

complaint

Mr N complains about loans he took out with Instant Cash Loans Limited (trading as Payday UK) which he says shouldn't have been given to him because they weren't unaffordable.

background

The background to this complaint was set out in my provisional decision in July 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 was minded to uphold the complaint. I invited both parties to let me have any further comments and evidence. Mr N has told us he doesn't have anything further to add. But Payday UK has given us some additional comments.

I've carefully considered everything Payday UK has told us. In summary it says;

- Mr N's borrowing was under 50% of his declared income.
- Payday UK was under no obligation to obtain bank statements or conduct a credit search before each application.
- The income and expenditure information provided by Mr N showed that he had enough disposable income to afford the loans and
- Mr N was responsible for providing accurate income and expenditure information.

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 explained in my provisional decision, there was no set list of checks Payday UK had to do. So I agree with Payday UK when it says that it wasn't required to carry out a credit check before each lending decision. However, Payday UK needed to assess whether the loans were affordable.

In this case, due to the number of previous loans Mr N had taken, I don't think it was sufficient of Payday UK to have relied on the income and expenditure information Mr N had given it. And, as I explained in my provision decision, I think it was proportionate for Payday UK to have had the fullest possible understanding of Mr N's financial situation.

I also accept the guidance doesn't say that Payday UK should review Mr N's bank statements. But this was just one, of a number of ways that it could've obtained a full understanding of Mr N's position at the time each loan was approved. And had Payday UK checked what it was being told, I think it would've become aware that Mr N was gambling and he had underreported his outgoings. And I don't think, knowing this Payday UK would've lent him the loans.

So having considered the additional comments Payday UK has given us, and everything I saw before making my provisional decision, I still think Payday UK was wrong to lend to Mr N.

what Payday UK should do to put things right

To put things right for Mr N, Payday UK should:

- refund all the interest and charges paid by Mr N on all of his loans,
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement † and;
- remove any adverse information recorded on Mr N's credit file because of these loans.

†HM Revenue & Customs requires Payday UK to take off tax from this interest. Payday UK must give Mr N 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 N's complaint.

Instant Cash Loans Limited should put things right for Mr N as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 September 2017.

Robert Walker
ombudsman

EXTRACT FROM PROVISIONAL DECISION**background**

A summary of Mr N's borrowing history can be found below;

loan number	loan amount	received date	actual repayment date	monthly repayment	number of repayments
1	£150.00	13/03/2015	22/05/2015	£110.28	2
2	£430.00	26/05/2015	25/09/2015	£172.43	4
3	£250.00	05/10/2015	23/10/2015		1
4	£150.00	09/11/2015	24/12/2015	£93.39	2
5	£280.00	31/12/2015	25/04/2016	£108.86	4
6	£200.00	12/05/2016	17/07/2016	£149.22	2

Although these are the first loans Mr N had taken with Payday UK's parent company he had previously had seven other loans – which formed part of the same chain of borrowing. So I've kept this in mind while considering this complaint.

An adjudicator looked at Mr N's complaint and didn't think any of the checks it carried out went far enough. And had sufficient checks been carried out Payday UK would've realised that Mr N's loans were unaffordable. So she recommended that interest and charges on all of the loans be refunded.

Payday UK didn't agree with the adjudicator's recommendation. In response it made a number of points, including;

- Payday UK wasn't required to carry out a credit check before each loan,
- Payday UK relied on the information given to it by Mr N,
- Payday UK wasn't required to see Mr N's bank statements,
- Mr N repaid his final loan early so he wasn't charged as much interest as he may otherwise have been and this doesn't indicate that Mr N was having financial difficulties.

Payday UK still didn't agree with the adjudicator's recommendation, so the case has been passed to me for a final decision.

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. Having carefully thought about everything I've been given, I'm intending to uphold Mr N's complaint and I've explained my reasons below.

Payday UK had to gather enough information to be able to make an informed decision as to whether or not it was going to lend. The guidance and rules didn't set out what checks must be done before lending was approved. However, Payday UK needed to conduct enough checks to make sure the loans were affordable. And these needed to be proportionate to a number of things such as the size of the loan and when the loan was due to be repaid.

But even if the checks Payday UK carried out weren't proportionate, that alone doesn't mean Mr N's complaint should be upheld. I say this because, it's possible, had further checks been carried out by Payday UK they would've shown Mr N was able to afford his loans. So Payday UK wouldn't have been wrong to lend him the money.

Payday UK says that for each lending decision it asked for Mr N's income and then used its own commercial judgement to decide whether or not it was going to lend. Payday UK also asked Mr N some questions about his expenditure and Payday UK says it was entitled to rely on the information it was given.

Payday UK says that based on the information it gathered about Mr N, it was reasonable to lend to him. But I've thought about what Payday UK says and Mr N's circumstances at the time each loan was approved. And having done so, I don't think the checks Payday UK carried out were proportionate for any of the borrowing.

The majority of Mr N's borrowings were instalment loans. So Mr N would've had a number of paydays in order to repay what he'd borrowed and I've kept this in mind when considering this complaint.

Given the number of loans that Mr N had already been given with Payday UK's other parent company I'm satisfied this was one chain of borrowing – so Mr N's first loan was actually his eighth loan.

I appreciate Payday UK took details of Mr N's income and expenditure details for all the loans. But I don't think these checks went far enough considering Mr N's borrowing history and what Payday UK ought to have already been aware of. Payday UK should've had a full understanding of his financial situation. It could've done this a number of ways such as asking for proof of his outgoings, or as I've done here, reviewed Mr N's bank statements.

Having looked at Mr N's bank statements – I can see his income is broadly in line with what Payday UK had recorded. But, Mr N had underreported his outgoings to Payday UK, which it would've been aware of, if it had carried out sufficient checks. I can also see from the bank statements that Mr N was borrowing from a number of other payday lenders and was spending a significant amount of money each month on gambling. So along with his regular living costs he didn't have enough disposable income to be able to afford his repayments. And had Payday UK carried out proportionate checks, it would've most likely seen that Mr N couldn't afford to repay his loans and it wouldn't have lent to him.