DRN-3909168

The complaint

Mr S says Lendable Ltd irresponsibly lent to him.

What happened

Mr S took out two instalment loans from Lendable. A summary of his borrowing follows:

loan	taken out	repaid	value, £	term in months	monthly repayment, £
1	19/05/2021	22/07/2021	5,000	36	211.81
2	18/08/2022	08/08/2022	5,000	36	224.81

Mr S says he was struggling with his mental health and finances. It was clear from his bank statements he had a gambling problem. He says appropriate checks were not carried out, particularly for loan 2 which was taken out so soon after loan 1 was settled.

Our adjudicator did not uphold Mr S's complaint. He said Lendable carried out proportionate checks for both loans which did not show the loans were likely to be unaffordable for Mr S.

Mr S disagreed and asked for an ombudsman's review. He said, in summary, his credit file would have shown a long history of his reliance on credit which had only improved earlier in 2021 after he sold property to pay off his debts. He said the child maintenance payment of £500 a month had not been considered. He listed the gambling transactions that Lendable would have seen on his bank statements in May and June 2021 and explained that the cash withdrawals of almost £3,000 in July 2021 were also gambling spend. So that totaled £7,821.20 over the three months. He also highlighted transactions totaling £7,200 over the same period that he says was spent gambling on stock positions. So, Mr S says it was clear he had used loan 1 to gamble, that his spending was out of control and more questions should have been asked. He asks for the assessment to be reconsidered, particularly for loan 2.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.
The Financial Conduct Authority (FCA) was the regulator when Lendable lent to Mr S. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged Lendable to lend responsibly. Amongst other things, Lendable was required to carry out a reasonable and proportionate assessment of whether Mr S could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So Lendable had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr S. 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 Mr S.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular 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 and cost of credit they have applied for.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Lendable did what it needed to before agreeing to lend to Mr S, and have considered the following questions:

- did Lendable complete reasonable and proportionate checks when assessing Mr S's loan applications to satisfy itself that he would be able to repay the loans in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Lendable make a fair lending decision?
- did Lendable act unfairly or unreasonably in some other way?

Lendable asked for some information from Mr S before it approved the loans. It asked for details of his income and his employment status. It checked his declared salary against his copies of his bank statements. It checked his credit file to understand his credit history and his existing credit commitments. It explained that it carried out focused expenditure checks to ensure Mr S would have enough income left for living costs and non-discretionary spend, after meeting all his credit commitments (including these new loans). For loan 1 it calculated he would have 72% of his income left and for loan 2 he would have 87% of his income available. It also asked about the purpose of the first loan - which was debt consolidation. From these checks combined Lendable concluded Mr S would be able to sustainably repay both loans.

Loan 1

I think that these checks were proportionate for loan 1. I have thought about the term of the loan, the stage in the lending relationship and the monthly repayment relative to Mr S's verified income.

Lendable was aware from its credit check that Mr S had around £18,000 of other debt across 11 active accounts that was costing around £835 a month. A Mr S had declared that the loan was to settle some of his debt I think it was fair for Lendable to assume this would reduce his monthly credit commitments by around £225 a month to £610. The report did show, as Mr S has flagged, that he had used payday loans but they were all settled. He was not in an active cycle of payday lending. And there was no concerning adverse data such recent arrears, defaults or public records.

Mr S asked if the child maintenance he pays was taken into account. As set out above, Lendable's approach was to ensure Mr S had enough income left to cover his fixed living costs and non-discretionary spend, and its affordability assessment showed he would have 72% of his income left - so in essence it was. From what I have seen on his bank statements Mr S's regular fixed costs in the month prior to his application totaled around £1,000. So, he had around £1,200 disposable income. There were also none of the common indicators of financial pressure showing on Mr S's bank statements, such as returned direct debits or the persistent use of an overdraft.

Overall, I don't think the results of the checks ought to have led Lendable to think there was a risk Mr S could not sustainably afford the loan.

It follows I don't think Lendable was wrong to give loan 1 to Mr S.

Loan 2

I think the checks were again proportionate. The credit check showed Mr S's indebtedness had reduced to £10,405 across five accounts and his monthly credit commitments had fallen to £253. Again, he was up-to-date with all his payments. He was no longer carrying a credit card balance. So, I don't think Lendable ought to have been concerned as there had been no deterioration in his financial stability - rather it had improved. Again, he was not using payday loans, nor an overdraft facility. His fixed outgoings had not changed significantly. So, at this point I think it had made a fair lending decision. I have then thought carefully about whether or not Lendable used and responded appropriately to all the information it gathered.

Mr S argues that his bank statements showed a high level of spend on gambling and it was clearly out of control. I have looked at the transactions he has highlighted. But I don't think Lendable would have necessarily identified them as gambling spend. I don't doubt Mr S's testimony, but the main beneficiary seems to be a payment aggregator making it difficult to identify the gambling problem Mr S has told us about. Similarly, he listed many ATM transactions and told us the cash funded more gambling, but I think it would have been disproportionate in the case of this lending decision for Lendable to carry out the level of investigation needed to know this. Mr S says he should have been asked more questions, but I can't fairly conclude with any certainty that he would have disclosed what he was spending his money on to Lendable if probed.

He also highlighted payments to a trading platform, but I am not satisfied Lendable ought to have been automatically concerned by this. Mr S's financial position was not easy to read from his statements – there were high-value payments in every month, as well as out, and not from a recognisable gambling firm. Overall, I can't see Lendable missed any of the standard indicators of financial difficulties that we would expect it to respond to. Clearly, had Mr S's gambling been more easily identifiable, and therefore his financial instability was visible, I would have not expected Lendable to proceed.

I also have to consider what the regulations Lendable must follow demand of the lender. The relevant provision is in CONC 5.2A.17(R) 2) which set outs that *'the firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the* *customer's non-discretionary expenditure'* and goes on to explain that this would be priority bills, essential living costs, other expenditure that would be hard to reduce to give a basic quality of life, including all contractual or statutory obligations. So, it is not obliged to scrutinise an applicant's discretionary spend if it seems that the loan application it's approving is sustainably affordable based on the applicant's income and non-discretionary outgoings.

It follows I do not find Lendable was wrong to give loan 2 to Mr S. And I haven't found that it treated Mr S unfairly in some other way.

I know this won't be the outcome Mr S was hoping for. And I am sorry he has struggled to control his spending which in turn has impacted his mental health. I hope he now has the support he needs, if not he could contact GamCare on 0808 8020 133 for free support and advice.

My final decision

I am not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 February 2023.

Rebecca Connelley
Ombudsman