DRN-2764621

The complaint

Mr R complains that PDL Finance Limited trading as Mr Lender was irresponsible in its lending to him.

What happened

Mr R was provided with four loans by Mr Lender between October 2014 and August 2016. The details are set out below.

Loan	Amount	Instalments	Date	Repaid
1	£200.00	4	06/10/2014	27/02/2015
2	£100.00	1	24/05/2016	30/06/2016
3	£700.00	6	30/06/2016	31/08/2016
4	£650.00	6	31/08/2016	outstanding

Mr R says that adequate checks weren't carried out before the loans were provided and that he had a poor credit score and several other payday loans at the time. He says the issues with his debts have had a seriously detrimental effect on his mental health.

Mr Lender issued a final response letter to Mr R saying that checks were carried out in line with the regulatory guidelines. It says that affordability and credit checks were carried out alongside reviews of Mr R's borrowing history and based on these the loans were affordable. While it didn't uphold Mr R's complaint it offered as a gesture of goodwill to recall Mr R's account and write off the outstanding balance.

Mr R didn't accept Mr Lender's offer and referred his complaint to this service.

Our adjudicator partially upheld this complaint. He didn't think he'd seen enough to say it was unfair that loans 1 to 3 were provided but thought that further checks should have taken place before loan 4. He said that had these happened, Mr Lender would have realised that Mr R was struggling to manage his money and was gambling excessively. He thought loan 4 wasn't sustainably affordable.

Mr Lender didn't agree with our adjudicator's view. It noted that loan 4 was only the third loan in the lending chain and was for a lower amount that Mr R had previously borrowed and repaid. It said Mr R was asked the reasons for the loan and he'd said it was for a holiday and that he was asked about gambling and confirmed the money wouldn't be spent on gambling. Mr Lender said it was proportionate at this stage in the lending relationship to rely on the information Mr R had provided. It noted the comment about Mr R's gambling but said that this would have only become clear if bank statements had been provided and it wasn't proportionate to ask for these at that time.

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 R 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 *lowe*r 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 R 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.

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

Mr R took out the first loan in October 2014 and repaid it in February 2015. He then didn't take out another loan until May 2016. Given the gap in Mr R's borrowing I find it reasonable to accept that the loans fall into two lending chains with the first chain including loan 1 and the second chain including loans 2 to 4.

Before loan 1 was provided information about Mr R's income and expenses was gathered. He declared a monthly income of £1,100 and expenses totalling £480. The highest repayment under the loan was £120. Given the size of the repayments compared to Mr R's income and given this was the first loan Mr R was provided by Mr Lender, I find these checks were proportionate. As the checks didn't raise concerns about the affordability of the loan I do not find I can say this loan shouldn't have been provided.

Mr R was provided with loan 2 in May 2016. This was the first loan of the second lending chain. It was for £100 with £130 repayable the following month. Mr R declared a monthly income of £1,300 and expenses of £510. The information recorded Mr R as living at home at the time and Mr Lender says a credit check carried out didn't raise concerns. Having considered the size of the loan and repayment compared with Mr R's income I think the checks were proportionate and as these suggested the loan was affordable for Mr R I think it reasonable it was provided.

Loan 3 (second in the second lending chain) was for a much higher amount, £700 and was taken out the same day the previous loan was repaid. This could raise concerns that Mr R wasn't able to repay his previous loan without borrowing more, however as this was only the second loan in the lending chain, I do not find I can say that this pattern had been established at that time. While the loan was for a higher amount it was repayable over a longer term, six months, with the highest repayment amount being £275. At this time Mr R disclosed that he was paying £50 a month towards other short term loans. While this amount (along with his other expenses) didn't suggest the loan was unaffordable, I think the disclosure of other short term loans suggested he may have been struggling to manage his money. While I think there were issues beginning to show as this was only the second loan in the lending chain I do not think I can say Mr Lender was wrong to provide this loan.

Loan 3 was repaid early but loan 4 was taken out on the same day. I note Mr Lender's comment that loan 4 was for a smaller amount than loan 3, but it was only slightly less and was for an amount higher than Mr R repaid at that time on loan 3. Taking out new borrowing on the day previous borrowing is repaid (even if repaid early) should raise concerns about sustainability as it could suggest that the new borrowing is required in order to repay the previous loan. As this had now happened on two occasions I think this should have raised concerns. The highest repayment amount accounted for around 20% of Mr R's declared income. The loan was repayable over six months and while the repayment amounts decreased Mr Lender needed to carry out adequate checks to ensure Mr R could make his repayments over the full term. Mr R disclosed that he was making repayments to other short term lenders and include the same amount as had been included in the previous loan application suggesting that his use of short term loans wasn't reducing. Given the combination of issues noted above I think that Mr Lender should have undertaken further checks to ensure that the loan was sustainably affordable for Mr R.

Mr Lender has said that requiring bank statements at this stage in the lending relationship wasn't proportionate. I note this comment, but I think further evidence should have been gathered to ensure that Mr Lender had a clear understanding of Mr R's financial position. Bank statements could have been part of this process and had these been gathered, Mr Lender would have seen that Mr R was spending excessively on gambling.

As I find that further checks should have been undertaken before loan 4 was provided and that had these happened, they would have raised concerns about how Mr R was managing his money and his spending on gambling, I do not find that loan 4 should have been considered sustainably affordable. Because of this I uphold this complaint in regard to loan 4.

Putting things right

If Mr Lender has sold the outstanding debt it should buy this back if it is able to do so and then take the following steps. If Mr Lender is not able to buy the debt back then it should liaise with the new debt owner to achieve the following result.

- Based on the information provided, Mr R has repaid more than the capital amount he borrowed for loan 4. If this is the case, all payments made should be treated as if there were repayments of the capital and any overpayments should be refunded to Mr R along with 8% simple interest* on the individual payments calculated from the date of the overpayment to the date the complaint is settled.

- Any information recorded on Mr R's credit file regarding loan 4 should be removed.

*HM Revenue & Customs requires you to deduct tax from this interest. You should give Mr R a certificate showing how much tax you've deducted, if he asks for one.

My final decision

My final decision is that I uphold this complaint. PDL Finance Limited trading as Mr R 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 R to accept or reject my decision before 26 May 2021.

Jane Archer
Ombudsman