

complaint

Mrs Q complains that Txtloan Limited (trading as MYJAR) irresponsibly lent money to her and that her loans with it were unaffordable.

background

Mrs Q took out her first payday loan with MYJAR in 2010. Since then she has taken out some 90 loans. Of these the majority, and all but seven of them, have been paid off on time or early.

Mrs Q has recently complained about the loans and says that MYJAR lent to her irresponsibly. MYJAR says it was not made aware of any financial difficulty and it carried out extensive checks before lending to Mrs Q. Given her repayment history it had no cause for concern about lending to her.

Our adjudicator recommended that the complaint should be upheld. In summary she considered that:

- Although MYJAR was not required to check a customer's credit file it should be satisfied the loan is affordable. Mrs Q's credit file shows a number of defaults prior to her first loan with MYJAR and one was for in excess of £20,000. She was not in a good financial position.
- Each loan should also have been assessed individually. Mrs Q has provided income and expenditure details which show that when she took out the first loan with MYJAR her expenditure exceeded her income. She was not in a position to repay her loans when due. She had made repayment to MYJAR but had loans with other payday loan providers and it is evident she also took out loans to repay existing ones.
- MYJAR did not make sufficient enquiries into Mrs Q's circumstances and it is evident the loans were not affordable. She also had multiple loans with several other providers running at the same time. Given the amount of loans she took out and the timespan of them Mrs Q was in a spiral of debt. There is insufficient information to show MYJAR could be satisfied the loans were actually affordable.
- Although Mrs Q had a responsibility to ensure the loans she applied for were affordable it was MYJAR's overriding responsibility to ensure she could actually repay the loans.
- Notwithstanding any checks carried out by MYJAR she is not persuaded that the loans were affordable. Mrs Q has however received the benefit of the money she borrowed.
- MYJAR should therefore refund the payments Mrs Q has made together with interest on them at the rate of 8% simple a year from the date of each payment to the date of settlement less the money Mrs Q has received from each of the loans. If this results in a credit balance it should be refunded to Mrs Q. MYJAR should also write off any existing debt Mrs Q owes and amend any credit entries made on Mrs Q's credit file to show the loans as satisfied. It should also pay her £250 compensation for the inconvenience and upset she has experienced.

MYJAR does not agree and has asked for an ombudsman review. In summary it says:

- It has complied with the OFT Guidance on irresponsible lending. At the time the first loan was taken out Mrs Q said she had a disposable income sufficient to make the loan affordable and sustainable.
- At the time of application there is no indication that Mrs Q did not understand the nature of the commitment she was entering into and she did not give any indication that her finances were under pressure until the late repayment of the final loan. She had ample opportunity to advise it if she was experiencing financial difficulty but did not do so.
- The evidence it saw does not support the claim that the loans were unaffordable or unsustainable until the final loan. It was only after some 18 months that she had explained that some missed payments were caused by problems with her card and until then the account had always been paid early or on time. Her track record was exceptional and the characteristics of a borrower getting into a spiral of unmanageable debt do not include early repayments and no late payments for more than 18 months. It does not agree she was in spiral of debt.
- MYJAR's checks were proportionate - the initial loan was for £100 over a seven day period. It was entitled to rely on the information Mrs Q gave as being true. This indicated she had ample disposable income to meet the loan payments. She did not mention she had previously worked with a debt management company the year before she took out the initial loan. MYJAR did not allow customers to have more than one loan with it at a time.
- It is reasonable for Mrs Q to repay the capital sums but it is not consistent for it to be required to write off the outstanding loan. It is unfair and excessive to require it to make an additional payment to Mrs Q. But it accepts Mrs Q may now be in financial difficulty and it is prepared to write off her outstanding debt including all charges.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

MYJAR says that when Mrs Q first applied for the loan it carried out a proportionate check and relied on the information she gave it. But, overall, I am not persuaded that its checks then and in the future were adequate.

I accept that MYJAR was entitled to rely on the information Mrs Q gave as being true and that she may not have mentioned all the information she might have done – for example she did not tell MYJAR that she had previously consulted a debt management company. But notwithstanding this I am not persuaded that MYJAR did enough to assess or consider Mrs Q's financial situation and the sustainability or affordability of each loan. It did not for example examine her credit file or examine in any detail her income and expenditure.

Had it done so, as I find would have been reasonable, I consider it is more likely than not that it would have been reasonably apparent that the information she had declared was both

incomplete and not entirely accurate. An examination of her credit file would have shown, for example, that she had a number of defaults already recorded against her – one of which was for in excess of £20,000 - and that she had a number of payday loans with other providers.

Furthermore, and in any event, the simple fact remains that Mrs Q took out some 90 loans in about an 18 month period. Although she repaid most early or on time I consider that this history of repeated borrowing indicates that she was reliant on short term payday loans for long term borrowing and as a long term financial solution. I do not consider that this is acceptable. I am also not persuaded that it is similar to using a credit card as MYJAR suggests.

Overall, I find on balance that MYJAR should reasonably have carried out more adequate and detailed affordability checks and taken greater account of Mrs Q's credit history and borrowing pattern when each loan was taken out. Had it done so I consider that it would most likely have reasonably concluded that the loans were not sustainable or affordable and should not have been granted.

But the loans were granted and Mrs Q has received the benefit of the money. It is therefore reasonable that Mrs Q should repay the capital sums she borrowed. MYJAR has said it is prepared to write off her outstanding debt including all charges. I find that is reasonable.

Overall taking account of all the circumstances and the level of award we make I consider the redress and award recommended by the adjudicator are therefore fair and reasonable. So, I see no compelling reason to change the proposed outcome in this complaint.

my final decision

My final decision is that I uphold this complaint and I order Txtloan Limited (trading as MYJAR), if it has not already done so:

1. To write off any existing outstanding debt including charges that Mrs Q owes;
2. To refund to Mrs Q the payments she has made together with interest on them at the rate of 8% simple a year from the date of each payment to the date of settlement less the money Mrs Q has received from each of the loans she took out. If this results in a credit balance it should be refunded to Mrs Q;
3. To amend any credit entries made on Mrs Q's credit file to show the loans as satisfied; and
4. To pay Mrs Q £250 compensation for any inconvenience and upset she has been caused.

Stephen Cooper
ombudsman