complaint and background

Mr M complains that Instant Cash Loans Limited, trading as Money Shop ("Money Shop") provided him with loans he could not afford to repay.

I've attached my provisional decision from August 2018, which forms part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint. In short, that was because I didn't think Money Shop had carried out sufficient checks when agreeing to lend to Mr M. And that, if it had, it would have seen that the lending was not affordable for him.

I asked both Mr M and Money Shop to let me have any more information they wanted me to consider. Money Shop has accepted my provisional findings, and Mr M confirmed he has nothing further to add.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Given that Money Shop has accepted my provisional decision, I have no reason to depart from that. And so it follows that I uphold this complaint.

putting things right

Money Shop now needs to:

- refund all interest and charges
- 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 M's credit file as a result of these loans

†HM Revenue & Customs requires Money Shop to take off tax from this interest. Money Shop must give Mr M a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons I've explained, I uphold this complaint and direct Instant Cash Loans Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 September 2018.

Siobhan McBride
ombudsman

copy of provisional decision

complaint

Mr M complains that Instant Cash Loans Limited, trading as Money Shop ("Money Shop") provided him with loans he could not afford to repay.

background

During May and June 2009, Mr M borrowed ten amounts of £85.01 each. He did this via what is referred to by this business as "cheque based loans" in branch(es) of Money Shop, whereby he got cash and left post-dated cheques in the amount of £100 each to repay the amounts at a future date. So he was repaying the capital of £85.01, plus £14.99 interest on each of those sums.

He says that at the time of the loans his income was less than his outgoings which was why he was borrowing. He says ultimately this resulted in him building up unmanageable debt, and that Money Shop was irresponsible to give him the loans.

In its initial submissions to this service, Money Shop said that it didn't have enough information anymore to be able to investigate this complaint properly, and *"…seeks to define a pragmatic solution to a difficult problem."* In short, it says:

> *"…the test TMS* [that is, The Money Shop] *applies is not whether it lent to* [Mr M] *fairly, but whether* [Mr M] *has been treated fairly."*

It also commented that it believed it was difficult to be clear as to whether this type of transaction, which Money Shop refers to as "cheque based loans", is, in fact, "…a decision to lend". And if it isn't, then Money Shop appears to question whether:

> *"…the obligations to lend responsibly apply at* [sic] *these instances*."

Our adjudicator viewed the draw downs of these ten cheques as separate acts of lending, and thought that sufficient checks had not been carried out before the loans were agreed. She said that, had proportionate checks been carried out, Money Shop would have realised that all the loans from the second one onwards were not sustainably affordable for Mr M. So, she upheld the complaint in part.

Money Shop, some four months after the adjudicator's view, replied and disagreed. It introduced new arguments, setting out that this borrowing was effectively one loan facility, *"…under the one agreement…"* with a credit limit of £750. So it would only have carried out one *"…creditworthiness assessment…for the full £750 limit."*

Money Shop has provided fresh comments which have led me to a slightly different outcome. So I am writing this provisional decision setting out what I think before moving to a final decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I am planning to uphold this complaint in full.

As noted above, Money Shop has said that it believes the interest rate paid by Mr M was fair, and therefore concludes that it treated him fairly. Firstly, that is not the complaint at hand. But, more importantly, fairness is broader than that. For example, lending irresponsibly is likely to be seen as unfair. Under the guidance for consumer credit licensees at the time, irresponsible lending was defined as a failure to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so. Those are the lines along which I will be considering this case.

are cheque-based loans "…a decision to lend…" to which obligations to lend responsibly apply?

I do not agree with Money Shop's assertion that cheque-based loans may not constitute lending, which in my view defies logic or reason. I will explain why.

It is unfortunate, but understandable given the length of time that has passed, that Money Shop no longer has any of the documents from the time that it provided these loans to Mr M. But it has been able to provide some account notes, which show that in May 2009, Mr M signed a "*contract*". I haven't been given a copy of that, and there are no further details. But based on what we know about Money Shop's practices around that time in relation to cheque-based loans, I think it is highly likely that contract was one regulated by the Consumer Credit Act 1974. That would mean that the agreement between Mr M and Money Shop was drawn up in accordance with the legislation governing lending. In addition, the simple, every day, reality is that Money Shop was providing cash to Mr M in return for a fee – that is, providing credit. So I find the notion that lending was not taking place, on both a technical and a common sense basis, entirely without foundation. It follows that Money Shop needed to conduct that lending in line with guidance and good industry practice in 2009.

what checks should Money Shop have carried out when considering Mr M's request to borrow?

At that time, in addition to the guidance for consumer credit licensees, there was also established industry good practice in relation to responsible lending, such as that summarised in the 2006 Lending Code. In broad terms, lenders needed to carry out sufficient checks when deciding whether the potential customer would be able to repay the amount they were considering lending. So I have thought about whether Money Shop acted fairly and responsibly when agreeing to lend Mr M this money.

Money Shop says that it considered Mr M's application for a credit limit of £750 against his declared income. It says it didn't, and shouldn't have, re-checked his creditworthiness each time he went into a branch to get £100 cash.

I understand the argument that Money Shop is making here. But even if I were prepared to accept that this is what happened on this particular case, I don't think this helps its case.

To explain, Money Shop has provided a screenshot from its systems which shows that Mr M told it, seemingly in October 2008, that he was earning £10,000+ per annum via his full-time employment, and was a tenant. There is also a set of "account notes" which shows an entry from 5 May 2009 asking colleagues to *"…get bank stmnt and wage slip on next visit…"*. However, there is nothing further to suggest that ever happened, and according to what Money Shop has told me, it had already agreed Mr M's £750 credit limit on that date. So I don't understand why it would be seeking further information from him after it had already completed its one and only creditworthiness assessment on Mr M.

In its submissions to this service, Money Shop has said that it made its decision to lend to Mr M based on his income and employment status, which was reasonable in the circumstances. I've detailed above what good industry practice in relation to responsible lending looked like in 2009. And it's clear that lenders needed to think about whether their customer could manage the *repayments* being considered before deciding whether to lend.

Based on a statement of account provided by Money Shop, it's clear that five of the cheques that Mr M gave it were cashed in June 2009, and five in July. But at the point that Money Shop agreed Mr M's credit limit, that limit was also the amount he may have had to repay in a fairly short space of time – depending on how much he ultimately borrowed. So Mr M was facing a potential monthly repayment of £750 at the time that Money Shop decided to lend to him. Therefore, I don't think the credit limit of £750 is the key issue in this case – the potential repayment of £750 is.

As I've said, Mr M appears to have declared his income to be £10,000+, shown via a drop down menu on a screenshot. Money Shop doesn't seem to have known whether that was £10,001 or £14,999. So, as a first step in assessing Mr M's creditworthiness, I think it needed to consider his ability to repay based on the lowest income in that range in order to reach a fair and reasonable lending decision.

An annual gross income of £10,001 equates to a monthly gross income of around £833. As a financial business, I'm sure Money Shop was aware of what the personal tax free allowance is each year, and so would have known in 2009 that Mr M would need to pay tax on that amount. It also knew that he had rent to pay, as its system shows him being a tenant. And of course it would have known that he would have ordinary living expenses, such as buying food and paying for utilities.

Given the potential monthly repayment of £750 against that monthly income, proportionate checks in this case would have needed to be significant before Money Shop could possibly be satisfied that its decision to lend to Mr M was a responsible one. On the most basic headline information that Money Shop had, there was a clear risk that the potential repayment could have been more than Mr M's net income. So, if Money Shop still believed there *could* be a hypothetical situation in which it would be responsible to lend to Mr M – although I struggle to imagine one – it ought then to have sought a range of collateral information to establish that. For example, it could have verified Mr M's income; along with his outgoings; regular financial commitments; and indeed short term financial commitments.

As mentioned above, it seems that at least one Money Shop member of staff may have recognised this to some extent, in adding an entry on its system that it needed to see Mr M's bank statements. However, the evidence clearly shows either that Money Shop didn't get that information, or failed to take it into proper consideration. I'll go on to explain why.

what would proportionate checks have shown in this case?

Money Shop says that it is neither possible nor pragmatic at this point to assess Mr M's financial situation in 2009. I disagree. Mr M has given us bank statements from around that time, which, as mentioned, Money Shop seems to have been interested in previously. Those statements provide a fair overview of Mr M's position, which, in short, was one where his regular outgoings exceeded his income on a monthly basis. That is, he effectively had no disposable income. So I am satisfied that, had Money Shop carried out proportionate checks at the time (or taken the relevant evidence into proper consideration) it would have been abundantly clear that Mr M couldn't afford a potential monthly repayment of £750. And so, good, responsible, practice in 2009 meant that Money Shop should not have lent to Mr M.

doesn't the fact that the cheques were honoured as agreed, with no deferrals or repayment issues, show that the lending was affordable?

Money Shop argues that, as *"…it is not pragmatic to assess what* [Mr M's] *financial situation was in 2009…the best evidence to all parties is the outcome of the loans he received."* I've already dealt with the first point above, but have also considered the point about the 'outcome of the loans', which was that the cheques were cashed as planned and seemingly without problem.

But, given that Money Shop has told us that the cheques were guaranteed against a cheque guarantee card, that is hardly surprising. Effectively, Mr M's bank was pretty much *obliged* to honour those cheques, regardless of the state of Mr M's account or his general financial position. And as this was the case there was very little risk of Money Shop not getting its money back. So the successful cashing of those cheques evidences nothing about the affordability of the lending.

Having considered all the recent points raised by Money Shop, I am planning to uphold this complaint in full.

putting things right

I am planning to direct Money Shop to:

- refund all interest and charges

- 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 M's credit file as a result of these loans

†HM Revenue & Customs requires Money Shop to take off tax from this interest. Money Shop must give Mr M a certificate showing how much tax it's taken off if he asks for one.

my provisional decision

For the reasons I've explained, I'm currently planning to uphold this complaint and to direct Instant Cash Loans Limited to put things right as set out above.

Both Mr M and Instant Case Loans Limited have until 21 August 2018 to let me have anything else they'd like me to consider before I reach a final decision.

Siobhan McBride
ombudsman