

The complaint

Ms W complains that PDL Finance Limited, trading as Mr Lender, lent to her irresponsibly.

What happened

Using information from Mr Lender, here is a brief table of the approved loans.

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	02/06/2018	14/09/2018	3	£290.00	£191.78
2	14/09/2018	15/11/2018	6	£500.00	£207.33
3	23/11/2018	outstanding	12	£1,000.00	£215.17

One of our adjudicators had information from Ms W which led him to make further enquires about some transactions and having looked at the complaint he thought that Mr Lender ought not to have given Ms W loan 3.

Mr Lender disagreed as its view is that a full financial review was not warranted for the third loan.

The complaint remained unresolved and was passed to me to decide.

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 have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Mr Lender needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms W could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. 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:

- having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a level of income);
- having many loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Mr Lender was required to establish whether Ms W could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

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 the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Ms W's complaint.

Ms W has not commented on the outcome outlined by our adjudicator but she has not disagreed with it. From that I gather that loans 1 and 2 are undisputed. So, I have reviewed loan 3 only.

Mr Lender's opinion is that

'...we do not understand the relevance of the 12 months loan period as reasoning as a trigger on her third loan.'

'[Ms W] wanted to borrow £1,000 and we had to make sure she could afford the monthly repayments, which at 12 months was deemed affordable. If she opted to borrow this amount for say 6 months, then the repayments would have been double and potentially unaffordable based on our affordability assessments.'

As our adjudicator explained, a proportionate check for loan 3 would most likely have shown that Ms W was having serious problems managing her money. He felt that a full financial review was necessary at loan 3 and it's this element I considered carefully.

The information from Mr Lender to defend the complaint is, in my view, brief in relation to the credit file search it provides as part of that file. The table below duplicates the information Mr Lender has given to us and these income and expenditure (I&E) figures are the same for each loan – original emphasis retained.

ET Income	£2,995.00
Mortgage / Rent	£570.00
Electricity / Gas / Water	£100.00
Food / Travel	£150.00
Telecommunications	£125.00
Council Tax	£108.00
Loans (Inc short term)	£950.00
Other regular outgoings	£150.00
Total Expenditure (£)	£2,153.00
Disposable Income (£)	£842.00

Ms W declared £950 for '*Loans (inc short term)*' each time she applied, returning for a third loan within 7 days of repaying loan 2 and within six months of taking her first loan. Loan 3 was four times the amount of loan 1, and in my view these elements ought to have alerted Mr Lender to the need to make more enquiries.

Mr Lender says that it did by asking her what the loans were for and carrying out a credit search. The credit search information Mr Lender sends to us are always brief and despite Ms W having declared £950 on other loan (of all kinds) commitments, this does not appear to have been researched. And its results box produced for us indicates that she had no outstanding 'AAIs' which is shorthand for 'advances against income' which are payday loans. It appears from this 'results box' that all other criteria Mr Lender searched against were satisfactory. But it's not a complete picture, not least because there are other kinds of high cost credit as well as AAIs and the picture Mr Lender had does not appear to have considered those.

Mr Lender says '*There was no indication that the repayments on the prior loan had been unsustainable or that [Ms W] was facing financial difficulty with meeting them.*'

I have thought about this carefully but the amount being asked for on loan 3, the fact that her indebtedness was going to be extended for a further 12 months, the fact that she had declared £950 a month and yet still needed more credit all pointed to Mr Lender needing to make additional enquiries. And I don't think that a brief credit search just to see if she had other AAIs or asking her what she needed the loan for was enough.

A full financial review would have been the proportionate check I would have expected for loan 3 in Ms W's circumstances using the information Mr Lender has told us is had at the time she applied for loan 3.

Even on its own explanation to us, Mr Lender has said that the length of the term -12 months as opposed to 6 months – for the £1,000 loan likely made the difference to it being affordable for Ms W. This indicates to me that stretching her indebtedness for an additional 12 months was a solution of some sort to make it affordable whereas this loan over a shorter period may not have been. As I have said earlier, just doing the 'pounds and pence' calculation is not always what's needed.

Once Loan 3 was in place, her total repayments to Mr Lender and other lenders (on this information it had) was going to be £950 plus £215 for the loan 3 repayments which added up to £1,165 each month. That was a large proportion of her declared net income of £2,995 – about 38% - and on the information it had at the time that could have been the situation for the whole 12 month period. And Mr Lender had enough information to know this at the time she applied. So, I do think additional checks would have been proportionate.

Mr Lender could've verified her expenditure several ways, and one way was to have reviewed copies of her bank statements or it could've asked to see copies of bills, rent agreement or any other documentary evidence that it felt it needed to see.

I'm satisfied that Mr Lender didn't do a proportionate check, but for me to be able to uphold Ms W's complaint about loan 3, I would have to be satisfied not only that it didn't carry out a proportionate check, but had it done so, it would've likely discovered that Ms W couldn't afford the repayments she was committed to repaying. And I think it's highly likely Mr Lender would have found out more details about the borrowing from other lenders including friends and family, to meet obligations. I saw this from bank statements I have reviewed sent to us by Ms W and I asked her to clarify some elements of what I had seen.

These bank statements have shown me that Ms W had a lot of other debt to repay. I appreciate that she had declared the monthly £950 commitments but I can also see that Ms W had a gambling issue too. My view is that this would have been apparent to Mr Lender had it looked at the statements leading up to her loan 3 application.

In the bank statements supplied, between 25 August 2018 and 24 September 2018, Ms W spent over £700 on multiple online gambling sites. Between 25 September 2018 and 24 October 2018, Ms W spent over £2,000 on multiple online gambling sites, this was over 66% of her income of £2,995. And between 25 November 2018 and 10 November 2018, Ms W spent over £3,000 on multiple online gambling site's, this was over 100% of her income of £2,995 and well over her 'disposable income' of around £627.

In the circumstances, I disagree with Mr Lender – I think that it had enough information to be prompted to make some additional checks and if it had it would have discovered these details relatively easily. So, I uphold Ms W's complaint about loan 3 for both sets of reasons - the high commitment to other lenders together with the gambling.

Putting things right

In deciding what redress Mr L should fairly pay in this case I've thought about what might have happened had it stopped lending to Ms W at loan 3 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 Ms W may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed

between them and this 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 Ms W in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Ms W 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 ought not to have approved loan 3 for Ms W.

If Mr Lender have sold the outstanding debt Mr Lender should buy it back if it can and then take the following steps. If Mr Lender are not able to buy the debt back then Mr Lender should liaise with the new debt owner to achieve the results outlined below.

- A) Mr Lender should add together the total of the repayments made by Ms W towards interest, fees and charges on loan 3 without an outstanding balance, not including anything Mr Lender have already refunded.
- B) Mr Lender should calculate 8% simple interest* on the individual payments made by Ms W which were considered as part of "A", calculated from the date Ms W originally made the payments, to the date the complaint is settled.
- C) Mr Lender should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Ms W as though they had been repayments of the principal on all outstanding loans. If this results in Ms W having made overpayments then Mr Lender should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Mr Lender should then refund the amounts calculated in "A" and "B" and move to step "E".
- D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans and any principal Mr Lender may have already written-off. If this results in a surplus then the surplus should be paid to Ms W.

However, if there is still an outstanding balance then Mr Lender should try to agree an affordable repayment plan with Ms W. Mr Lender shouldn't pursue outstanding balances made up of principal Mr Lender may have already written-off.

- E) Mr Lender should remove any adverse payment information recorded on Ms W' credit file in relation to loan 3.

*HMRC requires Mr Lender to take off tax from this interest. If Ms W asks Mr Lender for a certificate showing how much tax it has taken off, Mr Lender should provide this.

If Mr Lender intends to use the refund to reduce an amount Ms W owes, it must do this after tax.

My final decision

My final decision is that I uphold Ms W's complaint in part and I direct that PDL Finance Limited, trading as Mr Lender, does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 4 January 2022.

Rachael Williams
Ombudsman