

## The complaint

Ms B complains 1Plus1 Loans Limited unfairly accepted her as the guarantor on a friend's ('the borrower') loan.

## What happened

1Plus1 Loans provided the borrower with a loan for £3,000 in September 2017. It was repayable over 60 months. The monthly repayments were around £114 and in total the borrower agreed to pay back about £6,900 over the five years, once interest was added. The loan was secured by way of a guarantee, with Ms B standing as guarantor.

Sadly, the borrower died a few months into the loan term and the monthly repayments stopped being made to the loan. So 1Plus1 Loans turned to Ms B as guarantor to repay the loan. In around May 2018 Ms B reluctantly repaid the loan in full.

When Ms B asked the borrower's husband why the estate couldn't pay back the balance of the loan, she was told the borrower had lots of similar and higher value loans that she was struggling to pay back when she died. So Ms B complained to 1Plus1 Loans that it hadn't carried out proper checks when it lent to the borrower.

1Plus1 Loans said it did check whether the loan was affordable, both for Ms B and the borrower and they both had enough disposable income to make the loan repayments. After the complaint was referred to the Financial Ombudsman, 1Plus1 Loans did offer to pay back some of the money Ms B had paid towards the loan as a gesture of goodwill – the amount she'd paid above the £3,000 originally borrowed, plus interest.

Ms B didn't accept 1Plus1 Loans' offer as she wanted all of the money she'd paid towards the loan refunded, plus interest.

I issued a provisional decision about this complaint and explained why I thought this complaint should be upheld. I said:

*"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 approach to complaints about unaffordable and irresponsible lending on our website. And I've taken this into account in deciding Ms B's complaint.*

*Among other things, 1Plus1 Loans needed to take reasonable steps to ensure that it didn't lend to the borrower irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that both the borrower and Ms B, if necessary, would be able to pay the loan in a sustainable way.*

*I don't think there's any dispute that Ms B could afford to repay the loan if the borrower didn't. So the outcome of this complaint turns on the checks 1Plus1 Loans did on the borrower, the borrower's circumstances at the time, and whether 1Plus1 Loans made a fair decision to lend to the borrower.*

*Understandably, 1Plus1 Loans has been reluctant to share too much information about the borrower's circumstances. But it has given us some details of the checks it did and information it gathered about the borrower. I have had to base my decision on this information, together with what Ms B has told us.*

*1Plus1 Loans did complete some checks to see if the loan was affordable. But given the total cost of repaying the money the borrower was borrowing, the information she had provided about her income and expenditure, together with the information on her credit file, I don't think 1Plus1 Loans' checks were good enough. Specifically, I don't think it reacted appropriately to the data it gathered when it made its lending decision.*

*Based on 1Plus1 Loans' checks, it concluded the borrower had a monthly disposable income that would easily cover the repayments for the new loan. But the information 1Plus1 Loans had from the borrower's credit file, shows this was unlikely.*

*The borrower had a relatively large amount of outstanding debt already and she was behind with her payments towards at least one of her accounts. While the available information doesn't necessarily suggest the borrower was in dire financial difficulties, there were some signs she was already struggling financially. And it does throw doubt on whether the information the borrower had given about her outgoings was accurate. I would have expected 1Plus1 Loans to do some extra checks to verify the information.*

*The borrower told 1Plus1 Loans she was borrowing to consolidate some of her debts, including the account that was in arrears. So by taking out the loan with 1Plus1 Loans, the borrower was borrowing further to repay the credit she already had and couldn't afford. Giving someone who is already in financial difficulties additional credit, is unlikely to be considered responsible.*

*I appreciate the new loan may have decreased the borrower's monthly outgoings, but the reason it likely will have done this is because it had been taken over a longer term, meaning she'd be paying more interest and be indebted for longer. I think the costs of consolidating some of her debts and the disadvantages of prolonging the time the borrower would likely be indebted outweighed any perceived benefit. From the information 1Plus1 Loans had, I think it ought to have recognised that taking further lending was unlikely to help the borrower make inroads into her overall existing debt position.*

*As I've said, I've had to make this provisional decision with limited information. If 1Plus1 Loans can show me the borrower wasn't in financial difficulties when she took out the loan, then I ask it to do so when it responds. But based on the information I have, I think there's enough to say the loan more likely than not wasn't affordable for the borrower. So I currently think it was wrong of 1Plus1 Loans to give the loan to the borrower.*

*It follows that Ms B would never have been guarantor for the loan and would never have been required to make any payments towards it."*

Ms B responded to say she accepted the provisional decision. 1Plus1 Loans responded to say it didn't. In summary, it said:

- It could not disclose any sensitive financial information about the borrower.
- The borrower had over £500 surplus income each month, which shows she wasn't in a cycle of debt. And her income was independently verified. The amount of debt the borrower had isn't indicative of a person in financial difficulties.
- Consumers will often repay debt in smaller installments and will often want to consolidate debts as they are being charged a higher level of interest or want to have

one convenient payment.

- Ms B agreed to make the payments if the borrower couldn't. The borrower made all the payments on time, while she was still alive. She didn't contact 1Plus1 Loans to say she was in financial difficulty. All tangible evidence points to the fact the borrower could afford the loan.
- The information provided by the borrower's husband is hearsay evidence and it isn't fair or reasonable to take it into account.
- The investigator incorrectly said 1Plus1 Loans had accepted and upheld the complaint. It had only ever made a goodwill offer to settle the matter.

### **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.

My role is to review this complaint afresh. So what the investigator did and said before me hasn't influenced my decision. I understand that in making the offer it did, 1Plus1 Loans wasn't accepting it had done anything wrong by giving the borrower the loan or accepting Ms B as guarantor.

I understand why 1Plus1 Loans won't provide details of all the information it has about the borrower. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what is more likely to have happened in light of the available evidence and wider circumstances.

I also want to explain that as an informal alternative to the courts, the rules relating to hearsay evidence aren't relevant. I will consider *all* evidence that's presented to me and it's my job to determine how much weight, if any, to place on the different evidence available. In this case, I'm satisfied that the evidence provided by 1Plus1 Loans suggests the borrower was struggling financially. And what the borrower's husband told Ms B just supports this.

As I explained in my provisional decision, the information 1Plus1 Loans had from the borrower's credit file shows it was unlikely she did have the level of disposable income 1Plus1 Loans concluded she had. I appreciate some people might neglect some of their smaller debts, such as catalogue shopping and mobile phone accounts. But in my experience this isn't usually what we'd see when someone has surplus income of over £500 a month. Someone who is has that level of disposable income is unlikely to want to suffer the consequences of not repaying a debt if they could easily afford to do so.

Similarly, I accept some people might want the convenience of a consolidating smaller debts, so they only need to make one payment. People also might not repay a debt in full, even though they can afford to do so. But I do question whether many people with a spare £500 a month would really choose to take out a loan where they'll be paying back more than twice as much as they borrowed, for the sake of convenience and if they could afford to repay the debt without doing so.

The Finance and Leasing Association (the 'FLA') suggested in its Lending Code as long ago as 2006 that having four or more credit commitments and/or spending more than 25% of gross income on consumer credit might suggest that there was a higher risk of financial difficulty. I acknowledge that such risk factors weren't included in the FLA's 2012 Lending Code – nor the amended version of that in 2014. But since then, the Office of National Statistics' (the 'ONS') has included in its definition of 'problem debt':

- (1) households whose debt repayments were/are at least 25% of its net monthly income; or
- (2) households whose debt to net annual income is higher than 20%.

And as 1Plus1 Loans is no doubt aware, debt can be both an immediate and a longer-term problem for a household's material standard of living if the costs of servicing the debt take up too large a proportion of the household's income. Presumably this is why it tests both 'annual unsecured debt to income' and 'monthly payment to monthly income' ratios as part of its *pre-payout* checks. The more income a consumer needs to make available for repayments and the longer they need to make the repayments for, the more risk there is that they'll find the borrowing unsustainable.

The level of the borrower's income isn't in dispute. I accept it was independently verified. But what we know from this is that the borrower didn't have a high income. And while her level of indebtedness – 28% of her net income was spent servicing unsecured debt – doesn't conclusively show she was in financial difficulties, it was relatively high. This, when put together with what else we know, adds weight to the idea that the borrower wasn't in the strong financial position 1Plus1 Loans suggests she was.

The fact the borrower was able to make the payments to the loan for the months before she died *might* suggest it was affordable. But we don't know how she managed to make those payments. It's possible the borrower needed to borrow to repay this loan, which would mean she wasn't able to pay it in a sustainable way. So this alone isn't enough to say the loan was affordable.

Having weighed up all the available evidence, and for the reasons set out here and in my provisional decision, I think it's more likely the borrower wasn't in a position to sustainably repay the loan 1Plus1 Loans gave her. If 1Plus1 Loans hadn't given the borrower the loan, Ms B would never have been guarantor or make any payments towards it.

### **Putting things right**

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they would be in now if the mistakes it made hadn't happened. In this case, that would mean putting Ms B in the position she would now be in if she hadn't been guarantor on this loan.

As Ms B should never have been accepted as a guarantor on this loan, it is unfair and unreasonable for her to have made any loan payments. So, 1Plus1 Loans should pay her back everything she paid towards the loan.

Ms B will have lost the use of those funds and I think that she should be compensated for this. We normally ask a business to pay 8% simple interest where someone hasn't had the use of funds because its actions resulted in something having gone wrong. I see no reason to depart from our usual approach here.

So this is how I currently think 1Plus1 Loans should put things right:

- refund any loan payments Ms B made including the sum she paid to fully repay the debt. And to each of those sums, it must add 8% simple interest\* a year, from the date Ms B paid them to the date the refund is paid to her.
- remove any adverse information about this loan from Ms B's credit file.

\*HM Revenue & Customs requires 1Plus1 Loans to deduct tax from this interest. 1Plus1 Loans should give Ms B a certificate showing how much tax it's deducted, if she asks for one.

**My final decision**

I uphold this complaint. 1Plus1 Loans Limited should put things right for Ms B in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 29 December 2022.

Claire Allison

**Ombudsman**