

Complaint

Mrs S has complained that 1plus 1 Loans Limited (trading as “1plus 1 Loans”) provided her with an unaffordable guarantor loan.

Background

1plus 1 Loans provided Mrs S with a loan of £5,000.00 in October 2017. This loan had an APR of 46.9% and a 60-month term. This all meant the total amount to repay, including interest of, £6,437.80, was £11,437.80 and Mrs S had to 60 monthly instalments of around £190. One of our investigators looked at this complaint and thought that 1plus 1 Loans had unfairly provided Mrs S with this loan. So she recommended the complaint be upheld. 1plus 1 Loans disagreed and asked for an ombudsman to review this complaint.

My findings

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 unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I’ve referred to this when deciding Mrs S’ complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mrs S’ complaint. These two questions are:

1. Did 1plus 1 Loans complete reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay her loan in a sustainable way?
 - o If so, did it make a fair lending decision?
 - o If not, would those checks have shown that Mrs S would’ve been able to do so?
2. Did 1plus 1 Loans act unfairly or unreasonably in some other way?

Did 1plus 1 Loans complete reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay her loan in a sustainable way?

1plus 1 Loans provided this loan while it was authorised and regulated by the Financial Conduct Authority (“FCA”). The rules and regulations in place required 1plus 1 Loans to carry out a reasonable and proportionate assessment of Mrs S’ ability to make the repayments under this agreement. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so 1plus 1 Loans had to think about whether repaying the loan would cause significant adverse consequences *for Mrs S*. In practice this meant that 1plus 1 Loans had to ensure that making the payments to the loan wouldn’t

cause Mrs S undue difficulty or adverse consequences. In other words, it wasn't enough for 1plus 1 Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mrs S. The existence of a guarantee and the potential for 1plus 1 Loans to pursue the guarantor instead of Mrs S, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- 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 also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were 1plus 1 Loans' checks reasonable and proportionate?

1plus 1 Loans says that it carried out an income and expenditure assessment with Mrs S before it agreed to provide this loan to her. It also carried out a credit check, checked Mrs S' income electronically and cross-referenced Mrs S' expenditure against data from the Office of National Statistics ("ONS"). These checks confirmed that Mrs S total income, made up of her salary and in-work benefits was around £1,400.00 a month and had total expenses of around £920 leaving her with £400 in monthly disposable income after a buffer of £100 was also added.

The credit check 1plus 1 Loans carried out showed that Mrs S had ten other existing credit commitments including a guarantor loan with another provider. Given the purpose of this loan was home improvement there was no indication any of Mrs S' existing credit would be repaid with the proceeds of this loan. Nonetheless, 1plus 1 Loans says Mrs S had enough left to be able to comfortably make the required monthly payments to this loan, when the

living costs and the monthly payments needed to meet the credit commitments shown on the credit check were deducted from Mrs S' monthly income.

I've carefully thought about what 1plus 1 Loans has said. But simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

The credit check 1plus 1 Loans carried out indicated that Mrs S already had an existing guarantor loan (although it isn't clear whether the guarantor was guaranteeing Mrs S' existing loan). Equally while 1plus 1 Loans hasn't provided the full copy of the credit search results it obtained (it only showed us what it included in its income and expenditure assessment) Mrs S' full credit report shows that she was in a debt management plan and had arrangements to pay other debts. Mrs S was also heavily overdrawn too. I can't see that the expenditure side of 1plus 1 Loans' accounted for any of this.

Bearing in mind the regulatory rules place an obligation to carry out a borrower focused check, where previous repayment difficulties are apparent, given what 1plus 1 Loans is likely to have seen, I would have expected it to have taken additional steps to verify that Mrs S was in a position to take on this additional commitment before providing it. I also have concerns with 1plus 1 Loans' use of ONS data to 'validate' Mrs S' living expenses. 1plus 1 Loans may say the FCA permits the use of statistical data to estimate a prospective borrower's non-discretionary expenditure. I accept that this is the case but it's also fair to say it also states that it is unfair to rely on such data where it is unlikely to be reasonably representative of the prospective borrower's situation.

1plus 1 Loans used ONS data, which was based on the finances and expenditure of the average consumer, to validate Mrs S' living expenses. But 1plus 1 Loans knew, when it lent to Mrs S, that it was providing a loan to someone whose credit file suggested they fell well outside this average portfolio. I don't think that using ONS data – which was unlikely to reflect the existing commitments and expenditure of someone in Mrs S' position is fair, reasonable and proportionate. Furthermore, I'm also concerned how 1plus 1 Loans seems to have accepted at face value that Mrs S had a monthly disposable income of over £400. This is despite the fact that this disposable income was clearly at odds with what her credit file was displaying and her apparent need for a second guarantor loan.

Bearing all of this in mind, I think that 1plus 1 Loans needed to take steps to verify Mrs S' expenditure and consider what it was made up of instead of choosing to rely on an over optimistic calculation of her monthly disposable income based on data and declared expenditure. As I can't see that this 1plus 1 Loans did do this, or in fact take any steps at all to address the apparent mismatch between what Mrs S' credit file suggested and the disposable income arrived at, I don't think that the checks it carried out before providing Mrs S with her loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to 1plus 1 Loans that Mrs S would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told 1plus 1 Loans that Mrs S would've been unable to sustainably repay this loan.

Mrs S has now provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mrs S has provided, it doesn't mean it would've shown up in any checks 1plus 1 Loans might've carried out. But in the absence of

anything else from 1plus 1 Loans showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mrs S' financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mrs S' bank statements because I think that 1plus 1 Loans ought to have obtained them before lending to her – although it does appear as though 1plus 1 Loans did obtain some open banking information as part of its consideration of Mrs S' complaint. I've consulted Mrs S' bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check 1plus 1 Loans should have but failed to carry out.

As I've already explained, 1plus 1 Loans was required to establish whether Mrs S could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation, or simply proceed on the basis that it, in any event, had a second bite of the cherry in terms of being able to recover payments from the guarantor.

Of course the loan payments being affordable on a strict pounds and pence basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Mrs S has provided in light of all of this. The information provided shows that the joint account Mrs S was a party was and had been significantly overdrawn for sometime and there were even a number of returned direct debits in the lead up to this application. I appreciate that this was a joint account and that Mrs S wasn't solely responsible for this debt. But the point is here that Mrs S' was jointly and severally liable for this debt and I can't see that 1plus 1 Loans attributed anything at all from Mrs S' income towards repaying this.

Furthermore, as Mrs S' mortgage was being paid from this account – supposedly by her partner – the sheer number of returned direct debits ought to have called this as well as the expenditure declaration provided into question. Especially bearing in mind Mrs S' pre-existing difficulties with credit – in terms of her debt management plan, arrangements to repay and apparent dependence on high-cost credit.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mrs S was already reliant on credit and in a difficult financial position. I think this, in itself, demonstrates that Mrs S was unlikely to have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted 1plus 1 Loans to the fact that Mrs S would not be able to sustainably make the repayments to this loan.

Did 1plus 1 Loans act unfairly or unreasonably towards Mrs S in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude 1plus 1 Loans acted unfairly or unreasonably towards Mrs S in some other way.

So I find that 1plus 1 Loans didn't act unfairly or unreasonably towards Mrs S in some other way.

Did Mrs S lose out as a result of 1plus 1 Loans unfairly providing her with this loan?

As Mrs S has paid or is being expected to pay interest and charges on a loan that she shouldn't have been provided with in the first place, I'm satisfied that she has lost out as a result of what 1plus 1 Loans did wrong.

So I think that 1plus 1 Loans needs to put things right.

Fair compensation – what 1plus 1 Loans needs to do to put things right for Mrs S

Having thought about everything, I think it's fair and reasonable in all the circumstances of Mrs S' complaint for 1plus 1 Loans to put things right by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mrs S has made should be deducted from the £5,000.00 she was originally lent. 1plus 1 Loans should treat any payments made if and when the £5,000.00 has been cleared as overpayments. And any overpayments should be refunded to Mrs S;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mrs S to the date of settlement†;
- removing any adverse information recorded on Mrs S' credit file as a result of this loan.

† HM Revenue & Customs requires 1plus 1 Loans to take off tax from this interest. 1plus 1 Loans must give Mrs S a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Mrs S' complaint. 1plus 1 Loans Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 29 March 2022.

Jeshen Narayanan
Ombudsman