DRN-3418554

The complaint

Mr M complains that PDL Finance Limited (trading as 'Mr Lender') lent to him irresponsibly.

What happened

This complaint is about loans Mr Lender provided to Mr M as follows:

Loan	Date taken	Date repaid	Monthly instalments	Amount	Highest repayment
1	10/02/2018	14/02/2018	3	£200	£97.41
2	17/03/2018	31/03/2018	6	£400	£204.26
3	07/04/2018	21/04/2018	6	£600	£224.00
4	07/07/2019	09/09/2019	6	£700	£247.14
5	23/11/2019	24/12/2019	6	£470	£202.41
6	18/01/2020	05/05/2020	12	£650	£173.88

When he complained to Mr Lender, Mr M mainly said that paying Mr Lender each month had left him with too little money so he had to keep borrowing to get through the next month. He said he had a major mental illness and addiction to gambling which meant the loans provided were unaffordable and only repaid if he borrowed further or won whilst gambling. Mr M said better checks would've shown up all his other debts and money problems.
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In response, Mr Lender didn't uphold Mr M's complaint but it offered him a £25 shopping voucher and said it would remove information from his credit file as a gesture of goodwill.

Following this, Mr Lender then conducted its own internal review of historic loans and, as a result, it offered to refund any interest and fees Mr M had paid for loan 3, pay him 8% simple interest on any refund and remove that loan entirely from his credit file.

Mr M didn't feel that this offer went far enough to put everything right so he brought his complaint to us and one of our adjudicators began an investigation.

As Mr Lender had already offered to put things right in relation to loan 3, our adjudicator concentrated in his decision on looking at the other loans and he upheld the complaint in part. Our adjudicator felt he hadn't seen enough to say it was unfair for Mr Lender to have provided loans 1, 2, 4 and 5 to Mr M. But our adjudicator explained why he thought that Mr Lender should've realised that loan 6 shouldn't have been lent and he set out the steps he said Mr Lender should take to put things right in relation to that loan.

Mr Lender didn't accept our adjudicator's view about loan 6 and asked for an ombudsman to review the complaint. Mr Lender confirmed its offer in respect of loan 3 still stands.

In brief summary, Mr Lender mainly said its checks for loan 6 had been proportionate and there was no requirement, and no reason, for it to have asked to see Mr M's bank statements before lending. It pointed out that its affordability checks included taking into account statistical information as well as information about expenditure provided by Mr M and the fact he settled loans early, including loan 6, demonstrates affordability.

For his part, Mr M would have liked the adjudicator to have upheld more of his loans and there has been an exchange of correspondence between Mr M and our adjudicator about this. As I understand it, Mr M hasn't accepted Mr Lender's offer in relation to loan 3 because he would like us to look into his complaint about that loan also. And Mr M still feels strongly that as loan 6 was the second time that Mr Lender provided a loan it shouldn't have done, this needs to be taken into account when I review the complaint.

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 M 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 consumer'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.

Mr Lender was required to establish whether Mr M 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 relevant regulations define 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 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 M's complaint.

As Mr Lender has already agreed to refund all interest and charges in relation to loan 3 and to amend Mr M's credit file by deleting this loan from his credit file, this more than matches what we would expect a lender to do in these circumstances. So I don't need to consider this loan further as Mr Lender has already said it will do everything that we would tell it to do if we upheld the complaint about loan 3, which means there's nothing further for us to do in this situation. If Mr M hasn't yet done so and he would like to take up this offer (which Mr Lender has confirmed is still open to him to accept) then he should contact Mr Lender direct to make the arrangements.

I'll look at each of the other loans in turn.

Loan 1
At this early stage, Mr M didn't have any track record with the lender that should've alerted Mr Lender to any underlying money problems. And I can't see that there was anything in the information Mr M provided or the information Mr Lender had, which meant that Mr Lender should've enquired further into Mr M's financial circumstances.

Mr Lender asked Mr M for details of his monthly income and expenditure and this led Mr Lender to conclude, reasonably in my view, that the monthly repayments should've been comfortably affordable for him. It looked like he had other credit already outstanding – but this wouldn't be enough of a reason not to lend to him if the loan otherwise looked affordable – as it did here. It isn't unusual for applicants for this type of high cost loan to have a credit history showing other borrowing or even an impaired credit record – and these things wouldn't necessarily be reasons to prompt a responsible lender to decline a loan application.

There didn't appear to be any serious black marks within the last three years shown on the credit checks Mr Lender obtained such as bankruptcy or any county court judgements and Mr M hadn't entered into any arrangement with creditors during this period. So I don't think Mr Lender had any reason to think it needed to do more in-depth checks before agreeing to provide this loan. And if Mr M didn't mention his gambling spending to Mr Lender at that stage, then I can't fairly say that a proportionate check would've revealed this information to Mr Lender.

So I can't fairly uphold Mr M's complaint about this loan.

Loan 2

Mr M took out loan 2 a month or so after he paid loan 1 early and this time he doubled the amount he'd borrowed first time and set the loan up to repay it over a longer period of time. This had the effect of keeping down the monthly repayment amount – but I don't think Mr Lender had any reason to think at that stage it shouldn't lend to him again or that Mr M would be likely to have a problem making the repayment on loan 2. He hadn't given any reason to make Mr Lender think that paying for loan 1 was problematic when he cleared it just 4 days after taking it out. And with Mr Lender's affordability calculation suggesting that Mr M had more than £1,000 spare cash each month, I can see why Mr Lender might reasonably have thought the loan looked like it should be comfortably affordable for Mr M.

I don't think there was anything in the information that Mr Lender had recorded for Mr M, or anything else that it should've been aware of at that stage in the lending relationship, which would've caused Mr Lender to think this loan wasn't affordable for Mr M when he took it out or that his borrowing pattern suggested he was in financial difficulty. So I don't feel I've seen enough to be able to uphold Mr M's complaint about loan 2.

Loan 4
Mr M didn't ask Mr Lender for any more loans during the period April 2018 – July 2019. That gap of more than a year seems long enough to me for Mr Lender reasonably to think that Mr M might've put his finances in order during this period. This meant that when his borrowing started again, and Mr M applied for loan 4, he was effectively starting over. So it was fair for Mr Lender to treat this as a new 'chain' of borrowing and assess Mr M's lending requests accordingly.

The figures he'd declared, and the information Mr Lender had collected, seem to support Mr Lender's lending decision. There wasn't anything to indicate that the loan wouldn't be sustainably affordable for Mr M or that it was unfair to lend it to him. All the indications were that he'd be well able to manage the loan repayments with ample disposable income still left over *after* making the repayments on this loan. Mr Lender's credit checks didn't show he was over-reliant on other credit at that stage or give any particular sign that Mr M was in financial difficulty – it looked like he was less reliant on other credit than he had been when he took out his earlier loans.

So I can't see that there was anything in the information Mr M provided or the information Mr Lender had, which meant that Mr Lender should've enquired further into Mr M's financial circumstances before agreeing his loan application. Taking things as a whole, I think it was reasonable for Mr Lender to consider that paying for this loan should've been affordable for Mr M and it made a fair lending decision when it provided the loan. So I can't fairly uphold Mr M's complaint about loan 4.

Loan 5
Mr Lender followed the same loan application process for this loan and updated the checks and credit information it relied on when deciding whether or not to lend.

Mr M's income (which Mr Lender had taken steps to verify) was recorded as £2,560. His declared expenses came to around £514 – including the costs of servicing his other outstanding debt. So this appeared to leave Mr M with more than £2,000 disposable income. I think this potentially raised a question about why someone with this level of disposable income would need to take out this expensive loan. But Mr M was applying to borrow a significantly smaller amount than the loan he'd repaid two months earlier and there wasn't anything concerning in Mr Lender's credit checks.

On balance, given the loan amount and term, and bearing in mind that despite it being Mr M's fifth loan overall from this lender this was only the second loan in this chain, I think Mr

Lender was reasonably entitled to rely on the information it had gathered. Based on this, its lending decision was fair and reasonable.

So I'm not upholding Mr M's complaint about this loan.

Loan 6
By loan 6, Mr Lender expected Mr M would be paying the loan for the next 12 months. Despite Mr M's apparently sound financial situation, I think this was a long enough loan term to go beyond what would be a reasonably foreseeable period to expect complete stability in his finances. I've taken into account Mr Lender's view that its checks for this loan were proportionate. But, coupled with the loan term, I think the fact that Mr M still didn't appear to have any particular pressing need to continue using high cost credit (according to the affordability calculations Mr Lender was relying on) by now put the onus firmly on Mr Lender to find out more about why he needed the money. I say this because this potentially suggested that Mr Lender couldn't safely rely on its affordability calculations. As far as I can see, it recorded no information about the loan purpose. Also, Mr M was signing up to pay the loan back over a year – possibly to keep down the monthly repayments.

So I think Mr Lender ought to have gone further in its affordability checks before agreeing to lend. I think Mr Lender should have taken steps to verify what Mr M was saying about his financial circumstances – especially his expenditure. Mr Lender hasn't shown me it did this. So I can't fairly say that it carried out a proportionate check before agreeing to lend to Mr M.

Mr M has provided his bank statements so I've looked through these to see what Mr Lender was likely to have found out if it had carried out more robust checking of Mr M's circumstances. To be clear, I'm not suggesting the lender should necessarily have looked at bank statements – the rules aren't prescriptive. But in the absence of other evidence, I think these give a useful insight into Mr M's finances at the time.

And had Mr Lender looked in more depth at Mr M's finances, as I think a proportionate check in these particular circumstances would've required it to do, it would likely have seen that he was facing serious problems managing his money.

I think it would have seen that Mr M's spending on gambling was clearly linked to his borrowing - loans he had taken out with Mr Lender (and others) seemed to be used to fund gambling as soon as the money was put into his account - and the amounts had increased in recent months.

I think if Mr Lender had seen this information it should've realised that there was a significant risk that loan 6 wasn't sustainably affordable for Mr M. And so Mr Lender shouldn't have provided loan 6.

I appreciate that Mr M repaid his loans earlier than the agreed terms. But successfully repaying his loans doesn't mean he managed to do so in a sustainable way. And borrowing and repaying this number of loans early suggests to me that his finances were not in a stable position.

To sum up, I'm upholding the complaint about loan 6.

I can see that Mr Lender has said its earlier offer to remove loans 1,2,4 and 5 from Mr M's credit file is still available so Mr M should contact Mr Lender directly about this if he'd like to take up this offer.

Putting things right

In deciding what redress Mr Lender should fairly pay in this case I've thought about what might have happened if it hadn't provided lending to Mr M, 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 M may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 now impossible to reconstruct accurately.

From what I've seen in this case, I 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 M 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 M would more likely than not have taken up any one of these options. This means it wouldn't be fair now to reduce Mr Lender's liability in this case for what I'm satisfied it has done wrong and should put right.

So, Mr Lender should:

A Add together the total of the repayments made by Mr M towards interest, fees and charges on loan 6 not including anything it has already refunded.
B Calculate 8% simple interest* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
C Pay to Mr M the amounts calculated in "A" and "B".
D Remove any adverse entries from Mr M's credit file for loan 6.

*HM Revenue & Customs requires Mr Lender to take off tax from this interest. Mr Lender must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

For these reasons, I partly uphold Mr M's complaint and PDL Finance Limited (trading as Mr Lender) should take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 May 2022.

Susan Webb
Ombudsman