DRN-3845756

The complaint

Miss S complains that Lendable Ltd lent to her when she could not afford it. She says it was irresponsible in its lending decisions.

What happened

Miss S took two loans from Lendable and here is a summary. The second loan ran concurrently with the first and the information I have is that these have not been paid off.

Loan	Approved	Amount	Term and payments	Total amount payable
1	13 April 2018	£2000	48 months x £53.81	£2,581.04
2	12 April 2019	£3,500	60 months x £93.18	£5,596.23

Fees were added to the loans as well. The APR for loan 2 was higher than for loan 1.

Miss S had asked for information from Lendable as a Data Subject Access Request (DSAR) at the same time she made a formal complaint in February 2022. The final response letter from Lendable in April 2022 went into detail about the information it had gathered from Miss S, the information it had checked and the copy documents it obtained. For Loan 1 it had looked at information about her salary with a copy payslip and a letter relating to HMRC Tax Credits, plus it had carried out a credit search and had asked to see some of her bank account statements. All of these have been sent to us.

For loan 2, it said it carried out a search using a credit reference agency tool to check that Miss S' income was what it had been informed it was. It proceeded on the basis that Miss S earned over £3,000 each month. It carried out a credit check and those results have been sent to us.

Miss S says that she has always worked part-time and did receive child benefit plus Tax Credits.

After Miss S had referred her complaint to the Financial Ombudsman Service, one of our adjudicators considered that Lendable had done all it should have done for loan 1 and did not think that part of the complaint should be upheld. But our adjudicator did think that Lendable had not done enough for loan 2. He thought that Lendable may have got Miss S' income for each month wrong.
Plus, he considered that her credit file search carried out by Lendable before loan 2 demonstrated a large increase in her debt position since approving loan 1 for her, and so he upheld Miss S' complaint for loan 2.

Miss S agreed with the loan 2 uphold but wanted the complaint to be reviewed as she maintained that loan 1 ought not to have been lent to her either.

Lendable responded to give reasons why it did not agree with our adjudicator about loan 2.

And so, the unresolved complaint was passed to me to decide and as neither party was content I've reviewed it all afresh.

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 unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Considering the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Lendable completed reasonable and proportionate checks to satisfy itself that Miss S would be able to repay in a sustainable way? And, if not, would those checks have shown that Miss S would've been able to do so?

If I determine that Lendable did not act fairly and reasonably in its dealings with Miss S and that she has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Lendable to carry out a reasonable and proportionate assessment of Miss S' ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Lendable had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Miss S. In practice this meant that Lendable had to ensure that making the payments to the loan wouldn't cause Miss S undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Lendable to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss S. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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).

I’ve carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss S’ complaint. And my decision is that I uphold Miss S’ complaint about loan 2 only. One of the reasons is that I do think Lendable appears to have got the details wrong when carrying out Miss S’ affordability assessment for loan 2 and if it had got that right then I do not think it would have lent to Miss S for loan 2. I explain in the paragraphs which follow.

Loan 1

I have reviewed all the bank account statements received from Miss S and the ones we got which were the copies Lendable looked at when it was considering Miss S’ application for loan 1. And I have seen the copy payslip she sent Lendable when she applied, together with the letter to show she regularly received Child Tax Credits. I’ve seen those tax credits go into her account for March 2018 and April 2018 which were £571 and £676 respectively. And I am satisfied that although Lendable described Miss S as ‘working full time’ which was incorrect, it did have the correct combined income each month after tax. So, the loan looked affordable.

I have reviewed the credit search Lendable carried out in April 2018 and I have not seen anything there which likely would have given Lendable any cause for concern or alert it to have to do further checks. The overall debt picture presented by that credit search did not show that Miss S was having any financial difficulties. Lendable looked at some of her bank statements as well which I have reviewed. What Lendable did before loan 1 was proportionate for a new customer for this loan over this term.

I do not uphold Miss S’ complaint about loan 1.

Loan 2

The first point about loan 2 was that Miss S was returning for a much larger loan and it was scheduled to be repaid over a longer term (60 months) and was for loan consolidation. The second point is that Miss S was asking for more credit within 12 months of her having been approved for loan 1 and yet it was not the case that loan 2 was going to pay off loan 1. Lendable knew this loan was going to run concurrently with loan 1.

For all those reasons I think Lendable ought to have carried out thorough checks to understand why Miss S wanted more credit so soon after loan 1. And so, I would have expected at least the same set of checks to have been carried out as it did at loan 1 but it appears to have done less.

And I say this because it did not obtain a copy payslip or any confirmation about her employment situation or her Tax Credit eligibility. And this time it’s earlier mistake of recording Miss S as being a full time worker was inaccurate and seems to have contributed to the incorrect monthly income figure it says it used. Lendable had utilised net monthly income of £1,029 for loan 1 which I considered to have been broadly accurate. Lendable would have seen that she brought home £571.38 as tax credits and her payslip showed part time employment wage of £556.17. Which works out to be a little higher than £1,029.

For loan 2, Lendable has said in its FRL that it verified Miss S’ income using credit reference agency verification tools. In the FRL it states the income declared by Miss S as £1,583. In its cover letter to us to defend the complaint, Lendable says it verified her income at £3,023.

It told us:

> '[Miss S] *let us know that she was in part time employment with a monthly income amount of £1,583. We were able to verify a monthly income amount of £3,023 using a credit bureau product with the highest possible confidence…'*

As an explanation it went on to say to us:

> *'If Lendable deems that there are discrepancies with the verified income assessment, in that we were not able to determine a consistent level of income in the months preceding the application, we will then request copies of bank statements or payslips to verify this information further.'*

But the income figure of over £3,023 a month was so clearly incorrect that clearly there were discrepancies. I think it ought to have done what it did for loan 1 and obtained payslips and copy bank statements.

I've not been sent any evidence to show that it obtained any payslip or copy bank statements for loan 2. But this was such a significantly different income level for a returning customer within 12 months that I think it ought to have considered whether that was correct. Verification tools go so far but in the loan 1 application – which had been for less money – it had obtained copy bank statements and a payslip. And so, I think that for a larger (and concurrent loan) at least I would have expected it to do the same. And for a larger loan of £3,500 over a 60 month term I would have considered proportionate checks to have included being very clear on Miss S' actual income and outgoings and debt situation. I don't think Lendable did this.

Although I do not have any copies that Lendable may have seen before approving loan 2 of a payslip or copy bank statements, I have been sent the bank statements from Miss S to demonstrate to me what Lendable would have seen if it had carried out what I consider would have been proportionate checks for a loan of this kind. And I have seen that Miss S received income from her employment of just over £856 in February 2019, and just over £487 in March 2019. Plus, Miss S received tax credits of over £575 on 22 January 2019, over £575 on 19 February 2019 and £468 on 18 March 2019.

The statements for March 2019 showed a significant income decrease and using that figure the sum was around to £1,037 when the child benefit of £82 was added in as well. This was because her salary that month was much less. I think this also highlighted how changeable her monthly salary was – which can also be seen by the various amounts she received from her employer. Miss S has said that at the time she was on Statutory Sick Pay which may have explained that drop. But I have no evidence of that. I mention it as Miss S had mentioned it. It may explain the change. Either way I think it was a matter for Lendable to have recognised and known her income with confidence before lending to her for a second time.

And so, I think that had Lendable carried out proportionate checks and not simply relied on the verification tool then it would have realised that Miss S did not receive over £3,000 each month but more like an average of £1,400 and in fact in March 2019 only about £1,037.

Lendable carried out a credit search and I can see that Miss S' credit situation had altered.

Having reviewed both credit search results for April 2018 and April 2019 I agree with one part of Lendable's submissions - that the main increase in the credit situation was a new hire purchase (HP) agreement for a car which commenced in March 2019. It was £175 month HP cost to Miss S as opposed to the £157 she had been paying before.

In addition to this Miss S had increased her overall indebtedness either on existing accounts which 12 months earlier had a low or zero balance, or Miss S had obtained additional loans. For instance, one credit card balance had increased from £0 to £695 and she had obtained a new credit card in November 2018 which had a balance of £687 by the time she applied for loan 2.

I have noticed that Miss S was paying more than she had been before to a local council which may have been rent or council tax but on 2 April 2019 it was for £352.79. On 1 February 2019 and on 1 March 2019 what appeared to have been the same payee received just over £268 from Miss S by Direct Debit. Whereas on 3 April 2018 (the year before) it went through as a Direct Debit for £134.

Lendable has explained how it carried out some calculations to account for the fact that Miss S had told it she was going to use the £3,500 loan to consolidate other loans. But I have seen no evidence to demonstrate to me that Lendable took care to ensure that Miss S did use its capital from loan 2 to pay down other loans. I'd expect a professional lender to have checked on that more closely and often the lender can pay off the loans to be consolidated directly. Here that was not done.

And I have looked on Miss S' bank statements she has sent us for April 2019 to see what she used the £3,500 for. I have the pages from when the credit appeared into her account of £3,500 on 13 April 2019 and the spending which looked to have been a mix of paying off some debts and discretionary spending.

However, if Miss S had not used it to pay off other debts then it would have meant that Miss S had simply taken another loan and had added to her debt load and monthly cost commitments. I think Lendable ought to have been more careful to check and ascertain just what the £3,500 was going to be used for especially as Miss S still owed it money on loan 1.

So, for all these reasons I have outlined, I uphold the complaint for loan 2.

Other elements raised in the FRL about the way the repayment plans were offered and repaid do not form part of this complaint as Miss S has not raised that part with us in her complaint form. Our adjudicator did not address it in his view and Miss S has not raised it. So, I make no findings on it.

Miss S has referred to having raised a complaint with the Information Commissioners Office (ICO) in relation to Lendable and the DSAR she asked for in early 2022. It seems that Lendable responded to that issue and it looks as though that has been treated as a separate complaint to this one. As our adjudicator has said to her in the past – reporting it to the ICO seemed the appropriate route to have taken and he said no more about it. Since then, Miss S has not raised it and so I make no findings on that either.

Putting things right

Where a business has done something wrong, our service usually aims to put the consumer back in the position they would've been in had the incident not occurred. However, in cases where a business has lent irresponsibly, this isn't entirely possible – as the lending provided cannot be undone.

In this case, I think it's fair that Miss S should only have to repay the money she borrowed and had the use of. So, I think Lendable Ltd should refund all the interest and charges Miss S has paid on loan 2.

While I think it's fair that Miss S's credit file is an accurate reflection of her financial history, I don't think it's fair that she should be disadvantaged by Lendable's decision to lend to her irresponsibly. Therefore, under the circumstances, I think Lendable should remove any negative payment information recorded on Miss S's credit file.

I don't think Lendable should've given loan 2 to Miss S. I understand both are outstanding. If it has sold the outstanding debts, it should buy these back if able and then take the following steps. If it's not able to buy the debts back, then it should liaise with the new debt owner to achieve the results outlined below.

- Remove all interest, fees, and charges from the balance on loan 2, and treat any repayments made by Miss S as though they had been repayments of the principal on all outstanding loans. If this results in Miss S having made overpayments then it should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
- If there is still an outstanding balance, then the amounts calculated should be used to repay any balance remaining on outstanding loans. If this results in a surplus, then the surplus should be paid to Miss S. However, if there is still an outstanding balance then it should try to agree an affordable repayment plan with Miss S.
- Lendable shouldn't pursue outstanding balances made up of principal it's already written-off.
- Remove any adverse payment information recorded on Miss S's credit file in relation to loan 2.

*HM Revenue & Customs requires Lendable to deduct tax from this interest. It should give Miss S a certificate showing how much tax has been deducted if she asks for one.

My final decision

My final decision is that I uphold Miss S' complaint in part and I direct that Lendable Ltd does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 28 February 2023.

Rachael Williams
Ombudsman