

The complaint

Mr B says PDL Finance Limited trading as Mr Lender lent to him irresponsibly. He says that he needed to borrow again from Mr Lender, and other payday lenders, to repay the loans. He thinks Mr Lender should've found out about this and not lent to him.

What happened

This complaint is about 13 payday and instalment loans Mr Lender provided to Mr B between October 2014 and June 2020.

loan number	date started	amount borrowed	monthly instalments	date repaid
1	31/10/2014	£400	1	02/02/2015
2	02/02/2015	£500	4	08/05/2015
3	14/05/2015	£300	3	06/07/2015
4	12/07/2015	£500	6	26/11/2015
5	03/12/2015	£150	2	05/02/2016
6	07/02/2016	£300	6	05/08/2016
7	10/08/2016	£1,000	12	17/08/2017
break in lending				
8	24/08/2019	£900	12	30/08/2019
9	01/09/2019	£750	12	05/10/2019
10	07/10/2019	£750	12	31/10/2019
11	07/11/2019	£500	9	26/11/2019
12	27/11/2019	£750	12	17/06/2020
13	18/06/2020	£1,500	12	21/10/2020

Our adjudicator partially upheld the complaint. He thought that Mr Lender wasn't wrong to approve loans 1 to 3 and 8 to 10. But he thought it should pay compensation in respect of loans 4 to 7 and 11 to 13. Mr B agreed with what the adjudicator said.

Mr Lender agreed in part with the adjudicator's opinion. It agreed to pay compensation in respect of loans 11 to 13 on the same basis as the adjudicator recommended. But, in respect of loans 4 to 7 it said that:

- it was too early in the lending relationship to have found out about Mr B's gambling and other financial problems
- Mr B confirmed that he wasn't using the short-term lending for gambling
- it accounted for his other short-term loans in its application process
- it didn't think Mr B was reliant on the lending at loan 7

As no agreement has been reached the complaint has been passed to me.

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 irresponsible 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 B 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 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.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator 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.

I've decided to uphold Mr B's complaint in part and have explained why below.

Mr B didn't disagree with our adjudicator's opinion not to uphold loans 1 to 3 and 8 to 10. Because of this I don't think there is any ongoing disagreement about these loans. But, for the avoidance of doubt I agree with the conclusions our adjudicator reached for the same reasons. And they were part of the borrowing relationship Mr B had with Mr Lender. So, they are something I will take into account when considering the other loans he took.

And Mr Lender has agreed to pay compensation in respect of loans 11 to 13. I agree this is as fair way to resolve this part of Mr B's complaint with respect to these loans. I've included loans 11 to 13 in my putting things right section below.

Loans 4 to 7

This was Mr B's fourth loan in just over nine months. I think this is a relatively long period of time - in respect of using short-term high-cost credit – to be making loan repayments. There had been no breaks in the lending up to this point. And Mr B was making a commitment to make repayments for a further six months.

So, I think Mr Lender could've realised at that time that Mr B may have some longer-term financial problems and he wasn't just using the loans to help with a temporary cash flow problem. Mr Lender should've also become concerned about whether it knew enough about Mr B's true financial situation.

I think that it would've been proportionate to fully review Mr B's financial situation. And I think that it needed to verify the information it found out where possible. This is to make sure Mr B was in position to make the repayments sustainably.

I don't think Mr Lender did this. It seemed to largely rely on the information Mr B told it. So, I need to think about what Mr Lender would've seen if it had carried out proportionate checks.

Mr B has provided some information about his financial circumstances at the time of loan 4 which includes his bank statements. I accept that this isn't exactly what Mr Lender would've seen at the time. But I think it would've found out similar information if it had made proportionate checks, so I think it's reasonable to rely on it.

Mr Lender recorded Mr B's monthly income to be around £1,450 but it looks to have been somewhere between around £1,000 to £1,250 in the run up to loan 4. Putting this against his recorded expenditure of £750 means that he may've, at times, struggled to make the loan repayments.

But added to this was that Mr B was using other short-term lenders. I can see regular repayments to at least two other short-term lenders and there is also some other use of high cost credit.

And by this stage, I think proportionate checks would've also shown Mr Lender that a substantial portion of Mr B's income was being spent on gambling. I've seen times where he spent more than his income in one month around the same time as these loans. And I think that if Mr Lender would've seen this, it wouldn't have thought it was responsible to lend to Mr B because of this.

I do accept that Mr Lender found out some basic information about his other lending and asked if he was using the loans to fund gambling. But, to reiterate what I said earlier, I don't think its checks went far enough. It should've done more than ask Mr B what look to be standard, non-personalised, questions. And then rely on what he told it. It should have asked Mr B for, or obtained, further information.

I think that Mr Lender would've found out the information I've referred to above if it had made proportionate checks. And I think Mr Lender would've seen Mr B wouldn't have been able to repay the loans 4 to 6 in a sustainable way. So, I think that Mr Lender shouldn't have given these loans to Mr B and I think he's lost out as a result of this.

I've also considered the pattern of lending up to loan 7. I think the lending history and pattern of lending itself clearly demonstrates that further lending would likely be unsustainable. Mr B had been in debt to Mr Lender for around two and half years at this point and loan 7 was his largest loan yet. Whilst I appreciate that Mr B stopped lending for a period after this loan there was no indication he would do this when this loan was started. So, I think Mr Lender was irresponsible to approve this loan for this reason as well.

So, I'm upholding Mr B's complaint about loans 4 to 7. Mr Lender should put things right in respect of these loans.

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 not approved loans 4 to 7 and loans 11 to 13, 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 B 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 B 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 B 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.

Mr Lender shouldn't have given Mr B loans 4 to 7 and 11 to 13.

A) Mr Lender should add together the total of the repayments made by Mr B towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything it has already refunded.

B) Mr Lender should calculate 8% simple interest* on the individual payments made by Mr B which were considered as part of "A", calculated from the date Mr B originally made the payments, to the date the complaint is settled.

C) Mr Lender should pay Mr B the total of "A" plus "B".

D) Mr Lender should remove any adverse information it has recorded on Mr B's credit file in relation to loans 4 to 6 and 11 to 12. The overall pattern of Mr B's borrowing for loans 7 and 13 means any information recorded about them is adverse, so it should remove these loans entirely from Mr B's credit file. If Mr Lender has sold any of the loans Mr Lender should ask the debt purchaser to do the same.

*HM Revenue & Customs requires Mr Lender to deduct tax from this interest. Mr Lender should give Mr B a certificate showing how much tax Mr Lender has deducted, if they ask for one.

My final decision

For the reasons I've explained, I partly uphold Mr B's complaint.

PDL Finance Limited trading as Mr Lender should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 July 2021.

Andy Burlinson
Ombudsman