

## The complaint

Mr W is complaining about Plata Finance Limited because he says it lent to him irresponsibly without carrying out adequate checks into his financial situation.

## What happened

On 2 May 2023, Mr W took out a personal loan with Plata. He borrowed £20,000 over a term of five years with an interest rate of 24% and a monthly repayment of £576. The total repayable amount is £34,563.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be upheld. The reasons for my findings are set out here:

*Before lending to Mr W, Plata Finance was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:*

- *Did Plata Finance complete reasonable and proportionate checks to establish that Mr W would be able to repay the loan in a sustainable way?*
- *If so, was the decision to lend fair and reasonable?*
- *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

*The rules, regulations and good industry practice in place at the time the loan was approved required Plata Finance to carry out a proportionate and borrower-focused assessment of whether Mr W could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant Plata Finance had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr W.*

*The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.*

*In general, I think a reasonable and proportionate assessment should be more thorough:*

- *the lower the customer's income, reflecting that it could be more difficult to make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and*
- *the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.*

*There may also be other factors that could influence how detailed a proportionate check should've been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.*

*Plata Finance has described the information it gathered to assess whether Mr W's loan was affordable before it was approved. This included:*

- *information contained in his application, including residential status, employment status and his income, which was separately verified;*
- *information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit; and*
- *an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of his existing credit arrangements.*

*Plata Finance maintains its affordability assessment was proportionate to the loan being given and showed it was affordable.*

*After carefully reviewing the information Plata Finance obtained, I think there were factors that should have prompted it to carry out further checks before approving Mr W's loan and I don't agree the affordability assessment, based mainly on modelled statistical data rather than his actual circumstances, was reasonable and proportionate in this case. In saying this I'm conscious Mr W was borrowing a large amount over a comparatively long term and was committed to high monthly repayments. In that context, I believe a combination of the following factors contained in the credit check should have prompted Plata Finance to investigate further:*

- *Mr W had extensive existing borrowing totalling over £60,000. This was more than one and a half times his declared annual net income;*
- *of this amount, more than £30,000 was revolving credit and Mr W was using 93% of the limits available to him; and*
- *in the last twelve months, he'd only made the minimum payment 17 times on his revolving credit accounts.*

*I believe this information suggests Mr W was already heavily indebted and wasn't making significant steps towards repaying what he owed. Before a large amount of additional debt was approved, I think further checks were required to complete a proportionate affordability assessment. I am aware Mr W has said he was considering the loan to consolidate some of his existing debt. But I still think that what Plata Finance saw from its credit check was sufficiently concerning that further checks were warranted.*

*I can't know exactly what further checks Plata Finance might have carried out at the time, but I think a consideration of Mr W's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements for the two months*

*prior to the lending to establish what information could reasonably have been discovered.*

*A review of the statements for March and April 2023 shows Mr W essentially lived in his overdraft with his account balance only returning to a positive figure for a couple of days each month directly after he was paid. In each month his overdrawn balance peaked at more than £1,300 so he appears to have been living beyond his means. In addition, the bank statements show Mr W was gambling extensively. He had three online accounts and I counted 60 separate gambling transactions totalling £1,870 across the two months.*

*If Plata Finance had seen this information, it's my view that it shouldn't have lent to Mr W.*

*In summary, if Plata Finance had adequately assessed whether the loan repayments were affordable and sustainable, it's my view it shouldn't have lent to Mr W. It's for this reason that that I'm currently intending to uphold this complaint.*

Mr W accepted my provisional decision. Plata Finance didn't accept it and made the following key points:

- Of Mr W's existing borrowing of £60,000, £27,812 of this was a hire purchase agreement for a motor vehicle that was being excellently managed. In addition, this was a balloon agreement meaning he may never be required to repay the balance.
- The loan enabled Mr W to clear approximately two-thirds of his existing revolving debt on which he'd often only made minimum payments. Plata Finance believed it was actually improving his position by combining these debts into an agreement with a single payment over a fixed term.

Mr W had an excellent payment profile and, based on the information provided, a healthy disposable income. It doesn't believe further affordability checks, including asking for sight of Mr W's bank statements, were necessary in this case.

### **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.

Having done so, my findings haven't changed from those I set out previously. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

In response to the specific points raised by Plata Finance following my provisional decision:

- Mr W was heavily indebted compared to his income and the fact a significant part of this related to a motor vehicle hire purchase agreement doesn't change that. I also don't think it was reasonable to assume he wouldn't end up paying the full amount because this was a balloon agreement. Even if that turns out to be the case and he does return the vehicle with money owing, it's likely he'll need a replacement and that this will also need to be funded by credit.
- While Plata Finance says the loan was to consolidate existing debt, it's not clear that it established which accounts would be cleared or that these would be closed at the

same time. So, it was still advancing him a further £20,000 of credit and couldn't know for sure it was actually improving his situation as claimed. £20,000 is a significant amount and Mr W was tied to a large monthly payment for a lengthy period. Given what was known about his circumstances, I don't think this should have been approved without further affordability checks.

- Given Mr W was regularly only making the minimum payment to his existing revolving credit accounts, I don't necessarily share Plata Finance's view that he had an 'excellent' payment record. For the reasons I've already set out, it remains my view that on this occasion further checks were needed to complete a proportionate affordability assessment.

If Plata Finance had carried out further checks and discovered the information I've outlined, particularly in relation to the history of gambling transactions, I don't think it can reasonably be argued that it was responsible to lend to Mr W and I note Plata Finance hasn't disputed my findings on this point.

On balance, it remains my view that Plata Finance didn't lend responsibly and that's the reason I'm upholding this complaint.

### **Putting things right**

The principal aim of any award I make must be to return Mr W to the position he'd now be in but for the errors or inappropriate actions of Plata Finance. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Plata Finance should have lent to Mr W, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, Plata Finance should now take the following steps:

- Calculate the total of all Mr W's payments towards the loan.
- If this exceeds the £20,000 borrowed, any excess above £20,000 should be paid to him with simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Plata Finance to deduct tax from any interest. It must provide Mr W with a certificate showing how much tax has been deducted if he asks for one. If Plata Finance intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Mr W's payments doesn't exceed the £20,000 borrowed, Plata Finance should arrange an affordable payment plan with him for the shortfall.
- Remove any adverse information recorded on Mr W's credit file relating to this loan, once any outstanding balance has been repaid.

I'm satisfied this represents a fair and reasonable outcome to this complaint.

### **My final decision**

For the reasons I've explained, I'm upholding Mr W's complaint. Subject to his acceptance,

Plata Finance Limited should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 May 2024.

James Biles  
**Ombudsman**