

complaint

Mr L has complained about the lending he took out with Instant Cash Loans Limited (trading as "The Money Shop") in October 2012, November 2012, January 2013, April 2013, June 2013 and July 2013. He's said that it was irresponsible for The Money Shop to lend to him this money because the lending was unaffordable.

background

Mr L had a number of drawdowns on what The Money Shop says was a running credit agreement. His borrowing history is as follows:

- Drawdown one ("Drawdown 1") taken on 16 May 2012 for £300
- Drawdown two ("Drawdown 2") taken on 2 June 2012 for £400
- Drawdown three ("Drawdown 3") taken on 30 June 2012 for £450
- Drawdown four ("Drawdown 4") taken on 8 August 2012 for £450
- Drawdown five ("Drawdown 5") taken on 30 August 2012 for £450
- Drawdown six ("Drawdown 6") taken on 8 October 2012 for £450
- Drawdown seven ("Drawdown 7") taken on 2 November 2012 for £460
- Drawdown eight ("Drawdown 8") taken on 5 January 2013 for £460
- Drawdown nine ("Drawdown 9") taken on 30 January 2013 for £560
- Drawdown ten ("Drawdown 10") taken on 26 April 2013 for £500
- Drawdown eleven ("Drawdown 11") taken on 29 April 2013 for £160
- Drawdown twelve ("Drawdown 12") taken on 28 May 2013 for £500
- Drawdown thirteen ("Drawdown 13") taken on 6 June 2013 for £200
- Drawdown fourteen ("Drawdown 14") taken on 3 July 2013 for £300
- Drawdown fifteen ("Drawdown 15") taken on 8 July 2013 for £300
- Drawdown sixteen ("Drawdown 16") also taken on 8 July 2013 for £600
- Drawdown seventeen ("Drawdown 17") taken on 17 July 2013 for £140
- Drawdown eighteen ("Drawdown 18") taken on 26 July 2013 for £740 – Mr L deferred repaying this Drawdown on three occasions.
- Drawdown nineteen ("Drawdown 19") taken on 4 December 2013 for £700
- Drawdown twenty ("Drawdown 20") taken on 4 January 2014 for £150– Mr L deferred repaying this Drawdown on one occasion.

One of our adjudicators looked at what The Money Shop and Mr L said. She thought the checks The Money Shop carried out before agreeing to lend the drawdowns in question were only proportionate and sufficient for some of them. And she thought that if The Money Shop had carried out proportionate and sufficient checks it would most likely have seen that it shouldn't have lent to Mr L from drawdown six onwards. So our adjudicator thought Mr L's complaint should be partially upheld.

Mr L accepted our adjudicator's assessment. But The Money Shop only agreed that it shouldn't have lent drawdowns 9,10,12,16,18,19 and 20. As Mr L hasn't disputed our adjudicator's decision not to uphold his complaint about drawdowns 1-5 and The Money Shop has accepted it shouldn't have given Mr L drawdowns 9,10,12,16 and 18-20 (and it has agreed to do what I would ask if I were to uphold the complaint about these drawdowns), I won't be looking at those drawdowns.

So this decision is only looking at those drawdowns which remain in dispute. In other words, I'm only looking at whether The Money Shop should've given Mr L drawdowns 6-8, 11,13-15 and 17.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about short term lending on our website. And I've used this approach to help me decide Mr L's complaint.

Having carefully thought about everything I've been provided with, I'm upholding Mr L's complaint. I'd like to explain why in a little more detail.

why I don't think that the checks The Money Shop carried out before agreeing to lend to Mr L were proportionate and sufficient

When lending money to a consumer a lender should take proportionate steps to ensure a consumer will be able to repay what they're borrowing in a sustainable manner without it adversely impacting on their financial situation. A lender should gather enough information so that it can make an informed decision on the lending. The guidance and rules don't set out compulsory checks but they do list a number of things a lender might wish to take into account before agreeing to lend. But any checks need to be proportionate and should take into account a number of things, including things such as how much is being lent and when what's being borrowed is due to be repaid.

Mr L has complained about drawdowns that were supposed to be repaid in one payment. As a result, the checks The Money Shop carried out had to provide enough for it to be able to work out whether Mr L could afford to repay what he was borrowing plus the interest when it fell due. The Money Shop says the information it gathered suggested it was reasonable for it to agree to lend to Mr L. It has said that Mr L provided the details of his income and that it carried out a credit check, although it hasn't provided the details of what this showed.

It has also referred to Mr L having repaid most of these drawdowns when they were due. Finally it has said that it didn't need to do more than this because the guidance in place at the time referred to the types of checks that may or might be done – none of these checks were required for all applications.

I've thought about what The Money Shop has said. But overall given everything I think The Money Shop most likely knew about Mr L at the respective times, I think that it would've been proportionate to carry out further checks before agreeing to these further drawdowns.

The Money Shop has said that it carried out credit checks on Mr L before it agreed to lend to him. And despite being asked to provide us with the details of what these checks showed, The Money Shop hasn't provided the detail on what these checks showed. As The Money Shop has said that it carried out credit checks. I don't think that it would be fair to ignore this. So we've looked at the information Mr L's provided us with, to get an idea of what the credit checks The Money Shop carried out are likely to have shown.

I accept that the information provided might not exactly replicate what The Money Shop would've seen at the respective times. But in the absence of anything else and as The Money Shop hasn't provided the results of its own searches, it remains the best indication I

have of what The Money Shop is likely to have seen. So I think it's perfectly reasonable to rely on this information.

Mr L has provided us with information to show that he'd taken quite a large amount of short-term lending with another provider in the months leading up to October 2012 (which is when drawdown six took place). Indeed the payment for one of these loans is almost what The Money Shop had verified as being Mr L's income when it asked him for evidence of it.

I don't think it's unreasonable to conclude any reasonable credit searches that The Money Shop carried out would've shown this. The information Mr L has provided also shows he was repeatedly borrowing from other short-term lending providers throughout the period concerned. So I think it's likely that any credit checks The Money Shop carried out would've shown that Mr L had been borrowing from other short-term lenders. By this stage Mr L had also taken a number of drawdowns from The Money Shop. And he was borrowing more fairly shortly after repaying previous borrowing.

I accept that there are lots of reasons why a consumer may wish to take out short-term lending. And a consumer taking out more than one short term loan doesn't mean that a borrower won't be able to repay a later one. But where a lender is aware of such things, I don't think it's unreasonable or disproportionate to expect it to carry out further, more rigorous, enquiries in order to find out whether a consumer is going to be able to repay what they are committing to.

And I think that if The Money Shop had carried out further checks here, it would've realised that far from using short-term lending to tide him over a temporary period (which is what short-term loans were designed for), Mr L was becoming increasingly reliant on such lending to repay other loans and meet his day to day commitments.

So overall given what The Money Shop is likely to have uncovered in its credit checks and what it was learning about Mr L throughout its lending history with him, I don't think it was reasonable to ignore this information and instead simply agree to lend based on the information Mr L had initially provided.

I know The Money Shop has said Mr L paid back the vast majority of these drawdowns on time and without incurring any late fees. But I think that this is a somewhat simplistic assessment of things. And I don't think this is an indication of the strength of his overall financial position. After all if Mr L's financial circumstances were as healthy as The Money Shop is appearing to suggest why would he have taken so much short-term lending, which cost him a substantial amount in interest.

Taking everything I've seen on this case together, I think it would've been proportionate for The Money Shop to have carried out further checks to verify whether Mr L would be able to make the payments he was committing to. So I think that The Money Shop failed to carry out proportionate and sufficient checks before agreeing to the drawdowns I'm looking at.

what I think proportionate and sufficient checks would most likely have shown

Even though I don't think that the checks The Money Shop carried out were proportionate and sufficient, this doesn't, on its own, mean that Mr L's complaint should be upheld. After all if further checks would've simply shown The Money Shop that Mr L would most likely have been able to repay his drawdowns when they became due (and so there was no reason why The Money Shop shouldn't have lent to Mr L), then further checks wouldn't have made a

difference. This is because Mr L won't have lost out because of The Money Shop's failure to carry out proportionate and sufficient checks and there'd be no reason for me to uphold the complaint.

But if further checks would most likely have shown Mr L was unlikely to have been able to repay the drawdowns when they became due then The Money Shop would've seen that it shouldn't have lent to him. And this would mean that Mr L lost out because of The Money Shop's failure to carry out proportionate and sufficient checks. So there'd be grounds to uphold Mr L's complaint.

As proportionate and sufficient checks don't appear to have been carried out I can't know what exactly these checks would have shown. But Mr L has provided us with evidence of his financial circumstances at the time he asked for the drawdowns in question. And I've been able to get a picture of what his financial circumstances were like.

Of course I accept that this isn't perfect as different checks show different things. And just because something shows up in the information Mr L has provided it doesn't mean that it would've shown up in any additional checks that The Money Shop might've carried out. But the information Mr L has provided is the best indication I have of what his financial circumstances were like at the time of the respective applications. And in the absence of anything else I think it's perfectly reasonable to rely on it.

I've carefully looked through everything Mr L has provided and I've also thought about everything both parties have said. Having done so, I don't think Mr L had the capacity to take on the drawdowns I'm looking at. While the monthly income The Money Shop had for Mr L looks to be less than what he was actually earning at the time, most of his income was taken up by his existing monthly expenditure. And it seems to me that Mr L was already committed to making the relevant payments. I've also seen that Mr L looks to have been reliant on short-term lending and other forms of unsustainable borrowing to meet his day to day commitments as well as repay similar drawdowns with other lenders. Indeed more than £2000 was going to other short-term loan providers alone in the month drawdown six was taken.

I can't see how Mr L would ever have been able to make the payments to drawdowns 6-8 in a sustainable manner and without it adversely affecting his financial position. And from what I've seen The Money Shop has agreed that it shouldn't have lent drawdowns 9,10,12,16 and 18-20, because it agreed that proportionate checks would've shown that this money was being used for gambling.

So I find it somewhat strange for The Money Shop to be suggesting that it would've given some of the other drawdowns simply because they were for smaller amounts. As far as I'm concerned, if The Money Shop accepts that it wouldn't have given some of these drawdowns because proportionate checks would've shown the funds were being used for gambling (which appears to be the case here), then it follows that it wouldn't have given him smaller amounts to use for the same purpose either.

Overall I think that if The Money Shop had taken a reasonable look into Mr L's circumstances, before agreeing to the drawdowns in question, as it should've done given the information it had and what it ended up knowing during the course of its business relationship with him, it would've seen Mr L was unlikely to be able to repay what he was being asked to commit to when it became due.

So he wasn't in a position to be able to take on any of the borrowing I've been asked to look at and I don't think the funds would've been given if The Money Shop had carried out proportionate checks. This means that I think not only did The Money Shop fail to carry out proportionate and sufficient checks before lending to Mr L, but that Mr L also lost out as a result of this.

what The Money Shop should do to put things right

To put things right for Mr L, The Money Shop should:

- refund all the interest and charges applied on the drawdowns I've looked at (drawdowns 6-8, 11,13-15 and 17), as well as on the drawdowns it has already agreed it shouldn't have given (drawdowns 9,10,12,16,18,19 and 20) - in other words all of the drawdowns taken from 8 August 2012 onwards; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- remove any adverse information recorded on Mr L's credit file as a result of these drawdowns;

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

my final decision

For the reasons given above, I uphold Mr L's complaint. Instant Cash Loans Limited (trading as The Money Shop) should pay Mr L compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 January 2017.

Jeshen Narayanan
ombudsman