

The complaint

Mr O complains that the loans he had from PDL Finance Limited (trading as Mr Lender) were unaffordable.

What happened

Mr O was approved for nine loans from Mr Lender between October 2014 and October 2018 as follows:

<u>Loan</u>	<u>Date</u>	<u>Amount</u>	<u>Term</u>	<u>Max Monthly Repayment</u>	<u>Due</u>	<u>Repaid</u>
1	20 Oct 2014	£300	3m	£205.00	6 Jan 2015	On time
2	21 Apr 2015	£100	44d	£136.00	5 Jun 2015	8 Jun 2015
3	10 Jun 2015	£400	3m	£219.73	4 Sep 2015	20 Aug 2015
4	24 Aug 2015	£850	6m	£440.86	4 Mar 2016	10 Dec 2015
5	14 Dec 2015	£1,000	6m	£366.66	6 Jun 2016	9 Mar 2016
6	27 Apr 2016	£1,500	12m	£395.00	5 May 2017	7 Mar 2017
7	9 Mar 2017	£1,000	6m	£385.06	6 Sep 2017	23 May 2017
8	10 Aug 2017	£1,000	6m	£352.96	6 Feb 2018	31 Jan 2018
9	4 Oct 2018	£1,000	12m	£236.33	8 Oct 2019	29 Nov 2019

Mr O says he had a poor credit score and multiple credit accounts at the time of the lending. He says the nine loans he had from Mr Lender were often in quick succession and he was using one loan to repay another. Mr O says he doesn't believe Mr Lender carried out sufficient checks and the lending was unaffordable and irresponsible. He says the lending has severely affected both his financial and his emotional health.

Mr Lender says it feels further assessments may have been appropriate before loans 7 and 8 and offered to refund interest on those loans (plus 8%) and remove them from Mr O's credit file.

Mr O did not accept this offer.

Our adjudicator recommended the complaint should be upheld in part. He considered proportionate checks were likely to have shown Mr O was having problems managing his money by loan 4 and that his pattern of borrowing by loan 6 suggested he was becoming reliant on short-term loans. Our adjudicator said Mr Lender should refund interest charged on loans 4 to 8 (plus 8% statutory interest) and remove any negative information about loans 4 and 5 from Mr O's credit file. He added that loans 6 to 8 should be removed from the credit file in its entirety.

Mr Lender offered to uphold the complaint about loans 5 to 8, but Mr O declined its offer. Mr Lender responded to say that its checks for loan 4 showed Mr O had one outstanding short-term loan for which he said he was repaying £100 per month. It says the results of its checks showed no evidence of financial difficulty and so further checks were not proportionate for loan 4.

Mr O accepted the adjudicator's view but added that at the time of loan 9 he was also repaying 5 other loans with combined repayments of over £900.

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 Mr O 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 net 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 during which a customer's 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 O 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 the arguments, evidence and information provided in this context and what this all means for Mr O's complaint.

Loans 1, 2 and 3

As these were Mr O's first loans with Mr Lender and the repayments were a maximum of 14% of his income, I'm satisfied the checks carried out by Mr Lender went far enough. There was nothing in the available information to indicate Mr O was in financial difficulties, or that the repayments were unaffordable, so I can't conclude Mr Lender was wrong to have approved loans 1, 2 or 3.

Loan 4

When Mr O applied for loan 4, I consider Mr Lender should have ensured it fully understood his financial circumstances before approving this, and any future, applications. I say that because:

- This was Mr O's fourth loan application and he'd been borrowing from Mr Lender for over ten months;
- This was the second time Mr O had applied for a new loan within a few days of repaying a previous one;
- The loan amount had more than doubled;
- The maximum repayment had more than doubled;
- The loan term had also doubled;
- Mr O's said his family circumstances had changed.

I've looked into what Mr Lender is likely to have found had it carried out better checks for loan 4 and I can see Mr O had at least three other outstanding short-term loans at the time. I'm satisfied, therefore, that if Mr Lender had conducted proportionate checks, it would have found Mr O was already struggling to manage his money and was unlikely to be able to sustainably repay a new loan. So I find Mr Lender was irresponsible to have approved loan 4.

Loans 5 to 8

Mr Lender has already agreed to uphold these loans, so I won't consider them further here, other than to say that the overall pattern of Mr O's borrowing from loan 6 means any information recorded about these loans is adverse, so Mr Lender should remove them entirely from Mr O's credit file.

Loan 9

I accept Mr O says he had a number of other loans at the time of loan 9, but as there was a gap of over nine months between loans 8 and 9, I find it reasonable that Mr Lender considered this as a new chain of lending. As such, there was no indication that Mr O was reliant on short-term lending and Mr Lender asked Mr O about his income and expenditure and checked his credit file. The credit check showed nothing of concern and Mr Lender was entitled to rely on the information Mr O provided which indicated the loan was affordable. So I don't find Mr Lender was wrong to have approved loan 9.

In summary, I'm upholding Mr O's complaint about loans 4 to 8, and Mr Lender should put things right.

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 refused to lend to Mr O, 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 O may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between him and this particular lender which he may not have had with others. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he 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 he 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 O 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 O 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.

My final decision

My decision is that I uphold this complaint in part. PDL Finance Limited (trading as Mr Lender) should:

- A. Add together the total of the repayments made by Mr O towards interest, fees and charges on loans 4 to 8;
- B. Calculate 8% simple interest* on the individual payments made by Mr O which were considered as part of "A", calculated from the date Mr O originally made the payments, to the date the complaint is settled;

- C. Pay Mr O the total of “A” plus “B”;
- D. Remove any adverse information recorded on Mr O’s credit file in relation to loans 4 and 5. The overall pattern of Mr O’s borrowing for loans 6 to 8 means any information recorded about them is adverse, so Mr Lender should remove loans 6 to 8 entirely from Mr O’s credit file.

*HM Revenue & Customs requires Mr Lender to deduct tax from this interest. Mr Lender should give Mr O a certificate showing how much tax it’s deducted if he asks for one.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr O to accept or reject my decision before 3 May 2022.

Amanda Williams
Ombudsman