

The complaint

Mr J, represented by a third party, complains that PDL Finance Limited trading as Mr Lender was irresponsible in its lending to him.

What happened

Initially it was thought that Mr J was provided with seven loans by Mr Lender and a view was issued on that basis. However, after further investigation it was established that Mr J received ten loans from Mr Lender between September 2011 and February 2015. These loans are listed in the table below.

Loan	Date	Repaid	Amount (£)
1	Sep-11	Dec-11	300
2	Mar-12	Mar-12	150
3	Oct-12	Oct-12	150
4	May-14	Jun-14	100
5	Jul-14	Jul-14	300
6	Jul-14	Aug-14	750
7	Sep-14	Sep-14	700
8	Oct-14	Nov-14	700
9	Jan-15	Feb-15	500
10	Feb-15	Nov-16	900

Mr J says that he was an easy target for these loans which had very high interest rates meaning he was only able to repay the interest and not the loan itself.

Mr Lender says that it carried out checks to ensure the affordability of the loans. Based on the initial view (assessing seven loans) it offered to refund the interest and charges on loans six and seven. This wasn't accepted by Mr J.

Our adjudicator noted that the first three loans were provided more than six years before Mr J raised his complaint however she didn't find any evidence to say that Mr J should have reasonably known he had cause to complain more than three years before he did. Therefore, she included all the loans in the assessment.

Having looked through the details of the loans, our adjudicator didn't think there was enough evidence to say that loans one to five shouldn't have been provided however she thought loans six to ten shouldn't have been lent. She said that the repayments for loan six represented a significant portion of Mr J's income and so she thought it was unlikely this loan was sustainably affordable. By loan nine our adjudicator thought that Mr J's overall pattern of borrowing suggested he had become persistently reliant on short-term loans.

Mr Lender didn't accept our adjudicator's view. It said although it had been said the loan repayments on loan six took a significant portion of Mr J's income, it carried out checks to

establish Mr J's disposable income and to ensure the repayments were affordable. It said that at loan eight, the loan amount was the same as the previous loan which didn't suggest Mr J was persistently reliant on its product. It noted the gap between loans eight and nine and said this combined with the lower loan amount didn't support the suggestion of Mr J being reliant on the loans.

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 that Mr J 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 a consumer. These factors include:

- 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 *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 J 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 Consumer Credit Sourcebook ("CONC"), defines 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.

The early loans in this case were provided before CONC. At that time the relevant guidance was provided by the Office of Fair trading (OFT) and this also set out the need to make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner. This refers to issues such as being able to make the repayments without undue difficulties throughout the life of the agreement and without having to realise

security or assets. It then further sets out that *without undue difficulty* means without having to borrow further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr J's complaint.

As our adjudicator explained we can consider complaints where the action complained about happened more than six years prior to the complaint if we find that the complainant complained within three years of becoming reasonably aware of their cause for complaint. In this case I have nothing to suggest Mr J was aware of his cause for complaint more than three years prior to his raising his complaint about the loans Mr Lender provide. So I have considered all the loans in this decision.

Mr J's first loan was for £300. He opted to use the interest only service and the highest repayment amount was just under £400. At the time, Mr J's monthly net income was recorded as around £1,750. As this was Mr J's first loan with Mr Lender I find the checks were reasonable. As the loan appeared affordable based on the checks I do not find I can say it was unreasonable this loan was provided.

Loan two was for a lower amount, £150 and there was a short break between Mr J repaying loan one and him taking out loan two. As this was still early in the lending relationship with Mr J and the previous loan had been repaid I do not find it unreasonable that Mr Lender provided this loan.

There was then a break of over six months between loan two being repaid and loan three being provided. I find that this was enough to suggest there was a break in the lending chain and so I have considered the third loan as the first in a new lending chain. This loan was for £150 and based on Mr J's reported income and the repayment amount I do not find it unreasonable this loan was provided.

There was then a break of a round a year and a half between Mr J repaying the third loan and receiving the fourth loan. I think this break was enough to say that loan four started a new lending chain.

Loans four and five were for £100 and £300 respectively. Before these loans were provided Mr Lender gathered information about Mr J's monthly income and expenses. I find these checks were reasonable. Based on Mr J's disposable income and the repayment due under the loans I do not find I can say that Mr Lender was wrong to provide loans four and five.

Loan six was for a much higher amount (£750). It was repayable in a single instalment with the repayment amount of £975. This loan was taken out within a week of Mr J repaying the previous loan. At this time, I think that Mr Lender should have been concerned that Mr J was borrowing money that he may not be able to sustainably afford. I note Mr Lender's comments about it calculating Mr J's disposable income and based on this the loan being affordable. But I can see from the information gathered that Mr J's reported expenses had reduced by around £180 from the amount he had recorded for the two previous loans (taken out in the previous two months). His expenses numbers were also quite low and I would have expected further checks to take place. The repayment accounted for a significant amount of Mr J's monthly income and I do not think that Mr Lender should have considered this loan sustainably affordable.

Loans seven and eight were both for £700 and each taken out a week after the previous loan was repaid. I again find that these loans raise concerns about the sustainability of Mr J's borrowing.

By loan nine I agree with our adjudicator that a pattern of borrowing had emerged. This was Mr J's sixth loan in under eight months. I note the comment about the break of around a month and a half between loans eight and nine but given Mr J's history of borrowing by this time, I do not find that this break was substantial enough to suggest that his circumstances had changed in any significant way. Overall the amount he was borrowing wasn't showing a pattern of reducing and instead was, in general, increasing. Mr J was having to consistently take out high interest, short-term lending over a sustained period and the indebtedness caused by this type of borrowing was harmful, in my view. Loan ten was for £900 and taken out as soon as the previous loan was repaid further supporting the suggestion that Mr J was persistently reliant on the borrowing.

Given the above I think that that loans six to ten shouldn't have been provided.

Putting things right

In deciding what redress Mr Lender should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr J from loan six, as I'm satisfied it ought to have.

Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr J may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr J in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr J would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Mr Lender's liability in this case for what I'm satisfied it has done wrong and should put right.

Therefore, to put things right Mr Lender should:

- A) add together the total of the repayments made by Mr J towards interest, fees and charges on loans six to ten;
- B) calculate 8% simple interest* on the individual payments made by Mr J which were considered as part of "A", calculated from the date he originally made the payments, to the date the complaint is settled;
- C) pay Mr J the total of "A" plus "B".
- D) remove any adverse information recorded on Mr J's credit file in relation to loans six to eight. The overall pattern of Mr J's borrowing for loans nine and ten means any information recorded about them is adverse, so these should be removed entirely from Mr J's credit file.

* HM Revenue & Customs requires PDL Finance Limited trading as Mr Lender to take off tax from this interest. Mr Lender must give Mr J a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint in regard to loans six to ten inclusive. PDL Finance Limited trading as Mr Lender should take the actions set out above in resolution of this complaint.

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

Jane Archer
Ombudsman