

## **complaint**

Mr D complains that PDL Finance Limited (trading as Mr Lender) irresponsibly gave him loans he couldn't afford to pay back.

## **background**

Mr Lender gave Mr D 3 loans between July and December 2017.

Mr D says that proportionate checks weren't carried out before the loans were provided. He says if these had taken place Mr Lender would have realised he was reliant on short term loans and gambling and that the loans weren't affordable.

Mr Lender says that before the loans were provided it carried out through affordability and credit checks. It verified Mr D's employment and says based on the information it gathered the lending was affordable.

Our adjudicator thought that there wasn't enough to say that loan 1 shouldn't have been provided. However, at the point of loan 2 Mr D's borrowing and repayment pattern should have alerted the business that Mr D was having problems managing his money and it shouldn't have given him any further loans.

Mr Lender agreed with our adjudicator's view and offered to refund all interest and charges on loans 2 and 3 and apply it to reduce the outstanding balance. Mr D didn't reply to the adjudicator's view or respond to the offer so the complaint has been passed to me to decide.

## **my findings**

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

Mr Lender needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure that Mr D could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Mr Lender should fairly and reasonably have done more to establish that any lending was sustainable for a consumer. These factors include:

- the *lower* a customer's 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 *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 *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Mr Lender was required to establish whether Mr D could sustainably repay his loans - not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC"), defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr D's complaint.

Our adjudicator didn't think he had enough evidence to say that loan one should not have been provided. I have looked at the information gathered, including income and expenditure information from the time, and I agree that there isn't enough to say Mr Lender should not have provided these loans to Mr D. It was early in the lending relationship and there was no reason to doubt what Mr D was saying about his finances.

Looking at Mr D's borrowing pattern I can see that he extended his repayment of loan 1 and asked to take out loan 2 on the same day that loan 1 was repaid. He asked for an increased amount which would suggest that he was having problems managing his money and couldn't afford to pay back what he had borrowed without borrowing again. Although the loan looked affordable on the figures Mr D gave, it was clear that this was not the case and the repayment on loan 2 was a significant proportion of Mr D's declared income. I think that Mr Lender should not have continued to lend to Mr D without a more thorough check of his circumstances. I think at this point Mr Lender should have taken steps to verify what Mr D was saying about his financial circumstances as they appeared at odds with his borrowing pattern. If Mr Lender had carried out more robust checking of Mr D's circumstances it would have seen that Mr D wasn't responsibly managing his money, had other payday loans and was gambling, so further lending was unsustainable. Mr Lender has agreed with the adjudicator's assessment so I don't think I need to say anything further.

So I'm upholding Mr D's complaint about loans 2 and 3.

### **putting things right – what Mr Lender needs to do**

If Mr Lender has sold the outstanding debts it should buy these back before doing what I have outlined below. If Mr Lender isn't able to buy the debts back then it should liaise with the new debt owner to achieve the following:

- A. Add together the total of the repayments made by Mr D towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

- B. Calculate 8% simple interest\* on the individual payments made by Mr D which were considered as part of "A", calculated from the date Mr D originally made the payments, to the date the complaint is settled.
- C. Remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr D as though they had been repayments of the principal. If this results in Mr D having made overpayments then these should be refunded with 8% simple interest\* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Mr Lender should then refund the amounts calculated in "A" and "B" and move to step "E".
- D. If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Mr D. However if there is still an outstanding balance then Mr Lender should try to agree an affordable repayment plan with Mr D.
- E. Remove all adverse entries from Mr D's credit file for loans 2 and 3.

\*HM Revenue & Customs requires Mr Lender to take off tax from this interest. Mr Lender must give Mr D 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 this complaint and PDL Finance Limited (trading as Mr Lender) should put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 February 2020.

Emma Boothroyd  
**ombudsman**