

## The complaint

Miss L complains PDL Finance Limited trading as Mr Lender ("Mr Lender") gave her loans without carrying out affordability checks.

## What happened

A summary of Miss L's borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number monthly instalments	largest repayment per loan
1	£200.00	24/04/2023	25/04/2023	6	£95.73
2	£200.00	25/04/2023	27/04/2023	5	£100.80
3	£300.00	27/06/2023	outstanding	6	£112.00

All of the loans were structured so that payments decreased each month.

Following Miss L's complaint about the sale of the loans, Mr Lender wrote to her to explain that it wasn't going to uphold the complaint about loans 1 and 2 because it had carried out proportionate checks.

However, for loan 3, Mr Lender accepted that it ought to have done more before it approved the loan, and it made an offer to settle the complaint. It agreed to reduce Miss L's outstanding balance to the original capital amount she borrowed - £300 and so she wouldn't pay any interest towards it. Mr Lender also explained this new balance can be repaid by a payment plan. Finally, it said it would,

*"Remove your loans with Mr Lender entirely from your credit file. Further to this, please inform us once you have settled your outstanding loan to which we will then also remove this loan entirely from your credit file"*

Unhappy with this offer, Miss L referred the complaint to the Financial Ombudsman.

An investigator then considered the complaint, and she didn't uphold it about loans 1 and 2 because in her view Mr Lender had conducted proportionate checks which showed the loans to be affordable. The investigator explained why based on the information she had to hand the offer made by Mr Lender was fair. The investigator also said Mr Lender's offer for loan 3 was more than she would've have recommended because it offered to remove all the loans from Miss L's credit file.

Miss L didn't agree saying that although she isn't paying any interest she still owes Mr Lender £300 – money she wouldn't have owed had Mr Lender not lent to her. As no agreement has been reached, the case has been passed to me for a 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.

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. And I've used that to help me decide this complaint.

Mr Lender had to assess the lending to check if Miss L could afford to pay back the amounts she'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 a number of different things, such as how much was being lent, the size of the repayments, and Miss L's income and expenditure.

With this in mind, 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 Miss L. These factors include:

- Miss L 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);
- Miss L having a large number of 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);
- Miss L 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 Miss L. The investigator didn't think this applied to Miss L's complaint and I agree, considering the number and value of the loans.

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

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Miss L's complaint.

## **Loans 1 and 2**

Miss L declared her monthly income was £1,597 for loan 1 and £1,577 for loan 2. Miss L has said that had further checks been carried out at this time, Mr Lender would've seen her income wasn't as high as what she declared. But, Mr Lender didn't know her income wasn't as high and for the first loans I think it was entirely proportionate of Mr Lender to have relied on what Miss L had told it without the need to verify it.

Miss L declared monthly outgoings of £1,186 for loan 1 and £1,123 for loan 2 – this was across a number of different categories including rent/mortgage, utilities, food, transport and other credit commitments to name a few. Based solely on the income and expenditure information Mr Lender gathered, Miss L had enough disposable income to afford the largest repayment for each loan. The difference in expenditure isn't so great that I would've considered that Mr Lender needed to do further checks to verify what Miss L had said even though the loans were taken a couple of days apart.

Before each loan was approved, Mr Lender carried out a credit search and it has provided the Financial Ombudsman with a summary of the results it received from the credit reference agency. I want to add that, although Mr Lender carried out a credit search, there isn't a regulatory requirement to do one, let alone one to a specific standard.

Having looked at the credit results, there wasn't anything in my view, that would've led Mr Lender to have carried out further checks. It knew Miss L wasn't insolvent either through an Individual Voluntary Arrangement, bankruptcy or a County Court Judgement within the three years preceding each loan.

In addition, it was also told that Miss L didn't have any other outstanding "AAI" loans which is another name for payday loans and so there was no indication that Miss L was reliant on this sort of credit. I don't think the information Mr Lender received from the credit reference agency would've prompted Mr Lender to have carried out further checks.

I have thought about how the loans were repaid. Miss L says the first loan was repaid so quickly this ought to have been of a concern for Mr Lender. But I don't agree. The loan was repaid so quickly it was almost as if she had withdrawn from the agreement – indeed daily interest was charged in the amount of £1.60. But that wouldn't have prompted further checks or to have made Mr Lender believe the loan was only repaid due to gambling winnings as Miss L has said.

Miss L says she was gambling and was in a vulnerable position – and I am sorry to hear about this and I do hope things have improved for her. But unfortunately, that information wasn't reflected in either what she told Mr Lender or what Mr Lender discovered from carrying out proportionate checks. This means that Mr Lender couldn't take this into account when carrying out its affordability assessment.

Overall, it was reasonable for Mr Lender to have relied on the information Miss L provided about her income and expenditure as well as the credit check results which showed sufficient disposable income to afford the repayments. Finally, there also wasn't anything else to suggest that Miss L was currently having financial difficulties or that the loan repayments would be unsustainable for her. It therefore follows that I can't uphold Miss L's complaint about these loans.

### **Loan 3**

Mr Lender has already agreed, as outlined in the final response letter to pay compensation for what it did wrong in advancing the loan. The redress it has offered is in line with what the Financial Ombudsman Service would've asked Mr Lender to do, had I decided the loan ought to not have been granted. Indeed, it appears to have done more as it is offering to remove information about loans 1 and 2 from Miss L's credit file. I therefore don't need to make a finding on whether Mr Lender did all it ought to have done before providing the loan.

It's also worth adding that where either a lender or the Financial Ombudsman decides a loan ought to not have been granted, the starting and fairest position is that the capital amount borrowed should be repaid because a consumer has used the money that was lent to them. But if an outstanding balance remains due, then a lender shouldn't be able to collect more than the capital amount advanced. A refund of interest, fees and charges is really only applicable once a consumer has repaid more than the capital which was advanced.

In Miss L's complaint, outstanding capital remains due, and so I do think it is fair that Mr Lender recovers this. But, Mr Lender is now aware of Miss L's vulnerabilities and I would remind it of its obligation to treat her fairly and with forbearance and the offer of a repayment plan is a good starting point.

As Mr Lender has already accepted something went wrong and has proposed to pay compensation, then the offer made by Mr Lender is fair and reasonable in circumstances of the whole complaint and so this is what Mr Lender should arrange to pay to Miss L in order to resolve the complaint.

### **Putting things right**

Mr Lender should put things right for Miss L as it has already agreed to do and as detailed in the final response letter.

### **My final decision**

PDL Finance Limited has already made an offer for loan 3, as outlined in the final response letter to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that PDL Finance Limited should pay Miss L this offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 14 March 2024.

Robert Walker  
**Ombudsman**