

The complaint

Mr C has complained that 1Plus1 Loans Limited (“1Plus1” or “the lender”) should not have agreed a guarantor loan for him in May 2018.

What happened

1Plus1 agreed a loan of £2,000 for Mr C on the 23 May 2018. The monthly repayment was £122.50 over a term of two years, and the total amount to be repaid came to about £2,940. This was a guarantor loan, in other words it was granted on the basis that Mr C had a guarantor who would be responsible for repaying the loan if he failed to meet his repayments.

Mr C says that 1Plus1 was irresponsible to have agreed a loan for him. He says it would have declined his application had it carried out proper checks and evidenced his income and expenditure. Mr C says he was in a cycle of debt, was borrowing from elsewhere and was spending most of his wages on gambling. Mr C says the loan made his financial situation worse and caused him to spiral further into debt.

Mr C also complains that 1Plus1 Loans didn't treat him fairly in its response to his complaint, for example Mr C says that it referred to what he considers his addiction as a 'lifestyle choice' which he found offensive.

1Plus1 says that it carried out reasonable and proportionate checks before lending to Mr C and its checks didn't raise any concerns. It notes he had historic defaults and minor delinquencies but that his income was high enough for him to be able to afford the loan, and it verified his income level with his wage slips.

Our investigator assessed the complaint and found that 1Plus1 had been irresponsible in lending to Mr C. They recommended that the lender refund Mr C's interest repayments along with compensatory interest.

1Plus1 disagreed with this recommendation and asked for the complaint to come to me, as an ombudsman, to review and resolve.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Having done so, I am upholding Mr C's complaint. I appreciate this will be very disappointing for 1Plus1 and I hope my explanation below makes it clear why I have come to this conclusion.

The Financial Conduct Authority (FCA) was the regulator when 1Plus1 lent to Mr C. Its rules and guidance obliged 1Plus1 to lend responsibly. As set out in its Consumer Credit Sourcebook (CONC), 1Plus1 needed to “*pay due regard to the interests of its customers and treat them fairly*” and it would not be doing so if “*it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.*” (CONC 2.2.2G).

When agreeing credit, 1Plus1 needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.3.1G stated that

1. *In making the creditworthiness assessment or the assessment required ... a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required ... should include the firm taking 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.*

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or in particular without incurring or increasing problem indebtedness (ILG 4.3). ILG refers to the ‘Irresponsible Lending Guidance’ produced by the previous regulator - the Office of Fair Trading - which this part of CONC specifically references.

As set out in CONC, the risk to the borrower directly relates to the particulars of the lending and the circumstances of the borrower. In other words the assessment needs to be borrower-focussed. It is not an assessment of the risk to the lender of recouping its money, but of the risk to the borrower of incurring financial difficulties or experiencing significant adverse consequences as a result of the decision to lend. So even in this case where Mr C had a guarantor who agreed to step in and meet repayments in the event that he couldn’t, this doesn’t absolve 1Plus1 of its obligation to assess whether in the first instance Mr C could meet his repayments without undue difficulty.

Bearing all of this in mind, in coming to a decision on Mr C’s case, I have considered the following questions:

- Did 1Plus1 complete reasonable and proportionate checks when assessing Mr C’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way? if not, what would reasonable and proportionate checks have shown?
- Ultimately, did 1Plus1 make a fair lending decision?

1Plus1 says that it gathered information from Mr C about his income and expenditure. It discussed this with him on a telephone call and also discussed his existing debts. It’s provided the call recordings and a summary of the information it found on Mr C’s credit file.

Mr C declared an income of £1,336 from his main wage plus about £100 to £200 a month from an ad hoc second job. 1Plus1 estimated Mr C’s monthly net income to be £1,624 which I think was an overestimate. Mr C provided 1Plus1 with wage slips which showed his most

recent wage was £1,371. This included overtime and his basic gross salary was less than £1,300 a month. His most recent wage slip from his ad hoc job showed £82.

Mr C declared his living costs to be approximately £1,030. This included rent, council tax, utilities and some bills. This was an estimate and didn't include car insurance or tax costs, for example. 1Plus1 compared Mr C's expenditure figures to statistical datasets of living costs from the Office of National Statistics and used a figure of about £100 more in its estimate of his living costs (excluding debt repayments).

I think 1Plus1 had enough information here to be concerned about Mr C's ability to meet his repayments for further credit in a sustainable manner over the term of the loan. A month without overtime or additional ad hoc income would make it difficult for Mr C to meet his repayment.

The figures Mr C gave for his gas, electricity and water payments were to cover arrears – he mentioned on the call that his debt with his gas and electricity supplier was approximately £1,000. 1Plus1 referred to minor delinquent payments in its final response letter. I can't agree that arrears on utility bills are minor delinquencies, I think they are more likely to be an indication of financial distress.

Mr C's credit file information shows eight defaulted accounts, the most recent of which was a bank account defaulted in June 2016. The total owing amounted to over £3,000 and Mr C told 1Plus1 that he was repaying some of these but not others. Mr C's loan was to cover a home improvements and a holiday. He mentioned on the call that he would use some of the loan to clear some small debts. He also said that he'd paid off a loan of almost £1,500 from a high cost lender the previous day.

It seems to me that Mr C wasn't managing to clear old defaults and was in arrears on his priority bills. He had just repaid a loan and was borrowing again the next day, not to consolidate but to meet additional costs. I think it's likely Mr C needed to borrow again to replace the money he'd used to pay this previous loan. The regulator specifically says that being able to repay sustainably means not having to borrow to do so. I understand Mr C repaid this loan early by borrowing from elsewhere.

I don't think 1Plus1 treated Mr C fairly when it agreed to lend to him on this occasion, without carrying out any additional checks. I think it had enough information about Mr C's finances to see that he wasn't likely to be able to meet his repayments sustainably and so I think it was irresponsible to have agreed to lend to him.

Mr C told us that he was gambling heavily at that time and has provided his bank statements which support this. I think further checks on Mr C's circumstances wouldn't have provided any reassurance to 1Plus1 that he would have managed his repayments sustainably or that the loan was suitable for him at that time.

1Plus1 said in its response letter to Mr C that not revealing his gambling at the time of his application was unlawful and fraudulent. However, it also said that this had no bearing on the affordability of the loan as it was non-essential spending and that his complaint had no merit. Mr C said the comments worried him and he said that referring to his gambling as a choice was ignorant and upsetting.

I can see that Mr C brought his complaint to us shortly after receiving the final response so I don't think that these comments deterred him from pursuing his complaint. These comments seem contradictory to me and unsympathetic, however I don't think I can make an additional award specifically in relation to the offence these caused. I am upholding Mr C's complaint

and directing 1Plus1 to put things right for him as set out below, and I hope this resolves the matter for him.

Putting things right

In order to put Mr C back in the position he would have been in, had it not agreed to lend to him, I think 1Plus1 should:

- consider all payments made by Mr C as payments towards the original capital amount of £2,000; and
- refund all amounts Mr C paid above this capital amount; and
- pay interest on these refunds at 8% simple* per year from the dates they were paid to the date of settlement;
- remove any adverse information about this loan from Mr C's credit file.

*HM Revenue & Customs requires 1Plus1 to take off tax from this interest. 1Plus1 must give Mr C a certificate showing how much tax it's taken off if he asks for one.

My final decision

I'm upholding Mr C's complaint for the reasons I've explained above and require 1Plus1 Loans Limited to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 October 2021.

Michelle Boundy
Ombudsman