any provision made by or under—*
> >
> > > *(i) this Act;*
> > >
> > > *(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
> > >
> > > *(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
> >
> > *(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
> >
> > *(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*

> (e) ***engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)*** *[my emphasis]***.**

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the ***OFT to involve irresponsible lending*** *[my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Mr K's case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*

- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*

treat borrowers fairly and with forbearance if they experience difficulties

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, 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 and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
  - *the borrower's financial situation at the time the credit is sought;*
  - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
  - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*

- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a “deceptive and/or unfair practice” where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.

<u>*Section 55B of the Consumer Credit Act 1974*</u>

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an “Assessment of creditworthiness” was set out in section 55B of the Consumer Credit Act.

It’s important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the Financial Conduct Authority in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.".

<u>*Section 140 of the Consumer Credit Act 1974*</u>

All of Mr K's loans were given to him after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

(5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) *An order under this section in connection with a credit agreement may do one or more of the following—*

(a) *require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*

(b) *require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*

(c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*

(d) *direct the return to a surety of any property provided by him for the purposes of a security;*

(e) *otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*

(f) *alter the terms of the agreement or of any related agreement;*

(g) *direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

other relevant publications and good industry practice

The ILG set out the regulatory framework that regulated consumer credit providers had to adhere to. But it represents a minimum standard for firms. And as I've explained, I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

the OFT's Payday Lending Compliance Review Final Report

The OFT published its "Payday Lending Compliance Review Final Report" in March 2013, by which time MYJAR had already lent to Mr K on at least 55 occasions.

The purpose of the review was "…to establish the extent to which payday lenders [were] complying with the Consumer Credit Act, other legislation and [were] meeting the standards set out in the ILG."

The review sought to highlight examples of what the OFT considered poor practice and evidence of non-compliance with the relevant law and failure to meet the minimum standards expected. The analysis was also put together to help the FCA's work on payday lending ahead of it assuming responsibility for regulating the sector from April 2014.

The report began with an overview section setting out the OFT's concerns. Page two of the report says that the OFT:

…is particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can't repay are encouraged to extend them, exacerbating their financial difficulties This is causing real misery and hardship for a significant number of payday users

Page three of the report says:

Our evidence paints a concerning picture of the payday lending market. It appears that irresponsible lending is not a problem confined to a few rogue traders, but it has its roots in the way competition works in this market. The evidence suggests that many consumers are in a weak bargaining position, and that firms compete on speed of approval rather than price

It then goes on to say:

Additionally, firms describe and market their product to consumers as one-off short term loans (costing on average £25 per £100 borrowed for 30 days), but in practice around half the revenue comes from loans which last longer and cost a lot more because they are rolled over or refinanced. Lenders do not need to compete hard for this source of revenue because by this time they have a captive market. This, and the misuse of continuous payment authorities to reclaim monies owed, may distort incentives for lenders, encouraging them to make loans to people who cannot afford to repay them first time.

the Consumer Finance Association Lending Code for Small Cash Advances

The principal trade association representing the interests of short-term lending businesses operating in the United Kingdom is the Consumer Finance Association ("CFA"). The CFA published its Lending Code for Small Cash Advances ("the code") in July 2012.

I accept that MYJAR might not have been a member of the CFA in July 2012. But it is now. And as the code was published by the main trade association representing short-term lenders, I consider it to be indicative of the standards of good industry practice expected of lenders such as MYJAR at the time.

What's more, most of the relevant parts of this code went on to be included in the 'Good Practice Customer Charter Payday and Short-term Loans' which members of all the relevant trade associations signed up to just four months later, in November 2012.

Section 1 of the code sets out its purpose. Section 1b says:

Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online

Section 1c says:

This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months). The loan is not designed for longer term borrowing, but to improve short term personal cash flow

And Section 1d says:

The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in the Code, and accordingly protects and benefit consumers

Section 3 sets out the general obligations expected of lenders. Amongst other things Section 3 says members shall:

> *b) trade honestly, responsibly and treat customers with respect.*
>
> *l) ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.*

Section 4 of the code sets out a lender's specific lending obligations. Part (a) of this section is concerned with advertising and marketing and amongst other things, it says:

> *iii) members shall ensure all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.*

Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

> *v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining…:*

- *that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.*

my findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are three overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did MYJAR, for each loan, complete reasonable and proportionate checks to satisfy itself that Mr K would be able to repay the loan in a sustainable way?
    - If not, would those checks have shown that Mr K would've been able to do so?

- Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr K's indebtedness in a way that was unsustainable or otherwise harmful?

- Did MYJAR act unfairly or unreasonably in some other way?

If I determine that MYJAR did not act fairly and reasonably in its dealings with Mr K and that he has lost out as a result, I will go on to consider what is fair compensation.

Did MYJAR, for loans 38 to 68, complete reasonable and proportionate checks to satisfy itself that Mr K would be able to repay these loans in a sustainable way?

A lender will determine its own risk appetite when providing short-term loans. In other words, it'll decide how much risk – in relation to not getting its money back – it is prepared to accept when deciding to lend to a consumer. But the rules – throughout the time Mr K was borrowing from MYJAR – also require a lender to carry out a reasonable assessment of whether the borrower can afford to meet the repayment (or repayments) in a sustainable manner.

This is commonly referred to or called an "affordability assessment" or "affordability check". And a lender is required to carry out any such affordability assessment in addition to any creditworthiness assessment to assess the level of its risk. Affordability checks should be both "borrower-focused" and "proportionate". It's whether MYJAR fulfilled this obligation *to Mr K* that is what I'm concerned about and is the first key question I have to determine in order to decide this case.

What constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (such as their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income)

- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income)

- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that ongoing use of these loans may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I've thought about all the relevant factors in this case.

As I can't look at Mr K's complaint about his first 37 loans, I've not looked into any checks that MYJAR may have carried out for them. I've only looked at whether it was reasonable and proportionate for MYJAR to have given Mr K loans 38 to 68.

MYJAR says the checks it carried out before giving Mr K his loans included, Mr K declaring that:

- he had a monthly income of £1,290;
- he had no housing costs;
- he was single;
- he had no dependents;
- he was in full-time employment.

MYJAR appears to suggest that it didn't carry out any credit checks – or anything similar – because there was no specific requirement for lenders to do this.

I've carefully thought about what MYJAR has said

I want to start by saying that MYJAR's submissions appear to suggest that it didn't do anything differently to what it did for loans 1 to 37, before it decided to give Mr K loans 38 to 68. And while the checks carried out might've been reasonable and proportionate for some (but definitely not all 37) of the loans I'm not looking at, I certainly don't think that this is the case for loans 38 to 68. And I think that it would have been fair and reasonable for MYJAR to have done more.

In these circumstances, I think MYJAR ought to have been alert to the possibility that Mr K might've been struggling to repay his borrowing from disposable income –especially as he was frequently borrowing again shortly after repaying a previous loan. So I think that it's fair and reasonable to expect MYJAR to have undertaken further checks to verify the information provided to make sure that its lending was sustainable for Mr K.

Given the number of loans MYJAR provided Mr K with over what was an extended and prolonged period of time, I think that it would've been fair, reasonable and proportionate for MYJAR to have taken steps to verify Mr K's actual financial position. It could've done this by asking for evidence and information about his outgoings. Or it might have asked Mr K to provide proof that his income was what he'd declared. But, at the very least, what it needed to do was get to the crux of why it was Mr K kept needing to borrow money from it.

There's no evidence that MYJAR did any of this – or any other additional assessment of affordability – from loans 38 to 68. So I don't think MYJAR completed reasonable and proportionate affordability checks on loans 38 to 68.

Would reasonable and proportionate checks on loans 38 to 68 have indicated to MYJAR that Mr K would have been unable to sustainably repay the loan(s)?

As proportionate checks weren't carried out for these loans, I can't say for sure what they would've shown. In some circumstances, it would be appropriate to attempt to reconstruct proportionate checks to see what they would more likely than not have shown MYJAR about the proposed lending.

I'd usually attempt to do this using the evidence and information Mr K has provided us with about his financial circumstances at the time he applied for these loans. But I haven't recreated individual, proportionate affordability checks for loans 38 to 68. And I don't think that it necessary for me to do this, in this case.

I'll explain the reason why I think recreating individual, proportionate checks for loans 38 to 68, isn't necessary in this case in the section below.

Thinking about the short-term purpose of the loans provided, did the overall pattern of lending increase Mr K's indebtedness in a way that was unsustainable or harmful in some other way?

In addition to assessing the affordability of each *individual* loan provided to Mr K by MYJAR, I also think it's fair and reasonable to look at the *overall pattern* of lending. Bearing in mind the short-term purpose of this type of credit and the relevant rules, guidance and good industry practice at the time (as summarised in the earlier part of this decision), it seems to me that there may come a point at which a responsible lender would reasonably question whether continuing to offer further short-term loans to a customer who appears to be persistently reliant upon them was unsustainable or otherwise harmful.

I've carefully considered whether that point was reached in this case.

I think that it would be useful for me to start by setting out some examples of the kind of indicators that I think are particularly important when deciding this matter. Some examples of the kind of indicators would include:

- the number of times that MYJAR had lent to Mr K in total
- the time period over which it had provided those loans
- the amounts that MYJAR was lending to Mr K, including any general trends
- the time between Mr K repaying one loan and MYJAR providing the next

I've not looked at the concerns Mr K had about loans 1 to 37. But I've nonetheless seen that through this period Mr K was in debt to MYJAR for an unbroken period of around 21-22 months. So even without offering an opinion on whether it was right for MYJAR to have provided loans 1 to 20 to Mr K, I don't think that it's unfair or unreasonable for me to say that there were some clear warning signs that MYJAR ought fairly and reasonably to have been alert to.

Looking beyond loan 37 and specifically at the loans I've been asked to consider, I also think there's a clear mismatch between the intended purpose of this type of credit and the way in which MYJAR allowed it to be used. The loans MYJAR provided Mr K with are meant to be a short-term solution to temporary cash flow problems as set out in the ILG. Yet MYJAR persistently and repeatedly provided consecutive loans to Mr K over an extended period of time – a period encompassing over two years (in addition to the initial almost two year period of lending).

From this perspective, having carefully considered everything, I think this chain of lending was unsustainable and harmful from loan 38 (it arguably reached this point earlier but I can't consider the loans earlier in the chain). For this reason, I don't think that there's any need for me to recreate individual, proportionate affordability checks for loans 38 to 68.

To explain, I've already said that there was a pattern, between loans 1 and 37, of Mr K taking out new loans shortly after repaying previous ones – by taking 37 loans in a period of 21 months it's clear there were many months were Mr K was borrowing more than once. And I think that, by loan 38, at the absolute latest, MYJAR ought fairly and reasonably to have regarded that pattern as established. In my view, Mr K was never able to recover and get himself on an even financial keel from, at least, this point onwards

While MYJAR may have been received payments from Mr K after this, he wasn't truly settling his loans over the life of the credit agreements. Instead, what Mr K was doing was borrowing further funds from MYJAR in order to cover the gap in his finances left by the repayment of the previous loan.

After loan 38, the amounts Mr K borrowed fluctuated. But the amount MYJAR continued to lend wasn't getting Mr K out of this persistent debt.

Looking at the loans in this chain (loans 38 – 68), I can see that:

- only 6 were for less than his starting amount of £300 – and even then Mr K went on to borrow more shortly afterwards on all bar one occasion
- on a number of occasions Mr K was given another loan by MYJAR on the same day that he repaid a previous one
- 24 of the 30 loans were for either the same amount or more as loan 38
- Mr K was given further loans even after repaying previous ones late

Over the over two year period of this loan chain, Mr K borrowed an average amount of £270. For access to this money, he paid approaching £1500 in interest, fees and charges.

I think, during these periods, that Mr K was, in effect, merely servicing his debt to MYJAR – in other words, he was paying interest without making inroads into the outstanding capital. And although the amounts fluctuated the amount being lent remained stubbornly persistent – Mr K's final loan was eventually repaid more than six months late. This should've shown MYJAR that these loans were unsustainable. Mr K was proving unable to clear his indebtedness within a reasonable period of time.

Yet MYJAR continued to provide credit repeatedly to Mr K over this chain of lending. In these circumstances, I can't see how it was fair and reasonable for MYJAR to have given Mr K all of these loans in the way that it did. The *effect* of allowing Mr K to take such a long sequence of loans was that he found himself paying high interest charges over an extended period for loans that were only intended to be for short-term use.

So given all of MYJAR's obligations, the short-term purpose of this kind of high-cost credit, and what I think is fair and reasonable taking into account the circumstances and everything I've covered in this section, I think that MYJAR acted unfairly in providing Mr K with loans 38 to 68.

Did Mr K lose out as a result of MYJAR's shortcomings in relation to loans 38 to 68?

I also think that Mr K suffered adverse consequences as a result of MYJAR unfairly giving him loans 38 to 68. I think this is the case for two key reasons.

Firstly, these loans had the effect of unfairly prolonging Mr K's indebtedness to MYJAR by allowing him to take expensive credit – which the rules and guidance made clear was only intended for short-term use – over an extended period of time.

These loans were very expensive. For regular and prolonged access to this money, Mr K paid many multiples in interest, fees and charges. And I think that the overall cost of these loans unfairly prolonged Mr K's adverse financial position.

Secondly, the sheer number of loans involved (even those successfully repaid by refinancing) is likely to have had implications for Mr K's ability to access mainstream credit. The greater the presence of short-term loans on Mr K's credit file the less likely Mr K was able to rehabilitate his finances and regain access to mainstream credit.

In my view, MYJAR giving Mr K such a large number of loans (which it shouldn't have done) unfairly placed him in a position where he was effectively trapped into taking very expensive high-cost loans over an extended period as no-one else would lend to him. He kept turning to MYJAR (and other similar providers) because he no longer had access to more sustainable forms of credit.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I'm intending to say that Mr K lost out because MYJAR unfairly gave him loans 38 to 68, which it ought to have realised were unsustainable and harmful for him. And this means that I think it would be fair and reasonable for MYJAR to put things right.

fair compensation – what MYJAR needs to do to put things right for Mr K

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean MYJAR putting Mr K in the position he'd now be in if he hadn't been given the loans I'm upholding.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr K *was* given the loans in question and he's used the funds – albeit in reality what he's effectively done is repaid previous loans with the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr K back in the position he would be in if he hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair, reasonable and proportionate way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for MYJAR to put things right in the following way.

interest and charges on the loans Mr K shouldn't have been given

As I've explained throughout this decision, MYJAR continually lending to Mr K left him in a position where he wasn't able to properly settle his debt. This was because Mr K kept having to find additional funds (I suspect through borrowing elsewhere) to pay the (increasing) interest and charges on his MYJAR loans. And then he had to borrow again from MYJAR to either repay others or cover the hole in his finances and he incurred more interest and charges when he did this. So to start with, I think that MYJAR should refund the interest and charges Mr K paid on loans 38 to 68.

Mr K also lost the use of the funds he used to pay the interest and charges, I now think that MYJAR needs to refund to him. As Mr K lost the use of these funds, I think that he should be compensated for this. We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. I've seen no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So MYJAR should pay Mr K 8% per year simple interest on the interest and charges he paid from the date those charges were paid to the date it settles Mr K's complaint.

Mr K's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

But I'm upholding Mr K's complaint about loans 38 to 68 because I think the overall pattern of lending increased Mr K's indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of MYJAR having given Mr K so many loans. Firstly it caused him to pay an excessive amount of interest and charges. And I've already explained how Mr K should be compensated for this.

I also explained that the sheer number of loans involved is likely to have had implications for Mr K's ability to access mainstream credit. The greater the presence of short-term loans on Mr K's credit file the less likely Mr K was able to rehabilitate his finances and regain access to mainstream credit. And I think my direction in relation to Mr K's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Mr K's credit history and creditworthiness so that a lender can make an informed decision on whether lend to him, I think that the mere presence of this many loans on Mr K's credit file, in itself, constitutes adverse information.

I think that this many short term loans appearing on Mr K's credit file is likely to continue adversely affecting Mr K going forwards. In these circumstances, I think that it is fair and reasonable for MYJAR to remove all reference to loans 38 to 68 from Mr K's credit file, as the number of loans in itself is adverse information.

All of this means that I think it would be fair and reasonable in all the circumstances of Mr K's complaint for MYJAR to put things right for him in the following way:

- refund all the interest, fees and charges for loans 38 to 68; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid by Mr K to the date of settlement†;
- remove all reference to loans 38 to 68 from Mr K's credit file.

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

my final decision

For the reasons I've explained, I'm upholding Mr K's complaint. MYJAR Limited (trading as "MYJAR") should pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K to accept or reject my decision before 1 December 2018.

Jeshen Narayanan
ombudsman

Loans considered as part of Mr K's complaint

Loan	Application date	Settled	Total borrowed	Charges
38	06 October 2011	22 October 2011	£300	£51.00
39	03 November 2011	18 November 2011	£300	£51.00
40	22 November 2011	05 December 2011	£100	£17.00
41	05 December 2011	20 December 2011	£300	£51.00
42	05 January 2012	20 January 2012	£300	£51.00
43	05 February 2012	20 February 2012	£300	£51.00
44	05 March 2012	20 March 2012	£300	£51.00
45	09 April 2012	27 April 2012	£100	£17.00
46	03 May 2012	18 May 2012	£300	£51.00
47	05 June 2012	20 June 2012	£300	£51.00
48	05 July 2012	20 July 2012	£300	£51.00
49	05 August 2012	20 August 2012	£300	£51.00
50	05 September 2012	20 September 2012	£300	£51.00
51	04 October 2012	19 October 2012	£300	£51.00
52	06 November 2012	26 November 2012	£300	£51.00
53	06 December 2012	21 December 2012	£300	£51.00
54	05 January 2013	20 January 2013	£200	£34.00
55	05 February 2013	20 February 2013	£300	£51.00
56	05 March 2013	20 March 2013	£300	£51.00
57	04 April 2013	19 April 2013	£300	£51.00
58	05 May 2013	20 May 2013	£300	£51.00
59	20 May 2013	04 June 2013	£100	£17.00
60	07 June 2013	22 June 2013	£100	£17.00
61	04 July 2013	19 July 2013	£300	£51.00
62	22 July 2013	09 August 2013	£100	£20.00
63	09 August 2013	27 August 2013	£300	£60.00
64	08 September 2013	26 September 2013	£300	£60.00
65	08 October 2013	26 October 2013	£300	£60.00
66	09 November 2013	27 November 2013	£300	£60.00
67	02 December 2013	20 December 2013	£400	£80.00
68	06 January 2014	26 July 2014	£400	£80.00