

complaint

Mr S complains that Instant Cash Loans Limited, trading as Payday UK, approved loans he applied for which were unaffordable and it was irresponsible of Payday UK to do that.

background

Mr S applied for and was approved for several loans and I set out three of them here with brief details:

number	date taken	amount	instalment amount/period	date repaid and closed
1	11 June 2015	£100	3 x about £53	7 September 2015
2	15 September 2015	£100	5 x about £36	5 January 2016
3	3 May 2016	£1,000	12 x about £161	13 April 2017

In December 2015 Mr S received a refund under a Regulatory Repair Scheme for a loan taken by Mr S in July 2014. It does not seem to be part of this complaint but even if it was then it seems that Payday UK have addressed it under the redress scheme in 2015.

Mr S complained to Payday UK about these three loans through his representative in October 2017. Payday UK investigated, and did not think that it had done anything wrong in relation to the first two loans.

Payday UK conceded that it had not done enough checks in relation to Loan 3 but was not able to investigate further as Mr S did not send it the information it needed. It had asked for his bank statements for April 2016 in order to come to a conclusion. Payday UK has told us that it did not receive them.

We were sent copies of Mr S' bank statements for one account and we received his representative's submissions on his behalf. Our adjudicator's view was that Payday UK had done nothing wrong and so he thought that Mr S' complaint ought not to be upheld.

Payday UK agreed with this opinion. Mr S' representative told us that Mr S did not agree and so the complaint remains unresolved and was passed to me for a decision. In July 2018 I issued a provisional decision, a large part of which is added to the end of this decision and forms part of it.

Payday UK has said that it has nothing to add. Mr S has responded to my provisional finding that I was not in a position to assess Mr S' full financial position in early May 2016 for the purposes of Loan 3. He has sent us explanations about transfers into his account. So I am in a position to finalise my decision.

my findings

I have reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have taken into account the law, industry practice and any relevant regulations at the time.

In relation to Loans 1 and 2 my provisional decision was that I was not planning to uphold Mr S' complaint for these two loans. This has not changed.

In respect of Loan 3, I would have expected Payday UK to have verified Mr S' income especially as he had declared it as being a very different figure for Loan 3 to the figure declared in 2015. Also I would have expected it to carry out a full review to assess Mr S' outgoings and regular commitments and any other short term loan debts he may have had outstanding as at May 2016 before approving Mr S' application.

Payday UK has conceded that it did not do this and so I have gone on to look at what it would have found out if it had done that in 2016. Now that I have the additional information from Mr S I am in a position to look at his financial position in more detail.

Mr S has not sent any copy bank statements for the second bank account ("business account") but he has explained that the transfers of money are wages to him from his business account.

So I have relooked at the copy statements I do have in relation to Loan 3. Using the new information from Mr S then I can see that he transferred his wages on irregular dates and for differing sums. The wages transfers ranged from about £2,600 in February 2016 to about £3,310 in May 2016. I do not have all of the statements for April only 11 to end April 2016 and the wages in from the business account for those *three weeks* were about £2,670. So it's likely that the wages for the whole of April 2016 were about £3,000.

There were credits from betting sites which for income purposes I have not taken account of. Other unidentified or unexplained credits I have not included as part of Mr S' income. But I have seen that these do occur.

One set of statements (8 March to 9 April 2016) is missing. I have not got enough statement information to work out the wages figure for March 2016, but I do not need it as I have been able to work out a rough pattern using the information from the other months.

Mr S' representative has told us that Mr S spent money on living costs adding up to about £699 a month – rent of £300, utilities of £79, council tax of £90, landline and mobile phones of £50, gym membership £30 and food £150.

I cannot see all of these outgoings on Mr S' bank statements but he has explained to me that he often took cash to pay some of these things. I can see that Mr S withdrew a lot of cash - for example: February 2016 about £700, April 2016 (three weeks) - £400 and May 2016 over £1,100. So I accept this aspect as being a reasonable explanation.

In addition I can see that Mr S was paying for two cars (tax, petrol and insurance) and had regular bank charges (about £30), was paying a debt management agency about £30 each month and also had loan commitments amounting to about £300 a month. So I think that his total outgoings may well have amounted to about £1,500 each month and by making an allowance for this figure I am deliberately choosing a generous sum for Mr S' benefit.

In addition I can see from Mr S' statements and his personal credit file that he was using other short term lenders ("STL") for loans in addition to those from Payday UK. In May 2016, it seems that Mr S *could* have owed as much as £800 to other lenders that month. With knowledge of more detail on these loans it may have been less but for the purposes of this decision I am taking the STL debt as at 3 May 2016 as being at the higher end of the scale.

Therefore, when assessing Mr S' complaint in relation to Loan 3, and taking into account the information I have gathered as explained above I come to the conclusion that Mr S was likely able to afford the loan repayments of about £161 each month for 12 months.

I say this because subtracting Mr S' outgoings from his income he still seems to have had several hundred pounds left with which to repay Payday UK. I have taken Mr S' wages as being a median figure of about £3,000 a month. I have taken Mr S' total outgoings as being his living costs, regular financial commitments, loans and the other STL repayments outstanding on 3 May 2016 to be about £2,300 which I consider to be at the high end of the scale. And still I think Mr S would have been able to afford the Loan 3 repayments.

In my PD I addressed the gambling element and my view has not changed.

my final decision

My final decision is that I do not uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 13 September 2018.

Rachael Williams
ombudsman

provisional decision (extract) dated 18 July 2018**background**

Mr S applied for and was approved for three loans and I set out the brief details here:

number	date taken	amount	instalment amount/period	date repaid and closed
1	11 June 2015	£100	3 x about £53	7 September 2015
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Payday UK conceded that it had not done enough checks in relation to Loan 3 but was not able to investigate further as Mr S did not send it the information it needed. It had asked for his bank statements for April 2016 in order to come to a conclusion. Payday UK has told us that it did not receive them.

We were sent copies of Mr S' bank statements for one account and we received his representative's submissions on his behalf. Our adjudicator's view was that Payday UK had done nothing wrong and so he thought that Mr S' complaint ought not to be upheld.

Payday UK agreed with this opinion. Mr S' representative told us that Mr S did not agree and so the complaint remains unresolved and has been passed to me for a decision.

my provisional findings

I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have taken into account the law, industry practice and any relevant regulations at the time.

From 1 April 2014 the Financial Conduct Authority (FCA) regulations came into force and its Consumer Credit sourcebook (CONC) covers the rules for lenders about responsible lending. These were the rules which applied to Mr S' applications.

Among other things, the regulations say lenders should carry out affordability checks which are proportionate to the circumstances of the loan. The regulations also say repayments should be sustainable, meaning repayable from the borrower's income or savings.

In relation to Loans 1 and 2, these were relatively modest sums and early on in the lending relationship between Payday UK and Mr S. I think it was a proportionate approach for Payday UK to rely on the information it had been given by Mr S on both applications.

For Loan 1, Mr S had told Payday UK that his income was £1,700. In addition it had information that Mr S' total outgoings were £430 a month and he had other monthly credit commitments of £100. That would have meant that Payday UK could calculate that Mr S would have had about £1,170 left after paying his regular commitments – based on what it had been told. So I think that the £100 loan over three payment dates would have appeared affordable to Payday UK.

For Loan 2 Mr S had told Payday UK that he had an income of £2,500 and total monthly outgoings of £970 which, on the information Payday UK had, meant it could have calculated Mr S had £1,730 left with which to repay the loan of £100. It was arranged as five repayment sums of about £35 each.

Payday UK did some checks with a credit reference agency for both applications and I can see that it did discover that Mr S had a County Court Judgment in 2011, but it showed as being satisfied. So I doubt that record from several years earlier would have made a difference for the Loans 1 and 2 applications.

I do not consider that Payday UK had to, or would have been expected to, do more. I am planning not to uphold Mr S' complaint in relation to Loans 1 and 2.

Loan 3 is somewhat different. Mr S applied for £1,000 four months after repaying Loan 2. This was ten times the amount of either Loan 1 or 2. Given the increase in the amount being applied for I would have expected Payday UK to carry out additional checks.

Added to this Mr S had told Payday UK that his income was £4,200 and that his regular expenses and credit commitments were £1,050 in total. I think it is an extraordinary situation that a professional lender would accept such massive changes in figures (application sum and income level) at face value without doing additional checks.

And so I would have expected Payday UK to verify Mr S' income and his expenditure, his regular outgoings and regular monthly commitments, identify his other STL debts if he had any and generally build a full picture about his financial situation.

But it did not do that - it carried out checks which amounted to less than it did for Loans 1 and 2. Payday UK has told us that it did not carry out any credit checks and relied solely on the information Mr S gave it as part of the application process. So I have gone on to look at what Payday UK would have discovered if it had done a full review of Mr S' circumstances

Looking at Mr S' bank statements for early March, April and May 2016 I can see persistent gambling transactions for relatively small sums and that Mr S owed other STL lenders. But I can see very little income and very few regular monthly bills or outgoings. And I can see that there were transfers in and out of that account from another account. So using these statements alone I am not able to see what Mr S' income may have been.

I did ask Mr S to send me some additional bank statements for the other account for that period. Or an explanation as to what these transfers were about and the status of the account they came from. I have not received those or an explanation. So I am not able to see what I would have expected Payday UK to have seen if it had carried out the checks I would have considered proportionate. So I am not in a position to assess Mr S' full financial position in early May 2016.

In the absence of information requested but not sent to me, I have proceeded on the basis that the information Mr S gave to Payday UK was correct – that he would have had over £3,000 of disposable income. And I have had to rely on the information from the bank statements already sent to me. In those circumstances and even taking into account the outstanding STL loans it seems that Mr S would have been in a position to repay the instalments of about £161 each month in relation to this loan.

As for the gambling activity, this would have been the first occasion that this would have come to light if Payday UK had carried out the checks I would have expected it to have carried out. And although there appears to be frequent transactions they are not large sums – they vary from £5 to £30 each time. And so without more it's feasible that Payday UK may have proceeded with the approval of the loan regardless.

end of extract.