

Complaint

Mr O has complained that 1plus 1 Loans Limited (trading as “1plus 1 Loans”) provided him with an unaffordable guarantor loan.

Background

1plus 1 Loans provided Mr O with a loan of £5,000.00 in August 2017. This loan had an APR of 46.9% and a 60-month term. This all meant the total amount repayable of £11,437.80 was due to be repaid in 60 monthly instalments of around £190.63.

Two of our investigators looked at this complaint and both thought that 1plus 1 Loans had unfairly provided Mr O with this loan. So they recommended the complaint be upheld. 1plus 1 Loans disagreed with our investigator and asked for an ombudsman to review this complaint.

My findings

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 unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I’ve referred to this when deciding Mr O’s complaint.

Having thought about everything, I think there are two overarching questions I need to answer in order to fairly and reasonably decide Mr O’s complaint. These two questions are:

1. Did 1plus 1 Loans complete reasonable and proportionate checks to satisfy itself that Mr O would be able to repay his loan in a sustainable way?
 - o If so, did it make a fair lending decision?
 - o If not, would those checks have shown that Mr O would’ve been able to do so?
2. Did 1plus 1 Loans act unfairly or unreasonably in some other way?

Did 1plus 1 Loans complete reasonable and proportionate checks to satisfy itself that Mr O would be able to repay his loan in a sustainable way?

1plus 1 Loans provided this loan while it was authorised and regulated by the Financial Conduct Authority (“FCA”). The rules and regulations in place required 1plus 1 Loans to carry out a reasonable and proportionate assessment of Mr O’s ability to make the repayments under this agreement. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so 1plus 1 Loans had to think about whether repaying the loan would cause significant adverse consequences *for Mr O*. In practice this

meant that 1plus 1 Loans had to ensure that making the payments to the loan wouldn't cause Mr O undue difficulty or adverse consequences.

In other words, it wasn't enough for 1plus 1 Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr O. The existence of a guarantee and the potential for 1plus 1 Loans to pursue the guarantor instead of Mr O, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer'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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- 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 also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were 1plus 1 Loans' checks reasonable and proportionate?

1plus 1 Loans says that it carried out an income and expenditure assessment with Mr O prior to providing him with his loan. It also carried out a credit check, checked Mr O's income electronically and cross-referenced Mr O's expenditure against data from the Office of National Statistics ("ONS"). Mr O confirmed that he was earning around £3,400.00 a month and had total expenses of £1,308.00. After an additional buffer of £100 was applied this left him with £1,992.00 in monthly disposable income.

The credit check 1plus 1 Loans carried out showed that Mr O had two defaulted accounts, which were going to be settled with some of the proceeds from this loan. 1plus 1 Loans says Mr O had enough left to be able to comfortably make the required monthly loan payments, when the living costs and the monthly payments left needed to meet the credit commitments

shown on the credit check once they were consolidated by this loan, were deducted from Mr O's monthly income.

I've carefully thought about what 1plus 1 Loans has said. But simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

1plus 1 Loans had information indicating that Mr O had significant difficulties with credit in the past. Bearing in mind the regulatory rules place an obligation to carry out a borrower focused check, where previous repayment difficulties are apparent, I would expect a lender to take additional steps to verify that a consumer can take on an additional commitment before providing it. I have concerns with 1plus 1 Loans' use of ONS data to cross-check Mr O's living expenses. I accept that the FCA does permit the use of statistical data to estimate a prospective borrower's non-discretionary expenditure. But it's also fair to say that it is unfair to rely on such data where it is unlikely to be reasonably representative of the prospective borrower's situation.

1plus 1 Loans used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr O's living expenses. But 1plus 1 Loans knew, when it lent to Mr O, that it was providing a loan to someone whose credit file suggested they fell outside this average portfolio. I don't think that using ONS data – which was unlikely to reflect the existing commitments and expenditure of someone in Mr O's position is fair, reasonable and proportionate. I'd also add that I'm not persuaded that Mr O's debt to income level ratio of 37% was low and didn't warrant further investigation either – especially as this was made up of unsecured personal debt.

Furthermore, I'm also concerned how 1plus 1 Loans seems to have proceeded with this application on the basis that Mr O had a monthly disposable income of £1,992.00. This is despite the fact that this disposable income was clearly at odds with what his credit file was displaying and him apparently needing to borrow £5,000.00 on these terms and also involve a guarantor, to now clear accounts which had defaulted some time ago.

I want to confirm that I've also seen what 1plus 1 Loans has said about outcomes reached in another unrelated case confirming that its checks were proportionate. But I don't think that it is appropriate for me to review the conclusions reached by other casehandlers on a completely separate and unrelated case, or equally that these conclusions mean 1plus 1 Loans can reasonably conclude all complaints about irresponsible lending made against it will never be upheld.

In any event, I've already explained that 1plus 1 Loans was required to carry out a borrower focused check. And it is the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) together with the type, amount and cost of credit being provided that's the main driver in determining whether a check is proportionate. So it's entirely possible that a proportionate check – for similar loan amounts - could look different depending on the individual circumstances of the prospective borrower.

Bearing all of this in mind, I think that 1plus 1 Loans needed to take additional steps to verify Mr O's income and expenditure instead of choosing to rely on what appeared to be an over-optimistic calculation of his monthly disposable income based on data and some electronic checks. As I can't see that this 1plus 1 Loans did do this, or in fact take any additional steps at all to address the apparent mismatch between Mr O's credit file and the disposable income arrived at, I don't think that the checks it carried out before providing Mr O with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to 1plus 1 Loans that Mr O would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told 1plus 1 Loans that Mr O would've been unable to sustainably repay this loan.

Mr O has now provided us with evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr O has provided, it doesn't mean it would've shown up in any checks 1plus 1 Loans might've carried out.

But in the absence of anything else from 1plus 1 Loans showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr O's financial circumstances were more likely than not to have been at the time. To be clear, I've not looked at Mr O's bank statements because I think that 1plus 1 Loans ought to have obtained them before lending to him. I've consulted Mr O's bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check 1plus 1 Loans should have but failed to carry out.

1plus 1 Loans was required to establish whether Mr O could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation, or simply proceed on the basis that it, in any event, had a second bite of the cherry in terms of being able to recover payments from the guarantor.

Of course the loan payments being affordable on a strict pounds and pence basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further. I've carefully considered the information Mr O has provided in light of all of this.

The information provided shows that Mr O's income wasn't too dissimilar to what he'd declared and what was confirmed by 1plus 1 Loans' electronic checks. But Mr O's bank statements show that he was in a difficult financial position. He was regularly exceeding his overdraft limit and having direct debits returned by his bank. 1plus 1 Loans will be aware that the FCA, in CONC 1.3, sets out that the non-payment of essential bills in itself is an indication that a customer may be experiencing financial difficulty. Furthermore, Mr O applied for three other guarantor loans, using the same guarantor, in the lead up to and around the time of this application.

1plus 1 Loans is now also aware that Mr O was gambling significant sums of money. And the sums of money involved are a clear indication that Mr O was unlikely to be able to repay this loan without borrowing further or suffering undue financial difficulty.

In reaching my conclusions on this matter, I've considered what 1plus 1 Loans has said about Mr O not disclosing his gambling. But I'm also mindful that CONC 5.3.7R says:

"A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R(1)".

The income and expenditure information (and calculation of disposable income) 1plus 1 Loans proceeded with was inconsistent with other information regarding Mr O's financial position, which it had but chose to ignore – namely Mr O's impaired credit history calling into question whether he really had a monthly disposable income of approaching £2,000.00.

So I don't think that it's fair and reasonable for 1plus 1 Loans to claim it was misled by Mr O when it had sufficient information to have realised that the information it was relying on simply didn't add up. And I consider 1plus 1 Loans' use of inflammatory language such as fraud and its reference to the Fraud Act 2006 to be particularly unhelpful here.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr O was unlikely to have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted 1plus 1 Loans to the fact that Mr O would not be able to sustainably make the repayments to this loan.

Did 1plus 1 Loans act unfairly or unreasonably towards Mr O in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude 1plus 1 Loans acted unfairly or unreasonably towards Mr O in some other way.

So I find that 1plus 1 Loans didn't act unfairly or unreasonably towards Mr O in some other way.

Did Mr O lose out as a result of 1plus 1 Loans unfairly providing him with this loan?

As Mr O has paid or is being expected to pay interest and charges on a loan that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what 1plus 1 Loans did wrong.

So I think that 1plus 1 Loans needs to put things right.

Fair compensation - what 1plus 1 Loans needs to do to put things right for Mr O

Having thought about everything, I think it's fair and reasonable in all the circumstances of Mr O's complaint for 1plus 1 Loans to put things right by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr O has made should be deducted from the £5,000.00 he was originally lent. 1plus 1 Loans should treat any payments made if and when the £5,000.00 has been cleared as overpayments. And any overpayments should be refunded to Mr O;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr O to the date of settlement†;

† HM Revenue & Customs requires 1plus 1 Loans to take off tax from this interest. 1plus 1 Loans must give Mr O a certificate showing how much tax it has taken off if he asks for one.

I'd also remind 1plus 1 Loans of its obligation to exercise forbearance if an outstanding balance remains after all adjustments have been made to Mr O's account and it's the case that he is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mr O's complaint. 1plus 1 Loans Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 March 2021.

Jeshen Narayanan
Ombudsman