

complaint

Ms B complains that MYJAR Limited gave her two loans that she couldn't afford.

background

Ms B was given two loans by MYJAR. Loan 1 was taken in April 2016 and was for £300 and repayable over three months. Loan 2 was for £1,000 and was taken in May 2016. It was repayable over six months. Ms B said that MYJAR had acted irresponsibly in providing her with the loans and that they trapped her in a spiral of debt. Ms B stopped paying for Loan 2 in late 2016 and MYJAR agreed to a repayment plan which Ms B didn't keep to. MYJAR offered to reduce the outstanding balance to £561.86.

The adjudicator concluded that the checks carried out by MYJAR for Loan 1 went far enough. She said that it was reasonable for MYJAR to have checked Ms B's income and for it to have relied on what Ms B told it about her expenditure for this loan. But the adjudicator didn't think that MYJAR's checks for Loan 2 were sufficient in view of the increased lending. She noted that MYJAR checked Ms B's income, housing costs, other monthly expenses and monthly credit repayments, but she didn't think it was clear that this included short term lending. She thought that MYJAR should have asked Ms B about her short term loans. And if it had done so, MYJAR would have seen that Loan 2 wasn't affordable. So, she concluded that MYJAR should:

- Refund all interest and charges that Ms B paid on Loan 2;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Write off any unpaid interest and charges from Loan 2, apply the refund to reduce any capital outstanding and pay any balance to Ms B;
- Remove any negative information about Loan 2 from Ms B's credit file.

*HM Revenue & Customs requires MYJAR to take off tax from this interest. MYJAR must give Ms B a certificate showing how much tax it has taken off if she asks for one. If MYJAR intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

MYJAR responded to say, in summary, that its checks were proportionate to the amount of credit provided. It said it had asked Ms B about her monthly credit repayments and other monthly expenses. It believed that "monthly credit repayments" was a broad and clear capture for a customer to enter information about their credit commitments, including any short term financial commitments. Based on the information Ms B provided to it, it said that she had more than enough disposable income to repay the loan instalments. MYJAR also said that Ms B had told it that her monthly credit repayments were £250 before Loan 2, and it had no reason to suspect that this was incorrect. It also noted that the adjudicator had included in her affordability calculations as two separate expenditures Ms B's short term loan commitments, as well as her monthly credit commitments of £250 that she'd provided to it at the time. It thought that these had been double counted by the adjudicator. It didn't accept that Ms B wouldn't have understood the term "credit repayments".

The adjudicator responded to say that she didn't think that Ms B realised that she needed to declare short term lending as well as her regular credit commitments. She noted that Ms B had two long term loans that she made payments to each month. The total monthly

repayment for both loans was £248.36, so she thought that Ms B's declaration of £250.00 for monthly credit repayments included these two loans only.

MYJAR responded to say that it thought its question about Ms B's monthly credit repayments was clear enough for her to provide correct information about all her credit commitments.

my findings

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

MYJAR was required to lend responsibly. It needed to make checks to make sure Ms B could afford to repay each of the loans before it lent to her. Those checks needed to be proportionate to things such as the amount Ms B was borrowing, the length of the agreements and her lending history. But there was no set list of checks MYJAR had to do.

The Financial Conduct Authority ("FCA") was the regulator at the time Ms B took her loans from MYJAR. Its regulations for lenders are set out in its consumer credit sourcebook. These regulations require lenders to take *"reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."* The FCA defines 'sustainable' as being able to make repayments without undue difficulty. It says this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the interest paid might have been low in comparison with Ms B's income, or that she managed to repay some of the loans, doesn't necessarily mean the loans were affordable and that she managed to repay them in a sustainable manner. In other words I can't assume that because Ms B managed to repay some of the loans that she was able to do so out of her normal income without having to borrow further.

MYJAR has told us about the checks it did before lending to Ms B. These are considered below.

Loan 1

I note that MYJAR took details of Ms B's income (£2,100) as well as details about her housing costs, (£600), other monthly expenses (£300) and monthly credit repayments (£300). And based on the information MYJAR had collected, it said that Loan 1 was affordable. Loan 1 was Ms B's first loan with MYJAR, and it didn't have anything to make it doubt Ms B's information. I also think its checks were proportionate, given the amount of the loan and Ms B's stated income. So for these reasons, I won't be asking MYJAR to refund the interest and charges on Loan 1.

Loan 2

Loan 2 was for the significantly increased amount of £1,000, and this loan was taken out on the day after Loan 1 was repaid. I also note from MYJAR's affordability checks that these showed that Ms B had opened five credit accounts in the previous three months and that the balances on nine of her accounts had increased in the previous three months. So, I don't

think MYJAR could be confident that the information Ms B had provided reflected her true financial position. I think it should have asked more specific questions rather than rely on answers to its standard application questions. In particular, I think it should have asked Ms B for more information about her short term financial commitments. I appreciate that MYJAR asked Ms B about her monthly credit repayments, but I agree with the adjudicator that the question wasn't sufficiently clear for her to have realised that she also needed to provide information about her short term lending as well as her long term credit repayments.

Although I don't think the checks MYJAR did for Loan 2 were sufficient, that in itself doesn't mean that Ms B's complaint should succeed. I also need to see whether what I consider to be proportionate checks would have shown MYJAR that Ms B couldn't sustainably afford the loan. I can see that Loan 2 required six monthly payments of around £290, and that MYJAR had noted that Ms B's disposable income was around £950.

I've looked at Ms B's bank statements for the month before Loan 2 to see what she might have told MYJAR if it had asked for more information about her short term financial commitments. I note that in the month before Loan 2 that Ms B had taken two new short term loans totalling £900 from another short term lender. So, I think if MYJAR had asked for more information about Ms B's short term loans, it would've been alerted to a possible problem with her use of short term loans and most likely seen that the repayments for Loan 2 weren't sustainable. So I don't think that MYJAR acted correctly in providing Loan 2 to Ms B, and I agree with the recommendations made by the adjudicator.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order MYJAR Limited to:-

1. Refund all interest and charges that Ms B paid on Loan 2;
2. Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
3. Write off any unpaid interest and charges from Loan 2, apply the refund to reduce any capital outstanding and pay any balance to Ms B; and
4. Remove any negative information about Loan 2 from Ms B's credit file.

*HM Revenue & Customs requires MYJAR to take off tax from this interest. MYJAR must give Ms B a certificate showing how much tax it has taken off if she asks for one. If MYJAR intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 27 December 2017.

Roslyn Rawson
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