

The complaint

Miss H complains that PDL Finance Ltd, trading as Mr Lender, did not carry out the correct or adequate checks before lending and so it lent to her irresponsibly.

What happened

Miss H has said that she borrowed from Mr Lender ten times between April 2014 and March 2019. Miss H has been very articulate in her explanation of her financial situation before, during and after the Mr Lender loans. She also acknowledges that Mr Lender was one of many lenders with which she had a relationship, and feels that they are partly responsible for the debt spiral she found herself in.

Miss H has sent to us a great deal of written evidence and has explained that some of the entries in her credit file will not extend back to 2014, and some are incomplete as they have altered as records may have been removed where she has succeeded in complaints against other lenders. Part of the redress from those other complaints may have led to records being deleted or 'clean up' the loan records. All of this I have read, reviewed and considered as part of the complaint.

Mr Lender has sent to us its business file which included summaries of the information Miss H gave to it, the information it found out and some of this is summarised here.

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	16/04/2014	26/07/2014	1	£500.00	£587.50
2	26/07/2014	10/11/2014	1	£700.00	£910.00
3	16/03/2015	31/07/2015	6	£750.00	£389.00
4	28/09/2015	29/01/2016	6	£600.00	£248.80
5	16/02/2016	24/03/2016	1	£150.00	£194.40
6	12/04/2016	28/06/2016	3	£200.00	£96.83
gap					
7	08/09/2017	28/12/2017	3	£450.00	£213.00
8	10/01/2018	28/02/2018	6	£500.00	£190.58
gap					
9	11/12/2018	28/02/2019	3	£250.00	£124.56
10	13/03/2019	17/04/2020	12	£1,050.00	£217.40

After Miss H had complained, Mr Lender wrote to her and in its final response letter (FRL) in June 2021, Mr Lender said that for the fifth and sixth loans it approved for Miss H it ought to have done more – for instance – reviewed copy bank statements. If that had been done Mr Lender conceded that those loans (5 & 6) may not have been approved for her. So, it offered to put things right for loans 5 and 6 only.

Miss H referred her complaint to the Financial Ombudsman Service and one of our adjudicators looked at all the information both parties had sent.

Later, in December 2021, while the complaint was with us, Mr Lender altered its offer to put things right for Miss H for loans 4 to 6.

Miss H responded in January 2022 to say that if Mr Lender were to accept that loans 7 to 10 ought never to have been lent to her, then she would be content to concede in relation to loans 1 to 3.

The resolution Miss H was proposing did not occur and so our adjudicator looked at the complaint in more detail and came to a view.

The gaps in the lending relationship had a bearing in that the significant periods when Mr Lender was not lending to Miss H meant that when Miss H returned for a new loan then Mr Lender could approach her application as if she were a new customer. Our adjudicator took this approach and so have I.

Our adjudicator considered that Mr Lender ought to put things right for loans 3, 4 and 10 as well as the ones Mr Lender was willing to uphold. As Mr Lender appeared to have conceded on loan 4, 5 & 6 already that meant a net change of an additional uphold for loans 3 and 10.

For loan 10, as the loan was for a 12 month period then our adjudicator thought that additional checks ought to have been carried out. He did not think that Mr Lender had done that. Our adjudicator had information to show that Miss H had several other outstanding loans when she applied to Mr Lender for loan 10. He said he knew this from her personal credit file reports which Miss H had provided.

Mr Lender didn't agree to the reasoning behind the uphold outcome for loan 10. It conceded again in relation to loan 3 as it said it agreed with the outcome for the first two loan chains. That effectively meant the loan chains covering loans 1 to 8, of which loans 3 to 6 had either been conceded by Mr Lender or upheld by our adjudicator.

Mr Lender said about loan 10:

'A loan being taken with repayments over twelve months, in isolation, does not mean that it is proportionate to carry out additional assessments, this was also only the second loan in the chain of borrowing. That being said Mr Lender carry out a credit check prior to approving any of our loans. The credit check carried out prior to approving [Miss H] the loan in question showed no outstanding AAIs (short-term loans) and no evidence of Insolvency, Bankruptcy or CCJs.'

In addition, Mr Lender gave many submissions as to why our adjudicator, who had relied on two sets of Miss H's personal credit file to effectively 'look back in time' to see what her financial position was in March 2019 was wrong to have done that. Mr Lender had already carried out those credit searches when she applied for loan 10 and it has told us that it can only lend on what it can see. So, Mr Lender disagrees about loan 10.

Miss H appears to have agreed with the loans which have not been upheld and so I have not reviewed those. I have taken this from her responses sent us since our adjudicator's assessment in February 2022 and my recent provisional decision.

The partially unresolved complaint was passed to me to decide and I issued a provisional decision dated 27 July 2022 in which I gave reasons why I felt that loans 3 to 6 ought to be upheld (and had already been agreed to) and not the other loans.

Both parties have responded and so its time to issue my final decision.

For ease of reference I set out here, in smaller type to differentiate it, the provisional decision of 27 July 2022.

My provisional decision dated 27 July 2022

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 Miss H 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. I do not think that this applies to Miss H's situation as there are several separate loan chains over the time she took loans from Mr Lender.

Mr Lender was required to establish whether Miss H 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 to do that. I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss H's complaint.

The only loan I have reviewed, as it appears only to be the one in dispute now, is loan 10. The outcome in relation to the other loans have been accepted or conceded on and so I have not reviewed those.

Mr Lender's main line of argument against the uphold for loan 10 for me to consider is that it says the additional lending Miss H has demonstrated to us she had at the time did not show up on its own credit searches and so it would not have known of it and so on the information it had at the time it lent responsibly.

Loan 10

When Miss H applied for loan 10, there had been a significant gap in the lending before loan 9 and so I agree that I think it was reasonable for Mr Lender to approach loans 9 and 10 as part of one, and a separate, lending chain. And I have done the same.

Loan 10 was for a 12 month term and was the longest one she had applied for in this lending chain. Loan 9 had been for a relatively modest loan of £250 as the first loan in this loan chain. It was a big increase in capital request to ask for over £1,000 (loan 10) and for it to be repaid over a much longer term. So, I do think that Mr Lender ought to have been alerted to that large increase and in fairness I anticipate that it was.

I've reviewed the information Mr Lender had on Miss H's income, expenditure and credit history for loans 9 and 10.

I duplicate the income and expenditure Mr Lender gathered here.

NET Income	£2,600.00
Mortgage / Rent	£425.00
Electricity / Gas / Water	£120.00
Food / Travel	£800.00
Telecommunications	£46.00
Council Tax	£71.00
Loans (Inc short term)	£500.00
Other regular outgoings	£270.00
Total Expenditure (£)	£2,232.00
Disposable Income (£)	£368.00

Whereas for loan 9, Mr Lender's calculations of her disposable income was £368 with Mr Lender repayments of around £125 a month or less for three months, for loan 10 the Mr Lender calculations were that Miss H had £368 disposable income in order to make repayments of £217 a month over 12 months. And so, the impact on Miss H going forward was greater.

However, in the 'Income & Expenditure' (I&E) summary I have received it also lists that Mr Lender knew Miss H was spending around £500 a month on other loans (none, some or all of which may have been high cost credit).

And this summary does indicate that Miss H was able to afford the new loan with Mr Lender. I do not think that the second loan in this loan chain usually would have prompted any additional checks purely because of the length of the term being 12 months. But that leaves me with very limited information about the credit search results Mr Lender obtained in March 2019 and very detailed information from Miss H about what her credit situation was like. Reluctantly, I must accept what Mr Lender has said that it had already carried out its own credit searches and used those results as part of its assessment before lending. It looked affordable and the credit search results did not appear to be such that Mr Lender had reason to be alarmed.

I plan not to uphold loan 10.

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.

How did the parties respond to my provisional decision?

Mr Lender agreed to the provisional decision.

Miss H has expressed some level of puzzlement as to why I have noted her credit report and what it shows and concluded that Mr Lender carried out the right sort of checks. Having said that, Miss H has accepted the provisional decision outcome as she says she has nothing else she could send to us to add to her complaint.

Whilst I appreciate Miss H's point, part of the explanation is that loan 10 was only the second loan in that loan chain. So, for instance, if there had been no gaps in the lending since 2017 or 2014, and if Miss H had taken several large loans over longer terms than she did then that may have led to me thinking that proportionate checks ought to have included a full financial review. But loan 10 was only the second loan in this chain of lending (starting with loan 9) and there is a well-established approach the lenders take in relation to the regulatory requirements.

As neither have sent me anything further and as both have agreed then I see no reason to depart from the provisional findings. Those are repeated here and form part of the final decision.

I uphold loans 3 to 6 which have already been agreed to or conceded by Mr Lender. I do not uphold any other loans.

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 stopped lending to Miss H for loans 3 to 6 inclusive, 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 Miss H may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular 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 Miss H 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 Miss H 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 needs to do as follows:

- refund all interest and charges Miss H paid on loans 3 to 6;
- pay interest of 8% simple a year* on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- remove any negative payment information about loans 3 to 6 from Miss H's credit file if those loans are still recorded on it;

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

My final decision

My final decision is that I endorse the already conceded or agreed upholds for loans 3 to 6, and I direct that PDL Finance Limited, trading as Mr Lender, does as I have outlined in the 'putting things right' part of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 8 September 2022.

Rachael Williams
Ombudsman