

The complaint

Mr K complains that PDL Finance Limited, trading as Mr Lender, lent to him when he could not afford it. He says that proper checks would have revealed he was a gambler and he had an Individual Voluntary Arrangement (IVA) in place.

What happened

Mr K took one loan with Mr Lender in July 2022 for £200. It was due to be repaid in six repayments with the instalments ranging from around £73 in month one reducing to £41 in month six as the interest was paid off. The total amount payable was £361.78. The information I have is that Mr K has not made any payments towards it.

Mr K also says *'I have been hassled every day by Mr Lender with texts and emails re missed payments and advising me that my debt is increasing with daily interest which is having an adverse affect on my mental health.'*

After Mr K had complained, Mr Lender issued its final response letter. It did not uphold his complaint. Mr K referred it to the Financial Ombudsman Service where one of our adjudicators looked at the complaint. She did not think that Mr Lender needed to do anything to put things right.

Mr K raised that he was in an IVA. Our adjudicator explained that Mr Lender had not been aware of that. And Mr Lender would have had no reason to be aware of Mr K's gambling.

The unresolved complaint was passed to me to decide. After I had reviewed it I asked Mr K to send us documentation about his IVA. His Insolvency Practitioner (IP) confirmed that Mr K had entered a 60 month IVA in July 2020, it was still current and the IP did have an interest in the complaint.

I wrote to Mr Lender to ask it about the searches it carried out and I address that in the main body of the decision. I asked for information about how Mr Lender had been dealing with Mr K to recoup the debt.

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 this type of lending - including all the relevant rules, guidance, and good industry practice - on our website.

Mr Lender had to assess the lending to check if Mr K could afford to pay back the amount he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Mr Lender's checks could've taken into account several different things, such as how much was being lent, the size of the repayments, and Mr K's income and expenditure.

I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Mr Lender should have done more to establish that any lending was sustainable for Mr K. These factors include:

- Mr K 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 particular level of income);
- Mr K 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);
- Mr K 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 for Mr K. But a pattern would not have developed here as Mr K took one loan only.

Mr Lender was required to establish whether Mr K could *sustainably* repay the loan – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr K was able to repay his loan sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr K's complaint. I've decided not to uphold his complaint and I explain here.

Mr Lender carried out proportionate checks as it verified his income, checked his credit file which did not show any elements to prompt it to be unduly concerned. There was nothing there to indicate that Mr K was in financial difficulties or had been falling behind in his payments.

The income and expenditure assessment Mr Lender carried out indicated that Mr K had enough disposable income to repay the £73 for the first month followed by the other five payments all of which gradually reduced to £41 in month 6.

Mr K has sent to us his bank account statements. Although he has not explained his spending patterns to us I have reviewed them and I can see that there were transactions which related to betting and gaming/gambling. But, it would have been disproportionate for Mr Lender to have reviewed his bank account statements for this loan as it was his first one and for £200 only which is a low value and early in the lending relationship. Unless Mr K informed Mr Lender of these spending habits then it would not have known, and I would not have expected it to have known, of them.

In relation to the IVA, Mr Lender has explained that Mr K had confirmed when he applied to it that he was not in an IVA and its policy would have been not to have lent if it had known.

When I questioned Mr Lender as to how it had received information that Mr K was not in an IVA having carried out a credit search, when IVAs are a matter of Public Record, it explained

that Mr K had given to it a different address. And when it carried out a search on the address it had been given in July 2022 no reference to IVA had been shown. So, the combination of the two led it to be confident that Mr K was not in an insolvency situation.

Mr Lender has sent to me the credit search document showing the search it carried out using the address Mr K had put on his application form. I note that is different to the one I have seen on the Insolvency Records and different again to the one held by his IP when the IP wrote to us in August 2023. It may be that Mr K moves a lot or has had multiple addresses. But having investigated this with Mr Lender I am satisfied with its explanation that Mr K's IVA did not show up on a legitimate search it carried out. And that, combined with Mr K's application form assertion he was not in an IVA, would not have led Mr Lender to have been alerted. And as I am sure Mr K is aware, there is a limit to the amount of credit he can apply for and hold when he is in an IVA.

As for the issue surrounding how Mr Lender had approached Mr K in recouping the debt, it had explained to Mr K in its FRL that its policy was to inform customers that they have missed their repayments, so it's able to assist customers with their financial situation.

I have reviewed the list of contact dates and methods Mr Lender had with Mr K and I do not receive the impression that Mr K was contacted to an unreasonable extent such that Mr Lender had overstepped the line of reasonable debt collection activity.

I do not uphold Mr K's complaint.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 September 2023.

Rachael Williams
Ombudsman