DRN-4172584

The complaint

Mr M complains that Lendable Ltd lent to him irresponsibly six times over three years from 2019.

What happened

Using information from Lendable's records, here is a loan table of the approved loans:

Loan	Date taken	Amount	Term	Monthly repayment	Capital paid Mr M	Date repaid
1	08/07/19	£722.36	24 months	23 x £30.05 1 x £31.21	£500	03/10/19
2	30/01/20	£578.33	12 months	11 x £48.23 1 x £47.80	£500	16/10/20
3	30/12/20	£1,348.53	24 months	23 x £56.48 1 x £49.99	£1,000	21/04/21
4	04/05/21	£1,332.74	24 months	23 x £55.95 1 x £45.89	£1,000	07/01/22
5	04/01/22	£1,208.58	24 months	23 x £50.38 1 x £49.84	£1,000	17/04/23
6	01/08/22	£1,301.45	24 months	23x £54.11 1 x £56.92	£1,000	Ongoing

Mr M complained to Lendable using an on-line complaints management service in January 2023. The response from Lendable on 10 March 2023 was its final response letter (FRL). Lendable explained all that it had done before approving the loans and did not consider that it had lent irresponsibly.

Mr M disagreed and referred his complaint to the Financial Ombudsman Service. One of our adjudicators did a detailed analysis of all the information he had from Mr M and from Lendable and issued his view. It set out his reasons for him not upholding Mr M's complaints for each of the loans.

Mr M was not content and said that Lendable ought to have done more and if it had it would not have lent to him.

Mr M has mentioned that he gambled some money but that this spending habit has stopped now.

The unresolved complaint was passed to me to decide and on 27 July 2023 I issued a provisional decision giving reasons why I planned to uphold Mr M's complaint in part. What follows is a duplication of that provisional decision in smaller type to differentiate it. It forms part of this final determination.

The provisional decision dated 27 July 2023.

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.

Lendable had to assess the lending to check if Mr M could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Lendable's checks could've considered several different things, such as how much was being lent, the size of the repayments, and Mr M'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 Lendable should have done more to establish that any lending was sustainable for Mr M.
These factors include:

- 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);
- having a large number of loans and/or having these loans over a long period (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- 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 M.

Lendable was required to establish whether Mr M could sustainably repay the loans – 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 M was able to repay his loans 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 M's complaint.

Mr M's declared income for each of the loans was verified by Lendable before approving each loan. The FRL from Lendable plus our adjudicator's view set out the income figures which were checked and Mr M has not disputed those figures. Plus, I have seen from the bank account statements that these income figures were broadly accurate. So, I need not focus on the income figures.

For the benefit of this provisional decision I can summarise that the incomes declared to Lendable ranged from around £3,500 to £3,786 after tax each month. I do not consider that this was a low income.

The income and expenditure assessment which would have formed part of the creditworthiness assessment has been explained to us in the submissions to us from Lendable:

> *'Lendable performs a focused expenditure check to ensure that the customer has a sufficient proportion of their monthly income left for living costs and non-discretionary spending after servicing their debts. This is calculated as the proportion of income remaining after monthly debt servicing obligations, including the monthly repayment for the new Lendable loan. Revolving account contributions are estimated to require*

a minimum repayment of 3% of the outstanding balance. The monthly repayment for the new loan is added to the total, Lendable uses this value to calculate the percentage of the verified income that is required for debt servicing.'

And it was outlined in its FRL addressed to Mr M.

'We reviewed your credit file at the time of your application to understand your verifiable monthly expenditure and your history of managing credit.'

So, the credit research is a key part of Lendable's process. We have copies of all of those and Mr M needs to be aware that the regulatory requirements surrounding responsible lending do not include mandatory review of bank account statements.

Loans 1 and 2

Mr M has recently explained that he took another high cost loan to help pay off loan 1 in September 2019. And a family member lent to him £3,000 in October 2020 which he says helped to pay off the Lendable loan 2.

Proportionate checks were what the regulatory requirements required of Lendable. And placing the first two loans in context, these were for relatively modest amounts and low repayment figures. So, I consider that the checks Lendable carried out and for the first two loans, £500 over 24 months and £500 over 12 months, were a proportionate approach. Plus, Lendable did as it has explained to establish Mr M's credit repayments and assess the affordability. I have reviewed the credit searches carried out for loans 1 and 2.

Mr M's mortgage is noted there. The other overall balance figure was £18,059 and he had 12 active accounts at loan 1 and this had changed for loan 2. The overall debt (apart from the mortgage figure) had reduced slightly. But there were no adverse entries such as insolvency, defaults and no history showing of late repayments. So, at this early stage of the lending relationship then I consider that Lendable did what was expected and that approving loans of £500 each with relatively low repayments was as a result of proportionate checks. I do not plan to uphold the complaint on loans 1 and 2.

Loan 3

I considered the information I have from both parties very carefully when it came to loan 3 and I am of the same view – that I plan not to uphold the complaint about loan 3. Let me explain.

Mr M had already had two loans and had repaid them quickly – more speedily than the agreement terms. And I realise that Mr M has explained that he paid them off more quickly as he borrowed (from a lender and a family member) but Lendable would not have known of the reason for his early repayments. They would have been seen as a positive element in its creditworthiness assessments going forward and I consider that reasonable.

Plus, after repaying loan 1 there had been a gap before Mr M had applied for loan 2. And there was a two and a half month gap between paying off loan 2 and applying for loan 3. All these points likely indicated that the credit was not a burden and Mr M was not reliant on the credit. And so Lendable would have had that background information when Mr M applied for loan 3.

When Mr M applied for loan 3 in December 2020, it was for £1,000 repayable over 24 months which was larger than the loans Mr M had previously taken and it was for a two year term. And so that was the difference between loans 1 and 2 and loan 3.

I am conscious that it was this loan – loan 3 - which Mr M has submitted to us the following:

'The month leading up to this loan I paid £3923.98 in debt repayments over 7 loans, including 1 payday loan and a revolving credit account …[named lender which

> provides a credit facility attached to a customer's current account] *…credit card and overdraft fees. I spent £520 on gambling. I am in persistent debt, constantly at the upper limits of both my overdraft and credit card.'*

The credit facility provider to which Mr M refers, is a product offered by a lending company with which I am familiar. I know how those are approved and then can be utilised. However, how it shows on credit files would not necessarily have registered details such as how much Mr M may have drawn down or how much Mr M may have repaid to it. And I say this because the nature of the credit facility falls into the credit category of 'revolving credit' which is the same category as a credit card. So, often this sort of credit facility registers on credit searches as 'credit card'.

And having reviewed the credit search Lendable did before approving loan 3, I can see that two have been brought up in the search. One was opened in 2002 and had a limit of £4,500. I doubt it was that as I have not received the impression from Mr M he's had that facility with that lender for that long.

Another had closed in 2018. Another had opened in March 2020 with a limit of £1,320 of which £1,029 had been used up.

Another reason – as well – is that not all credit searches carried out by a lender reveal the same sort of credit results that an individual may obtain when carrying out a personal search.

Having thought about all this carefully, I think that the large sums Mr M has calculated as 'debt repayments' may well have been made up of large repayments to that facility but had not registered as such on the credit search results. And at this stage of the lending relationship – the third loan of modest amounts with low repayment monthly figures - it would have been disproportionate for Lendable to ask for and review bank account statements.

The credit search results Lendable obtained does not show the level of spending on existing debt in the lead up to loan 3 that Mr M has explained he spent. And as that is the information Lendable obtained and its able to rely on before approving a customer's application for a loan then, on current evidence, I can't accept Lendable knew – or ought to have known - of them.

I have reviewed the details and the figures our adjudicator gave in his view about loan 3 to Mr M in June 2023 and I agree with those figures. Excluding Mr M's mortgage cost (£925 a month) those were:

> *'Unsecured loan monthly repayments of £630.00*
> *Bank current account overdraft of £1,012 x 5% = £50.60*
> *Credit card balances of £5,435 …. = £4,435 x 5% = £221.75*
> *New loan three monthly repayments of £56.48*
> *TOTAL next monthly repayments of £958.83 which was around 25.3% of your monthly income of £3,786.'*

Plus, our adjudicator had allowed for 5% to be calculated as the expected minimum repayments for all credit card debt whereas Lendable had used 3%. So, our adjudicator's figures had been more generous in that regard which inevitably would have built in a margin.

At the risk of repeating myself, but I appreciate that this is an important point for Mr M, at this stage in the lending relationship I would not have expected that the information Lendable had about Mr M would have prompted it to consider that a full financial review was required.

And so, it would not have seen Mr M's bank statements as that would have been disproportionate and not what the regulatory requirements would have legislated for.

So the loan repayments would have looked affordable. I plan not to uphold the complaint about loan 3.

Loan 4

Loan 3 was paid off two weeks before loan 4 was applied for. At loan 4, Lendable had been lending to Mr M for almost two years albeit with some gaps between the loans. Mr M's repayment history was good as he'd repaid each of the previous loans much earlier than scheduled. Despite that I think that from here Lendable ought to have done more than it did to check why it was that Mr M was returning for additional credit. One way to have done this would have been to ask for copies of his bank account statements and as Mr M had sent us a set (I refer to it as the account with Bank A) I reviewed them.

On the first set of bank account copies sent to us by Mr M some time ago (Bank A) then I have seen that he had had three other high cost loans to which he was either paying money or receiving credit from those lenders. And he took £1,950 from the credit facility provider I referred to earlier. This was apparent when looking at the bank statements.

He paid one of the other lenders £1,000 then took the new loan 4 with Lendable which was for £1,000 to keep within the account's overdraft limit of £2,100. Although not strictly relevant as the loan 4 approval date was 4 May 2021, I've seen that Mr M took another loan with one of the lenders he'd just paid off for £1,000 on 6 May 2021.

But I had some questions about some of the transactions which showed and so as they likely would have been the same sort of questions Lendable may have wanted to ask – had it reviewed his statements – then I asked Mr M for details of the following:

- between 12 April 2021 and 4 May 2021 (loan 4) there were a number of transfers out of the Bank A account ending *3657 to accounts marked either 'bills' or 'Bill payment' or a combination of those transaction labels. Those amounted to £1,201 and the incoming transfers were £420 so about £780 went somewhere else.
- Plus, on 23 April 2021 £1,050 was sent to an account with a transaction label of 'bill pay to M ref savings'.
- And the accounts to which the money was transferred I asked Mr M for some details, for example to provide a snapshot of the receiving accounts.

Mr M has replied to say that there was no savings account – it was an old reference on the bank account transactions. Mr M went on to explain the transactions.

He transferred to a joint account (Bank B) he held with his wife about £1,800 each month to cover bills and the mortgage payments. I've seen copies of that account into which that money was sent and I've seen that it was run to pay the bills and after the bills were paid had very little extra cash in there. For example, on 9 April 2021 the balance was around £75.

I've also seen the statements for another account (Bank C) held by Mr M into which Mr M had been transferring money and I've seen extensive betting and gaming transactions.
So, my view is that if Lendable had carried out a full review of Mr M's financial situation it would have seen that he was borrowing to pay back other lenders and to keep inside his £2,100 overdraft on the account with Bank A, using another account with Bank B to pay bills and using another account with Bank C with which to gamble.

In the circumstances I consider that Lendable would not have thought that further lending was appropriate and I plan to uphold Mr M's complaint about loan 4.

Loans 5 & 6

The difference in behaviour with loan 5 is that I note that Loan 5 was taken out before loan 4 was paid off. I have seen using the records from Lendable and the bank statements for Bank A from Mr M that he paid £760.99 to Lendable on 7 January 2022 when he'd just had £1,000 paid into his account from Lendable for loan 5 on 4 January 2022. Effectively Loan 5 was used to pay off a large part of loan 4.

Then loan 6 was applied for seven months after Mr M had taken loan 5 and well before he was due to repay loan 5. So, there was a significant overlap.

These two loans show a difference in the way that Mr M was applying for and using the credit. Loan 4 was refinanced, effectively, into loan 5 and then Mr M still needed additional credit. He applied for loan 6 when loan 5 remained outstanding. These can be signs of financial distress and so I have reviewed the bank account statements I have for the account with Bank A to see what it is that Lendable likely would have seen if it had carried out a detailed review. And I think that at this stage the full financial review I recommended ought to have been done at loan 4 ought to have continued for loans 5 and 6.

In the period leading up to Mr M applying for loan 5 (January 2022) Mr M's bank transactions with Bank A showed that he was already paying for, or obtaining loans from, four other high cost lenders, and he had the Lendable loan 4 ongoing. He was always in his overdraft and the limit was £2,100 and often he was close to it or taking a new loan to bring that figure down within the limit.

But I also note that he transferred money to an account in his surname with reference 'savings' and another series of transfers to an account marked 'bills' and he paid £1,500 to a person with his surname on 24 December 2021. So, I asked Mr M about these and he's sent me details. Mr M has replied to say that there was no savings account – it was an old reference on the bank account transactions. Mr M went on to explain the transactions.

He transferred to a joint account he held with his wife (Bank B) about £1,800 each month to cover bills and the mortgage payments. I've seen copies of that account into which that money was sent and I've seen that it was run to pay the bills and after the bills were paid had very little extra cash in there. For example, on 10 January 2022 the balance was around £16.

The other account (sole account in Mr M's name with Bank C) into which money had been transferred showed less in the way of betting and gaming transactions than before but still showed some.

But I consider that the combination of all these details demonstrates to me that had Lendable carried out a full financial review before lending to Mr M at loan 5 it would have realised he was borrowing to repay borrowing and was spending some money on betting and gaming.

I plan to uphold Mr M's complaint about loan 5.

For the period leading up to loan 6, as I have already indicated, loan 5 overlapped with the Lendable loan 6 when it was approved and so Mr M's transactions with the account held with Bank A show that he had three other loans he was paying for, plus the Lendable loan 5, plus he was in his overdraft all the time. He took two additional loans on 30 June 2022. It seems to me that at this stage Mr M was borrowing to repay other borrowing. And that is a sign of unsustainability.

In the period up to loan 6 (13 July 2022 to 1 August 2022) there were numerous transfers out amounting to £1,098 and with transaction labels or references much the same as before. There was another payment out for £1,500 on 27 July 2022.

I asked Mr M about these and he's explained them to me and sent to me documentary evidence – the accounts for Bank B and Bank C. The pattern of transferring to other accounts either for bills or for other transactions were much the same as before. And the detailed picture of Mr M's financial situation was much the same as for loan 5.

For the reasons I have given, I plan to uphold Mr M's complaint for loan 6 as well.

This is the end of the duplicated 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.

Each party was given time to respond. Lendable has told us it has nothing further to add. Mr M has expressed disappointment at the non-uphold relating to loan 3. However, Mr M has said to resolve the complaint and move on he'd like to accept the provisional decision findings.

I have reviewed loan 3 in light of Mr M's comments. My view remains the same. I hope Mr M has recognised I was very detailed in my approach to his complaint as I appreciated he felt strongly about it.

In the circumstances, I see no reason to alter my findings as set out in the provisional decision and those are repeated here. I uphold Mr M's complaint about loans 4,5 and 6.

Putting things right

I uphold loans 4, 5 and 6. My understanding is that loan 6 remains outstanding. Neither party has given me fresh information about that loan recently. Loan 6 remains within its original agreement loan term. Lendable is entitled to offset the refund sums due to Mr M against the debt that he owes to it.

I direct that Lendable should do as set out below:

- remove all interest, fees and charges applied to loans 4, 5 & 6,
- treat any payments made by Mr M as payments towards the capital amounts,
- if Mr M has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date they were paid to the date of settlement, but if there's still an outstanding balance, Lendable should come to a reasonable repayment plan with Mr M or, if it suits Mr M, for the repayments to remain as they are now,
- remove any adverse payment information about loans 4, 5 and 6 from Mr M's credit file.

* HM Revenue & Customs requires Lendable to take off tax from this interest. It must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold the complaint in part and I direct that Lendable Ltd does as I have set out in the 'putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 September 2023.

Rachael Williams
Ombudsman