

The complaint

Mr M complains about a loan provided to him by 1Plus1 Loans Limited, ("1Plus1 Loans"), which he says was unaffordable. The complaint is brought to this service on Mr M's behalf by a claims' management company. But for ease, I shall refer below to all actions being taken by Mr M.

What happened

1Plus1 Loans agreed a loan for Mr M on 17 December 2019. The loan was for £3,000. The loan was repayable by 36 monthly repayments of £143.84. The interest rate was 24.2%, (47.8% APR). If Mr M made each payment when it was due, he'd pay £5,178.24 in total.

Mr M said that the loan was to be used partly for debt consolidation and partly for Christmas. Mr M said that 1Plus1 Loans failed to conduct thorough, appropriate and reasonable checks specific to his application and that it would have seen from its credit checks that he was dependent on borrowing.

Our investigator's view

Our investigator recommended that the complaint should be upheld. He said, in summary, that considering Mr M's credit repayment history, he thought it was unlikely that Mr M would be able to sustainably repay this loan over three years. And, although he thought that 1Plus1 Loans had made proportionate checks, he thought that what the lender saw should've triggered it not to give this loan to Mr M.

1Plus1 Loans disagreed and responded to the investigator's view to say, in summary, that:

- It had carried out checks as to Mr M's income and expenditure, including obtaining a review of his bank statements and obtaining a credit check report. It noted that the investigator had said that it should have carried out additional checks on top of those checks, despite also saying that the checks it carried out were proportionate for the loan size. It considered this to be contradictory and asked what additional checks it should have carried out
- The majority of the investigator's view focused upon Mr M's previous credit history. It said that its underwriter questioned Mr M's defaulted accounts and found that the answers were suitable to enable some of these to be consolidated.
- With reference to the bank statement review the investigator had conducted, it noted the monthly credit commitments were £625 a month. But Mr M was due to consolidate two loans totalling £140 a month. It said it wasn't under any legal obligation or regulatory requirement to ensure that the funds provided to Mr M were used for their intended purpose. But even if Mr M had not consolidated these loans, the additional £140 a month factored into the surplus figure left over would still enable Mr M to sustainably repay his loan repayments each month.
- The loan was made prior to Christmas and this accounted for a larger than usual part of Mr M's non-essential expenditure. Mr M had also confirmed that the majority of his cash withdrawals were for non-essential expenditure.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to 1Plus1 Loans on 23 June 2022. I summarise my findings:

I'd said that where the evidence was incomplete, inconclusive, or contradictory (as some of it was here), I'd reached my decision on the balance of probabilities – in other words, what I'd considered was most likely to have happened in light of the available evidence and the wider circumstances.

I'd noted that when 1Plus1 Loans lent to Mr M the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

1Plus1 Loans was entering a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr M's creditworthiness before it entered the agreement. This meant that 1Plus1 Loans had to consider both the risk to it that Mr M wouldn't make the repayments under the agreement when due, and the risk to Mr M of not being able to make those repayments.

In particular, 1Plus1 Loans had to consider Mr M's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules didn't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it was down to the lender to decide what specific checks it wished to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what was appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I'd have expected a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd have expected a lender to seek more assurance by carrying out more detailed checks

- 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 longer the period of time a borrower would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the borrower was required to make repayments for an extended period).

I'd noted that 1Plus1 Loans had spoken to Mr M several times on the phone and gathered some information from him about his income and expenses before it agreed the loan. I'd

listened to recordings of these calls. Mr M said he lived with his partner and had a dependent who didn't live with him. He was a council tenant and paid monthly rent of £160. 1Plus1 Loans asked Mr M a number of detailed questions about his spending and credit commitments. 1Plus1 Loans also carried out a credit check and saw bank statements for three of Mr M's current accounts for a period of around three months. Mr M told it he would use the loan for Christmas and to consolidate a high cost loan which had been defaulted with a balance of around £884, a payday loan with a balance of around £180 and a revolving credit account (I didn't have details of that balance).

Mr M was entering into a significant commitment with 1Plus1 Loans. He would need to make monthly repayments of around £144 for a period of three years. So, I thought it was right that 1Plus1 Loans wanted to gather, and independently check, some detailed information about Mr M's financial circumstances before it agreed to lend to him. I thought that the checks I'd described above allowed 1Plus1 Loans to form a detailed view of Mr M's finances and I thought that the checks 1Plus1 Loans did were proportionate.

But simply performing proportionate checks isn't always enough. A lender also needs to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. So, I'd looked at the results of 1Plus1 Loans' checks to see whether it made a fair lending decision.

1Plus1 Loans' affordability form showed that Mr M's average total monthly income was around £1,538. This was from employment income and benefit income.

I'd noted that 1Plus1 Loans had calculated Mr M's average monthly expenditure on living costs and financial commitments to total £1,149.58. So, it said that Mr M would be left with an average monthly disposable income of around £389.

1Plus1 Loans had used the results of its credit checks and other information to calculate Mr M's credit commitments to be £485 (as shown on its application details spreadsheet). As the items within this amount hadn't been itemised, I wasn't certain how this figure had been reached.

1Plus1 Loans provided this Service with a list of Mr M's credit commitments from its credit checks. The list didn't show either the dates the credit was taken out or the original loan amounts. The list showed a relatively large outstanding high cost loan with a balance of £4,013 with monthly repayments of £158 to be made over 60 months. This loan appeared to have been taken out only around four months before Mr M's application to 1Plus1 Loans as only four payments were shown on the checks. And around two months before the loan application, Mr M had taken out a payday loan with a balance of £180. One payment had been made for this and Mr M told 1Plus1 Loans he wanted to consolidate this loan.

Mr M also had two active credit cards. As credit limits weren't provided in the credit checks, I didn't know if the balances were near their respective credit limits.

Mr M also had two active communications loans. He had another communications loan with a balance of £548 and the checks showed missed payments on this loan three and four months prior to the loan application. The account was also under review, but Mr M told 1Plus1 Loans he didn't know the reason for this. Mr M was also mystified about a credit card account showing a balance of £330 and the last six payments showing as missed.

1Plus1 Loans also queried three defaulted accounts on the checks with Mr M. One communications account had been defaulted in 2016 and Mr M said he didn't know why this had happened. The second account had been defaulted relatively recently in March 2019. Mr M said this was his partner's account and he told 1Plus1 Loans "her credit was worse than mine". 1Plus1 Loans queried why the account was in Mr M's name but he didn't appear to know the reason for this. The third default was in October 2019. This was another high cost loan taken out around a year earlier with a balance of £884 and monthly repayments of around £68. Mr M said he would consolidate this debt with the loan from 1Plus1 Loans.

Mr M had also told 1Plus1 Loans about a further loan from a high cost lender for which the monthly repayments were £80. He'd said he'd stopped paying for this loan for at least six months as his van needed repairs. It didn't appear that this loan was on the credit checks. And it wasn't clear whether the revolving credit account that Mr M told 1Plus1 Loans he would consolidate was shown on the credit checks.

Altogether I thought 1Plus1 Loans' credit checks ought to have caused it concerns as Mr M's finances appeared to be under pressure. This was shown on its credit checks by Mr M's relatively recent need for high cost credit as shown by at least two high cost (short and long term) loans taken out in the five months before the loan application, two defaults in the nine months prior to the loan application, and three other accounts with missed payments. I'd noted that Mr M appeared mystified by some of the account balances and 1Plus1 Loans appeared to have accepted this. But I also thought 1Plus1 Loans might have tried to find out more about the mystery balances. It didn't appear from the phone call that 1Plus1 Loans had any real concerns about these and the relatively recent defaults and missed payments.

I also thought 1Plus1 Loans was likely to be aware that its credit checks might not have revealed the full extent of Mr M's credit commitments (and the information received from Mr M and the bank statements it saw suggested that this was the case). A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. Its checks might not necessarily be up to date. Also, not all lenders reported to the same credit reference agencies.

Mr M told 1Plus1 Loans he would be using part of the loan proceeds to consolidate three of his debts. From the information he gave to the lender about the debts to be consolidated, it was possible that less than half of the loan amount was being used for consolidation. I couldn't see from the information received from 1Plus1 Loans that it had made consolidation of the debts a condition of the loan. So, 1Plus1 Loans wasn't in control of making sure Mr M's debts would be repaid. And it couldn't have been sure it wasn't putting Mr M in a worse position by increasing his overall debt. It appeared that the largest credit amount Mr M intended to consolidate was the repayment of his defaulted loan of £884. But it was more likely than not that Mr M wouldn't have been paying interest on that defaulted debt. In addition, Mr M would still have been left with a relatively large amount of debt to repay even if he did repay three of his debts with part of the loan proceeds. And he would need around £5,180 to repay 1Plus1 Loans' loan over the loan term. So, 1Plus1 Loans was extending Mr M's indebtedness and prolonging his reliance on high-cost credit.

I also thought the relatively recent high cost borrowing shown on the credit checks might have suggested that Mr M was having problems managing his finances that a debt consolidation wouldn't have solved. The bank statements 1Plus1 Loans saw also suggested that Mr M had recently taken out other short term credit which hadn't appeared on its credit checks. I could see on Mr M's bank statements that he had taken out two short term loans totalling £450 in September 2019 and two short term loans totalling £400 in November 2019. I'd also noted that despite Mr M having received £3,100 into his account at the end of

July 2019, he'd needed to borrow short term credit in early September 2019. In addition, Mr M was receiving loans from family and friends in each of the three months prior to the loan application ranging from £100 to £190 each month. I thought all this suggested he was reliant on short term credit and other loans to make ends meet and was most likely trapped in a cycle of borrowing to repay these. Mr M told this Service that he'd received money from his family when he had no money. So, it appeared Mr M's need for credit appeared to be an ongoing one and his finances weren't stable. In view of Mr M's regular need to borrow, I didn't think 1Plus1 Loans could safely assume that Mr M wouldn't borrow again after he'd received its loan and there was a risk that Mr M would be unable to make repayments as they fell due over the life of the loan agreement, without him having to borrow to meet the repayments.

We'd received statements from Mr M for his main current account for the three months prior to the loan. I'd asked the investigator to ask Mr M for statements for his other two current accounts that 1Plus1 Loans said it had seen. But these haven't been received. But I couldn't see from 1Plus1 Loans' analysis of statements for all three bank accounts that the transactions on the other two accounts would have made a significant difference to my assessment.

I'd reviewed the transactions for September 2019 to November 2019 on the bank statements we'd received. As I'd said above, Mr M was borrowing from family and friends and taking out short term loans to supplement his employment income and benefits income. He'd told 1Plus1 Loans he was contributing £320 to a joint account for bills. But I could only see contributions totalling £100 in November 2019. And Mr M didn't appear to have enough money to pay all his financial commitments (such as his November 2018 high cost loan which was defaulted in October 2019, his two other defaulted accounts and two other credit accounts). I could also see payments to a debt collector and a buy now pay later account in October 2019. It also appeared that there wasn't an overdraft arrangement on the account. But I could see that Mr M's account was overdrawn in September 2019 and early December 2019. And on some occasions when the account was on the verge of going overdrawn in October 2019 and November 2019, a member of Mr M's family would deposit money into his account. Altogether, it appeared that Mr M was having problems managing his money.

1Plus1 Loans calculated a monthly disposable income of around £389. I'd noted that its final response letter said:-

"Based on the income and expenditure on non-discretionary items noted within your bank statements and the disposable income, the monthly repayment of £143.84 was more than affordable to you and just as importantly, sustainable for the lifetime of the loan. Considering an additional buffer of £100.00 this still left you with an average figure of £245.05 each month to spend on discretionary items and due to consolidating your other credit commitments this loan provided more monthly disposable income for you."

But I was concerned that 1Plus1 Loans seemed to have accepted at face value that Mr M had a monthly disposable income of some £389 a month when the pattern of spending on his bank statements suggested that he was having difficulty managing his money without borrowing elsewhere. 1Plus1 Loans was required to do more than check the pounds and pence affordability of the loan. It was obliged under CONC 5.2A.12 (R) to also ensure Mr M would be able to repay his loan without borrowing to do so, or it having a significant adverse impact on his financial situation.

Mr M's recent credit history suggested a reliance on borrowing (from high cost lenders and family/friends) to support his day to day spending and I didn't think this pattern of borrowing provided any reasonable reassurance that Mr M was likely to reduce his discretionary spending in order to make his loan repayments to 1Plus1. I thought 1Plus1 ought to have realised that it appeared that Mr M was living beyond his means and relying on credit to fund his day to day spending.

I'd noted that Mr M had taken out a payday loan for £150 within a month after 1Plus1 Loans' loan. I thought this was foreseeable.

So, on balance and for the reasons set out above, but subject to any further representations by Mr M or 1Plus1 Loans, I'd said that I intended to uphold Mr M's complaint. I didn't think 1Plus1 Loans had made a fair lending decision when it agreed to lend to Mr M based on the information it held and I intended to say that 1Plus1 Loans needed to put things right as follows:-

Putting things right – what 1Plus1 Loans needs to do

I understand that the loan hasn't been repaid. I think it is fair and reasonable for Mr M to repay the capital that he borrowed, because he has had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him. So, 1Plus1 Loans should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr M has made as payments towards the capital.
- If reworking Mr M's loan account results in him having effectively made payments above the original capital borrowed, then 1Plus1 Loans should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen to the date of settlement*.
- If reworking Mr M's loan account leaves a capital balance outstanding 1Plus1 Loans should try to agree an affordable repayment plan with Mr M.
- Remove any adverse information recorded on Mr M's credit file in relation to the loan.

*HM Revenue & Customs requires 1Plus1 Loans to deduct tax from this interest. 1Plus1 Loans should give Mr M a certificate showing how much tax it has deducted if he asks for one.

Mr M responded to my provisional decision to say that he was happy with it.

1Plus1 Loans hasn't provided a response to my provisional decision.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Given that Mr M and 1Plus1 Loans have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint and require 1Plus1 Loans to take the steps set out above under the heading "Putting things right - what 1Plus1 Loans needs to do".

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order 1Plus1 Loans to put things right as I've set out above under the heading "Putting things right – what 1Plus1 Loans needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 August 2022.

Roslyn Rawson

Ombudsman