

## **The complaint**

Mr S has complained that 1Plus1 Loans Limited (“1Plus1” or “the lender”) should not have agreed a guarantor loan for him in June 2019.

## **What happened**

1Plus1 agreed a loan of £6,000 for Mr S on the 27 June 2019. The monthly repayment was £228.75 over a term of five years, and the total amount to be repaid came to about £13,725. This was a guarantor loan, in other words it was granted on the basis that Mr S had a guarantor who would be responsible for repaying the loan if he failed to meet his repayments.

Mr S says that 1Plus1 was irresponsible to have agreed a loan for him. He says the loan was unaffordable for him and 1Plus1 would have realised that if it had checked properly before lending to him. He says that he had a gambling problem, his debts were increasing and he had defaults and late payments on his existing debt. Mr S also says that he has been unable to afford essential bills and has relied upon further loans both from loan companies and friends and family.

1Plus1 says that it carried out reasonable and proportionate checks before lending to Mr S and its checks didn't raise any concerns. It noted he had defaults and minor delinquencies on old accounts but felt that his income was high enough for him to be able to afford the loan.

Our investigator assessed the complaint and found that 1Plus1 had been irresponsible in lending to Mr S because further checks would likely have shown that he wouldn't be able to meet his repayments without borrowing further. They recommended that Mr S should only be liable for the money he borrowed; that the lender should remove any interest and charges owed under the agreement and treat Mr S's repayments as payments towards the capital.

1Plus1 disagreed with this recommendation. It said that Mr S was able to pay an amount out of his income to cover household bills and still have sufficient income remaining to meet his loan repayment. It also said “Mr [S] arguably obtained further credit to support his gambling, but it cannot be considered a necessity for Mr [S] to seek further financial assistance to meet the monthly repayments, when the figures clearly demonstrate it was and still is affordable.”

The complaint has now 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 S's complaint for broadly the same reasons as our investigator. 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 S. 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 without having to borrow, without failing to meet other obligations and without experiencing significant adverse impacts.

The regulations aren't specific as to how lenders should carry out an affordability assessment but, as set out in CONC, the risk to the borrower directly relates to the particulars of the lending and the circumstances of the borrower. 1Plus1 was obliged to check not only its risk of not recouping its money, but also the risk to Mr S of incurring financial difficulties or experiencing significant adverse consequences as a result of its decision to lend.

Even in this case, where Mr S had a guarantor who agreed to step in and meet repayments in the event that he couldn't, 1Plus1 was still obliged to assess whether in the first instance Mr S could meet his repayments without undue difficulty.

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

- Did 1Plus1 complete reasonable and proportionate checks when assessing Mr S'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 S 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 S's credit file.

Mr S declared a net monthly income of £2,774 and said that his monthly living costs amounted to approximately £1,050. This included his share of the rent, council tax, food, utilities and some bills.

Mr S's credit file information showed four defaulted accounts, the most recent of which had defaulted in December 2017. Mr S's total debts came to almost £12,000 including active loans from three different short term lenders. I think this information is at odds with the level of disposable income Mr S said he had each month. He doesn't seem to have cleared his older debts and was borrowing expensive credit yet appeared to have £1,700 left over each month after meeting his usual living costs.

Mr S told 1Plus1 that he planned to use £3,600 of the loan to consolidate his payday loans and a credit card but not any of his defaulted accounts, the largest of which was almost £8,000. This account had defaulted in 2013 and Mr S explained that it was a joint credit card which his ex-partner was planning to pay off.

1Plus1 says that it checked Mr S's income level electronically, using information from his bank account. It hasn't provided any details of this and so I don't know whether 1Plus1 checked that Mr S was in receipt of this income each month, for example, or if it cross-checked this amount with his bank account deposits. 1Plus1 said that it didn't ask Mr S for his payslips or bank statements. I also understand it didn't ask for evidence of his living costs or some corroboration of what he'd said about his defaulted joint credit card. I note that 1Plus1 compared Mr S's expense figures to national statistics but I don't think it could be confident that such data reasonably reflected Mr S's situation and was appropriate to rely on in this case. (CONC 5.2A.19-2)

1Plus1 says that £12,000 of debt is below the average UK household debt according to statistics published by The Money Charity. With respect, the charity gives an average figure of less than £4,000 for unsecured individual debt, excluding mortgages. I'd consider £13,725 a significant debt for Mr S, especially given the above circumstances. Bearing in mind that this loan was to be repaid over five years and that it wasn't all to be, potentially, used for debt consolidation, I think 1Plus1 ought to have done more here to verify what Mr S had told it about his finances in order to reasonably check that he would be able to meet his repayments without getting into difficulty.

Mr S has provided this Service with his bank statements from the time and I've looked through these to get an understanding of his financial situation. To be clear, I'm not suggesting that's what 1Plus1 should have done, but I think this information gives me an insight into what proportionate checks were likely to have revealed. I understand that 1Plus1 has now seen Mr S's bank statements. It will have seen that at that time Mr S paid £1,850 via standing order each month into what is labelled a 'joint' account. I've seen bank statements from this account which show it is his partner's sole account and Mr S has told us and 1Plus1 that was his contribution to their living costs. He also paid some smaller bills directly and an amount of £269 monthly to his ex-partner for maintenance.

I don't think any of the above information would have caused concerns for 1Plus1. What should have been of concern is that Mr S was in a cycle of borrowing from several short term lenders. He borrowed £1,000 in April 2019, repaid this and borrowed £1,050 the next day in May, and repaid this and borrowed £2,550 the following day in late May. 1Plus1 records a further short term loan of £800 when it checked Mr S's credit file in June. I don't know if 1Plus1 saw this pattern in its checks on Mr S's credit file but I think it's more likely than not that a reasonable and proportionate check would have shown that Mr S's outstanding short term loans were not his first.

1Plus1 says that had Mr S used its funds to consolidate his debts he would have been able to afford to repay the loan in a sustainable way. This assumes Mr S's need for credit isn't an ongoing one and I think his reliance on expensive short term lending to meet his existing costs shows that this isn't a reasonable assumption. It seems to me there was a risk here that Mr S would need to borrow to meet his repayments on this loan, as he was currently doing so for his existing costs.

Mr S told 1Plus1 that he was gambling heavily at that time and it's clear from the bank statements that this was the case, for example Mr S spent over £7,000 in April, £5,500 in May and £3,000 in June up to the point he borrowed from 1Plus1. Mr S had credits coming into his account from betting companies but his net outgoings to these companies ranged upwards of about £1,800 a month. I don't know if 1Plus1 would have uncovered the extent of Mr S's gambling spend through further checks, but I think it would have been clear to the lender that Mr S was spending beyond his means and had been for some time, and that further credit was likely to add to his indebtedness.

Mr S continued to borrow from short term and high cost lenders in the months following 1Plus1's loan, and I think this was foreseeable. In September 2019 all Mr S's standing orders and direct debits were returned unpaid, including his payment for this loan. I appreciate that Mr S has continued to make his repayments but, in this case, I don't think successfully meeting payments means he has managed to do so without difficulty. Mr S says he's continued to borrow from short term lenders, has borrowed from his employer and is in an arrangement to pay with another lender. He's also told us that his gambling spend continues to be an issue.

Altogether, I think further checks on Mr S'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. And so I think it was irresponsible to have agreed to lend to him on this occasion. I think Mr S has lost out financially through paying interest and charges under this agreement and 1Plus1 needs to put this right for him.

### **Putting things right**

I understand that Mr S's loan hasn't yet been repaid. I think it's fair that he repays the capital he borrowed as he's had the use of this money but I don't think he should be liable for any interest or charges associated with the loan.

1Plus1 should:

- limit the amount Mr S needs to repay to the original capital borrowed of £6,000; and
- consider all payments made by Mr S as payments towards this original capital amount; and
- refund any payments over this amount to Mr S along with 8% simple interest per annum\* from the date of payment to the date of settlement or come to a mutually agreed repayment plan with Mr S for any outstanding capital balance; and
- remove any adverse information about this loan from Mr S's credit file once it's been settled.

\* HMRC Revenue & Customs would require 1Plus1 to take off tax from this interest. 1Plus1 must give Mr S a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

I'm upholding Mr S'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 S to accept or reject my decision before 22 October 2021.

Michelle Boundy  
**Ombudsman**