DRN-2177466

The complaint

Mr D says PDL Finance Limited, trading as Mr Lender, irresponsibly lent to him.

What happened

This complaint is about eight loans Mr Lender provided to Mr D between July 2014 and July 2019. A summary of Mr D's borrowing history, as evidenced by Mr Lender, is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Repayment
1	24/07/2014	19/09/2014	1	£107.00	£144.45
2	28/09/2014	20/10/2014	1	£100.00	£130.00
3	10/11/2014	19/12/2014	1	£100.00	£130.00
4	31/12/2014	20/02/2015	2	£100.00	£65.20
Break in lending chain					
5 (1)	04/09/2015	20/10/2015	1	£100.00	£135.20
Break in lending chain					
6 (1)	21/04/2018	20/11/2018	6	£200.00	£81.33
7 (2)	05/12/2018	19/07/2019	6	£200.00	£69.87
8 (3)	19/07/2019	outstanding	12	£750.00	£170.34

Mr Lender agreed to uphold Mr D's complaint about loan 4 in line with our guidance, so I haven't considered this loan further. For completeness I've included this loan in my putting things right section below.

Our adjudicator considered this complaint and didn't think there was any reason to uphold the complaint about loans 1 – 7 (exclusive of loan 4 which was upheld by Mr Lender.) But the adjudicator felt Mr Lender should've conducted a more thorough check of Mr D's circumstances before agreeing to lend him loan 8. And had it have done this, it would've discovered Mr D was spending large amounts of money gambling each month, so he was unlikely to be able to pay back the loan sustainably. So, the adjudicator upheld the complaint about this loan only.

Mr Lender responded disagreeing with this view. Mr Lender felt that as there were breaks in Mr D's lending, at the time of taking out loan 8 Mr D had only borrowed 2 prior loans from them in this chain – so it says the checks it carried out were proportionate.

As Mr Lender disagreed, the complaint has been passed to me to reach a final decision.

What I've decided – and why

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

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Mr Lender needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr D could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Mr Lender should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Mr Lender was required to establish whether Mr D could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr D's complaint. Our adjudicator didn't uphold Mr D's complaint about loans 1-3 and 5-7 - and Mr D's hasn't responded with any reasons as to why he doesn't agree with this. So as these loans are no longer in dispute, I haven't considered these further in my decision.

Mr Lender says it carried out an affordability check before allowing Mr D to take out loan 8 – in which it requested information about Mr D's income and expenditure. Mr Lender also says it obtained Mr D's credit score, so it feels it went above and beyond the checks it was required to do at this stage. Based on this information, Mr Lender says it had no evidence Mr D was experiencing any financial difficulty, so it maintains it was reasonable to lend Mr D loan 8.

I have seen that there was a significant gap in lending between loan 5 and loan 6 (the first loan in this chain). However, I've looked closely at Mr D's history of lending with Mr Lender and what it knew about Mr D at the time. Mr D had deferred repayments on loan 7 twice – which is a sign Mr D was struggling with these repayments. He also applied to take out loan 8 on the same day he paid back loan 7. He took out loan 8 for a much larger amount than any of his earlier other loans and the repayment term was also much longer. This suggests he is getting himself further into debt and it's likely he took out loan 8 in order to repay loan 7. So, while this information alone may not have led Mr Lender to draw the conclusion that this loan wouldn't be affordable for Mr D, I think it ought to have led Mr Lender to carry out further checks of Mr D's circumstances.

Had Mr Lender have completed a full check of Mr D's financial position it would've seen that Mr D was regularly gambling large sums of money each month, and particularly in the months leading up to his application for loan 8. This is likely to mean that Mr D may have had an issue with repaying the loan in a 'sustainable' fashion within the meaning of CONC. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed to by, gambling, then a properly carried out affordability assessment was likely to lead a responsible lender to conclude that a loan was not affordable for an applicant in that situation.

So, I don't think the checks Mr Lender carried out were proportionate and based on what I've seen of Mr D's circumstances from the time, I don't think Mr Lender should've lent Mr D loan 8. Mr Lender should put things right as set out below.

Putting things right

- refund all interest and charges Mr D paid on loans 4 and 8**;**
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†;
- remove any negative information about loans 4 and 8 from Mr D's credit file;

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

My final decision

For the reasons given above, I'm upholding Mr D's complaint. Evergreen Finance London Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 October 2020.
Sienna Mahboobani
Ombudsman