

complaint

Mr R complains that Instant Cash Loans Limited (trading as Payday UK) gave him loans that he couldn't afford to repay.

background

The background to this complaint was set out in my provisional decision dated November 2017. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I didn't think the complaint should be upheld. I invited both parties to let me have any further comments and evidence. Payday UK has said that it agrees with my decision. Mr R has said that he is disappointed by my provisional findings, and doesn't think I've fully understood his financial situation. He has also said he would have hoped that Payday UK would have been chased for a response to our adjudicator's assessment.

my findings

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

As I said in my provisional decision, I expected that Mr R would be disappointed by my decision. And I want to reassure him, as I did in my provisional decision, that I fully understand the financial difficulties he was facing at the time he took these loans from Payday UK.

But my responsibility here isn't to look at whether the loans were actually affordable for Mr R. And for the avoidance of doubt, I don't think they were. My responsibility is to look at whether Payday UK did proportionate checks before giving Mr R the loans. And if Payday UK didn't do proportionate checks I need to look at whether proportionate checks would have shown the loans to be unaffordable.

I don't think that Payday UK did proportionate checks on all of Mr R's loans. But I also don't think that proportionate checks would have shown Payday UK the extent of Mr R's financial problems – it was reasonable for Payday UK to rely on the information Mr R provided when he made his applications. So I think it was fair for Payday UK to lend to him.

It would've been helpful if Payday UK had responded to our adjudicator's assessment. But I don't think Payday UK would have accepted that assessment and offered any compensation to Mr R. So the outcome would have been the same – the complaint would've been passed to an ombudsman to decide.

my final decision

For the reasons given above, and in my provisional decision, I don't uphold the complaint or make any award against Instant Cash Loans Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 January 2018.

Paul Reilly
ombudsman

EXTRACT FROM PROVISIONAL DECISION**complaint**

Mr R complains that Instant Cash Loans Limited (trading as Payday UK) gave him loans that he couldn't afford to repay.

background

Mr R was given a total of six loans by Payday UK between September 2013 and September 2016. But Instant Cash Loans wasn't responsible for Payday UK when the first loan was taken in 2013. So Mr R's complaint about that loan has been dealt with separately.

In this decision I will consider the five loans that Mr R was given by Payday UK between March 2015 and September 2016. I will though take account of the earlier loan when considering what Payday UK knew about Mr R, but given there was an 18 month gap between the two loans I don't think it has much influence on my decision.

Most of Mr R's loans from Payday UK were repayable in instalments – but the first loan I'm considering was repayable in a single payment. All Mr R's loans from Payday UK have been fully repaid. A summary of his borrowing is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount	Number of Repayments
1	09/03/2015	23/04/2015	£ 150	1
2	05/05/2015	30/06/2015	£ 300	2
3	05/05/2016	08/08/2016	£ 300	3
4	09/08/2016	23/08/2016	£ 250	3
5	02/09/2016	20/11/2016	£ 250	3

Mr R's complaint has been assessed by one of our adjudicators. He thought that the checks Payday UK did before giving Mr R the first two loans were sufficient. But he thought Payday UK should have done more checks before agreeing the remaining loans. And he thought that better checks would have shown Payday UK that Mr R couldn't afford to repay loans 4 and 5. So he asked Payday UK to pay Mr R some compensation.

Disappointingly Payday UK hasn't responded to that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

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 the loans were offered.

Payday UK was required to lend responsibly. It needed to make checks to see whether Mr R could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr R was borrowing, and his lending history, but there was no set list of checks Payday UK had to do.

Payday UK has told us about the checks it did before lending to Mr R. It asked him for details of his income before giving him each loan. And it did a credit check before the first and third loans. It has given us the results of those checks.

The first loan that Mr R took required him to repay just over £200 the following month. Mr R had told Payday UK that his normal income was £1,650. And the results of the credit check didn't show anything that should have caused additional concern to the lender. So since this was the first loan Mr R had taken from Payday UK for almost 18 months I think the checks Payday UK did here were reasonable. I don't think it was wrong to give him this loan.

A couple of weeks after repaying that loan, Mr R asked to borrow again. The amount he asked to borrow was double what he'd taken on his last loan. But he agreed to repay this loan in two instalments, so the amount he needed to pay each month was less than the £200 he'd repaid previously. So once more, I think the checks Payday UK did here were enough, and that it wasn't wrong to give this loan to Mr R either.

There was then a gap of almost a year before Mr R asked for another loan. I think that period of time would be sufficient for Payday UK to consider Mr R's application afresh. So, quite sensibly in my opinion, Payday UK did a new credit check on Mr R. But the results of that check weren't as good as the previous one. Although they didn't show Mr R was having problems making any of his repayments they did show that he'd opened, and closed, a large number of accounts over the past months. And that he was making relatively large repayments across other accounts each month.

So although Mr R was now asking to repay this loan over three months and, as a result, his repayments were just under £140 each month, I don't think the checks Payday UK did were sufficient from this point onwards. It should have been clear to Payday UK that it was likely Mr R was borrowing from other short term lenders at the same time. And so I think it would have been proportionate for this loan, and the remaining two loans, to have asked Mr R for details of his normal expenditure, and to have specifically asked him about any other short term finance that he was using.

But although I don't think the checks Payday UK did from loan 3 onwards were sufficient, that in itself doesn't mean that Mr R's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Payday UK that Mr R couldn't sustainably afford the loans. So I've looked at Mr R's bank statements, and what he's told us about his financial situation, to see what better checks would have shown Payday UK.

There is no doubt, having looked at Mr R's statements, that he was facing significant financial difficulties at the time he was taking these loans. He has told us that he had a gambling addiction at the time. And it is clear from the number and value of the gambling transactions on his statements that this was the case.

But I need to look at what Payday UK would have discovered from what I consider to be proportionate checks. And I don't think, for any of the loans, that it would have been proportionate to expect Payday UK to have independently verified the information Mr R was providing about his finances. So I think it highly unlikely that proportionate checks would have made Payday UK aware of Mr R's uncontrolled expenditure on gambling.

Mr R has told us that he was living with his parents at the time so had limited outgoings. He said he paid some rent when he could, but he didn't have any formal agreement about how much he paid. And that seems to match what I can see on Mr R's bank statements – there are very few transactions that relate to normal living costs. I have also looked at how much Mr R was repaying to other payday lenders at the same time. And although these amounts were sometimes relatively large, they were easily covered by the income that he was receiving.

So I currently think that if Payday UK had done what I consider to be proportionate checks it would have seemed that Mr R was able to afford to repay all the loans that he was given. So I don't currently think Payday UK did anything wrong in giving them to him.

I know that my provisional decision will be very disappointing for Mr R. And I'm not underestimating the level of financial problems that it is clear he was facing. But I don't think proportionate checks would have led to Payday UK being aware of these – and I think it was reasonable here for the lender to rely on the information Mr R was providing rather than verifying it independently.

