

complaint

Mrs P complains that MEM Consumer Finance Limited trading as Payday UK gave her loans she couldn't afford to repay.

background

Mrs P has told us that she borrowed money from Payday UK between 2009 and 2015. She doesn't feel Payday UK did enough to check she could afford the loans. Mrs P has agreed that our service should only look into the complaints about the loans lent to her by Payday UK after February 2010.

We contacted Payday UK several times about the complaint. They didn't get back to us with much information. As a result we don't know exactly how many loans Mrs P took out with Payday UK; the value of those loans and when they were taken out.

Our adjudicator considered the complaint. He couldn't determine what checks Payday UK completed before they lent money to Mrs P and so he went on to consider what Mrs P could afford. Based on what he saw, he reached the view that the Payday UK shouldn't have lent her money from February 2010 if they had carried out proportionate checks.

As the complaint couldn't be resolved informally, it's been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The rules and guidance applicable to short term lending at the time Mrs P was granted the loans required Payday UK to lend to her responsibly. This meant that before giving Mrs P the loans, Payday UK had to make sure she could afford to repay them. There was no set list of checks they had to perform, but any checks needed to be proportionate to factors like the size of the loan and Mrs P's circumstances.

When Payday UK responded directly to Mrs P about the complaint they said they lent her eight loans between 2009 and 2015. The sizes of those loans haven't been specified though and statements we have seen suggests she took out other loans with them that aren't set out in their response letter. Due to the lack of clarity, it's difficult to tell if Payday UK did enough to check if the loans they lent her were affordable. But like our adjudicator, I get the impression minimal checks were completed.

Payday UK have said to Mrs P that they found out how much she had coming in when she applied for a loan in 2015 and that they completed "internal and external checks". But what Payday UK haven't stated is what the results of the checks were and if they found out how much she earned when she took out the other 7 or more loans. I also note that Payday UK have said that Mrs P deferred payment of a number of the loans. At least two of them appear to have been deferred up to eight times. I think that this lending history in itself should have indicated to Payday UK that Mrs P may not have been able to afford the loans she took out after the loans that were deferred. Overall, I think it's unlikely Payday UK did enough to check if any of the loans they provided to Mrs P after February 2010 were affordable. So I've considered what Mrs P could afford at the time based on the information she has submitted to us.

Mrs P statements spanning the six year period from 2010 to 2016, show that she was in receipt of an income. But while she did have money coming in, the issue was that this income was nearly completely consumed by small, but frequent, gambling transactions. On a weekly basis Mrs P was generally spending hundreds of pounds on small bets. This left her a very little money. She was relying on her overdraft and was regularly paying over £100 in bank charges. Payday UK didn't necessarily have to check her statements but I think if they had queried her financial situation more, it would have become clear that it wasn't responsible to lend to her and that she couldn't sustainably repay the loans.

putting things right

For the reasons outlined I don't think Payday UK should have lent to Mr P from 11 February 2010. So they should:

- refund all interest and charges added to loans and advances they provided her with from 11 February 2010.
- pay interest at 8% simple per year on any refund from the date of payments to the date of settlement†;and
- deduct any capital amount outstanding from the interest and charges refunded and pay the balance to Mrs P. Payday UK should provide a statement setting out clearly how it's calculated this part of the refund.
- remove any adverse information about those loans from Mrs P's credit file.

†HM Revenue & Customs require Payday UK to take off tax from this interest. Payday UK must give Mrs P a certificate showing how much tax it's taken off if she asks for one.

my final decision

I partly uphold Mrs P's complaint against MEM Consumer Finance Limited trading as Payday UK and direct that they put things right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 23 January 2017.

Tope Adeyemi
ombudsman