

complaint

Mr C complains that MEM Consumer Finance Limited (trading as Payday UK) gave him loans he couldn't afford to pay back.

background

Mr C took out 18 loans with Payday UK between 28 December 2012 and 23 February 2015.

Our adjudicator thought that most of Mr C's complaint should be upheld. He said that from the second loan onwards Payday UK didn't do enough to check the loans were affordable for Mr C. And he said that if it had done more it would've seen they weren't affordable and wouldn't have lent to him. He asked Payday UK to refund all interest and charges on the second loan onwards and to remove any adverse information about the loans from Mr C's credit file.

Payday UK didn't agree with the adjudicator. It says in summary:

- There was nothing concerning on the credit check it carried out.
- Mr C never borrowed more than half of his income.
- It didn't have to get information about Mr C's expenditure every time it lent to him.
- The guidance at the time didn't require it to get bank statements before lending.
- There were gaps between some of the loans of up to 5 months.
- The adjudicator shouldn't have considered gambling transactions as part of Mr C's expenditure when looking at affordability as they weren't essential expenditure.

Payday UK did offer to refund interest and charges on the second to fourth loans and the seventh loan and to apply that refund to reduce the amount Mr C still owed it. Mr C didn't accept this offer.

The complaint was then referred to an ombudsman to look at.

my findings

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

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

From the evidence Payday UK has given it looks like it carried out the following checks:

- On loan one it carried out a credit check.
- On loans two to seven it asked Mr C about his monthly income on most occasions.
- On loans eight to twelve it asked Mr C about his monthly income and some limited information about his monthly expenditure broken down in to three columns headed housing, credit and 'other'.

- On loans thirteen to eighteen it asked Mr C about his monthly income and some more detailed information about his monthly expenditure including housing, credit, 'other', bills, transport, food, insurance and childcare.

I've thought about whether these checks were enough to make a reasonable assessment of affordability and, where I don't think they were, what proportionate checks would've shown.

The first loan Mr C asked for was £400 with a repayment of £500. This was a quite a sizeable loan to agree to without knowing what Mr C earned or at least some basic information about his outgoings. I don't think a credit check alone would've given Payday UK this kind of information. For example it wouldn't include information about things like his rent, food or bills

But like the adjudicator, I think that if Payday UK had got some basic information, it probably would still have lent to Mr C. For example when it did eventually ask Mr C for this kind of information later on in the loan chain he said his normal living expenses were around £800 - £1,000. So using that same information, and looking at Mr C's income at the time of this loan, I think it would've suggested that the loan repayment was affordable.

Mr C's second loan was 50% bigger than the first with a total repayment of £750. This time Payday UK asked Mr C about his monthly income, which he said was £1,800. So Payday UK knew the loan repayment would take up a large chunk of Mr C's income yet it didn't do anything else to check the loan was affordable for him. It seems Payday UK may have recognised this when making the offer to refund the interest and charges on this loan as well as the third, fourth and seventh loans. So I won't comment much further on those loans, except to say that having seen the other short term loans Mr C had to repay in conjunction with them, I don't think Payday UK would've lent to him if it had carried out more detailed checks.

That leaves me with the fifth and sixth loans, and the eighth loan onwards still to consider. The fifth and sixth loans were for smaller amounts than the second and third. But by now Mr C had borrowed from Payday UK almost every month since his first loan. And if it had carried out the kind of checks I think it ought to have on the previous loans, it would've known by now that Mr C had been frequently borrowing from a number of other payday lenders. So there were big question marks whether Mr C could sustainably afford the repayments on any further borrowing. The signs were there that Mr C was dependent on short term lending to get by.

I think Payday UK should therefore have got a full understanding of Mr C's finances before lending him any more money. This could've been done in a number of ways. It could've asked Mr C for evidence of his income and expenses for example or it could've looked at his bank statements.

If Payday UK had done this I don't think it would've agreed to the fifth and sixth loans. Mr C's bank statements show he was regularly running out of money within a few days of being paid and was having to borrow from other short term lenders for the remainder of the month. It looks like he had to borrow from one lender to pay off another. He was also gambling quite heavily.

This position barely improves right the way up until the thirteenth loan. So I don't think Payday UK would've agreed to any of these loans either. I recognise Payday UK did start asking Mr C about his expenses during this period. But by then, for the reasons I've already explained, I don't think it was enough to just ask Mr C about his expenses and I think Payday UK should've been verifying this information.

After this it seems Mr C received a large sum of money which he used to clear some of his debts. There's then a gap of around five months before he returns to Payday UK for the fourteenth loan. That might have suggested that Mr C was more in control of his finances. But given the level of dependency on short term lending Mr C had demonstrated for such a long period of time previously, there was still a risk that further borrowing wouldn't be sustainable for him. So I think Payday UK should still have been verifying what Mr C told it about his income and expenses.

If it had done this Payday UK would've seen that Mr C's position had improved compared with five months ago. But he was still running out of money each month and taking (albeit smaller) loans from another payday lender to see him through. So I think Payday UK would've again seen that it was unlikely Mr C would be able to repay the loan without having to borrow again.

After this, Mr C asks for a new loan almost every month until the final loan. So I see no reason why Payday UK shouldn't have continued to get a full understanding of his finances each time it lent to him. His bank statements show that he'd started to gamble heavier than before. And he starts borrowing more frequently from other short term lenders again. This situation doesn't improve for the remainder of the time Mr C borrows from Payday UK. So I don't think Payday UK should've lent to him.

I've thought about what Payday UK has said about gambling transactions. But I don't agree it shouldn't have taken account of them. Mr C's bank statements show he was regularly spending quite a lot of his income on gambling by this point. So if Payday UK (having a full understanding of his circumstances) was thinking about what Mr C would have available the following month, based on his previous spending patterns I think it's likely he would've continued to spend similar amounts on gambling. I don't think it's fair to say Mr C's spending on gambling was discretionary at this point.

Overall I don't think Payday UK should've agreed to any of the loans it gave Mr C from 27 January 2013 onwards. It should refund interest and charges on those loans and remove any adverse information about them from Mr C's credit file.

my final decision

My final decision is that I uphold most of Mr C's complaint. To put things right MEM Consumer Finance Limited should:

- refund all interest and charges Mr C paid on the loans taken from (and including) 27 January 2013;
- pay interest on these refunds at 8% simple* per year from the dates of payment to the date of settlement;
- remove any adverse information about these loans from Mr C's credit file.

*HM Revenue & Customs requires MEM Consumer Finance Limited to take off tax from this interest. MEM Consumer Finance Limited must give Mr C a certificate showing how much tax it's taken off if he asks for one.

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

Michael Ball
ombudsman