

## complaint

Mr N complains about payday loans he took out with MEM Consumer Finance Limited (trading as Payday UK) which he says were unaffordable.

## background

A summary of Mr N's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date
1	£150.00	13/01/2014	28/01/2014
2	£200.00	30/01/2014	28/02/2014
3	£250.00	09/03/2014	28/03/2014
4	£430.00	03/04/2014	28/04/2014
5	£150.00	12/07/2014	28/07/2014
6	£250.00	05/01/2015	23/01/2015
7	£200.00	02/02/2015	25/02/2015

Mr N had further loans after February 2015, but Payday UK had a different parent company at this time, so the remaining loans will be looked at in a different decision.

An adjudicator reviewed Mr N's complaint and didn't think the checks carried out by Payday UK went far enough for some of the borrowing. She felt the checks on loans one and two went far enough. But for loan three, Payday UK ought to have asked some further questions about Mr N's finances considering how often he was borrowing. However, had sufficient checks been carried out, it still would've lent to Mr N.

The adjudicator didn't think the checks on the remaining loans were proportionate and had sufficient checks been carried out Payday UK would've seen that the Mr N couldn't afford to repay the loans. So she recommended that the interest and charges from loan four be refunded. Payday UK didn't agree with the adjudicator's recommendation.

In my provisional decision I set out why I was minded to partly uphold the complaint. I invited both parties to let me have any further comments and evidence. Mr N didn't have anything else to add and Payday UK has told us it accepted the conclusions in the provisional decision.

## 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.

Both parties have agreed with the conclusions I reached in my provisional decision. So I see no reason to depart from what I previously said. And below I've explained why I've partly upheld Mr N's complaint.

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, that 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 before each lending decision it asked Mr N for his income and then used its own commercial judgement to decide whether or not it should lend to him. Payday UK also carried out a credit check on Mr N's first loan. And from April 2014, Payday UK also took details of Mr N's expenditure which it used to help it to decide whether it was going to lend.

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.

### *Loans 1 and 2*

For the first two loans, Mr N gave details of his income and Payday UK carried out an identity check with a credit reference agency. But I think Payday UK should've wanted some further information about Mr N's outgoings considering the size of his loan repayments.

But in April 2014 Payday UK took details of Mr N's expenditure, and I don't think it's unreasonable to use this information when assessing the first two loans. Having looked at the information Mr N gave to Payday UK (which it was entitled to rely on) it showed that he had enough disposable income to afford the repayments. So even though for these loans I don't think Payday UK carried out proportionate checks, I think had more sufficient checks been carried out it would've most likely seen the loans were affordable. So I'm not upholding Mr N's complaint about these loans.

### *Loan 3*

Mr N had continued to borrow from Payday UK and the amount he was borrowing was steadily increasing. So I think Payday UK ought to have gone further than just asking for Mr N's income and expenditure. I think, in addition to asking about Mr N's outgoings that it should've asked him some questions to see whether he had any other short term credit commitments.

I can see from the information Mr N gave Payday UK about his expenditure when he took a loan in April 2014 that he declared outgoings of £450. So, I've checked his bank statements to see what his outstanding payday commitments were at the time, and having done so I can see that Mr N owed other short term lenders over £500. Taking his outstanding short term commitments, together with his declared expenditure, Mr N couldn't afford the repayments he was committed to making. And Payday UK would've been aware of this had it carried out proportionate checks.

### *Loans 4 and 5*

Mr N by now was becoming a regular borrower, so I think Payday UK should've thought very carefully about the checks it was carrying out. I appreciate by this point, Payday UK had started to collect information about Mr N's outgoings. But by now Payday UK should've been verifying the information that it was being given. It could've done this a number of ways such as asking for evidence of Mr N's outgoings, or reviewed his bank statements, as I've done here.

Mr N's bank statements are the best indication of his ability to afford the loans at the time. So I don't think it's unreasonable to rely on these. Having looked at his bank statements from the time these loans were taken out, Payday UK would've most likely seen that the income was broadly correct. But it also would've seen that he owed a number of other payday lenders a significant amount of money. Payday UK would've also seen that he was spending a substantial amount each month on gambling. So Mr N didn't have enough disposable income to cover his living costs as well as repay what he had borrowed from Payday UK. And Payday UK would've been aware of Mr N's dependency on payday loans had it carried out proportionate checks and knowing this it wouldn't have lent to him.

I've also considered what Payday UK says about the gap between these loans. But I don't think the gap is big enough to have made it think that Mr N's financial position had returned to a more stable footing.

### *Loans 6 and 7*

Payday UK says the checks for these loans went far enough and we should consider the break of five and half month break between lending, which would've been enough for Mr N time to have sorted his finances out. But, I don't agree considering what Payday UK ought to have known about Mr N and the fact that his sixth loan was larger than his fifth loan. Taking all of this together, I think Payday UK ought to have carried out the same level of checks that it did from when it last lent to him, meaning it should've had a full understanding of Mr N's financial situation.

I've again used Mr N's bank statements, as these are the best indication as to whether he could afford the loans at the time. Having looked at Mr N's bank statements – I can see that he wasn't earning as much as he told Payday UK. And his financial position hadn't changed since his last loan. On top of his regular outgoings, he was still borrowing from other lenders and was still spending a significant amount each month on gambling. Had Payday UK carried out proportionate checks it wouldn't most likely seen that Mr N didn't have any disposable income to be able to afford his repayments and it wouldn't have lent to him.

I've considered that Payday UK says that the guidance at the time didn't require it to gather bank statements. But, the affordability tests were customer focused, and given Mr N's borrowing history I think it needed to have verified the information it was being given. And, as I've mentioned above, had it done so, I don't think Payday UK would've lent to him.

### **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 loans 3, 4, 5, 6 and 7.
- 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 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 partly uphold Mr N's complaint.

MEM Consumer Finance 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**