

**complaint**

Mr S complains V7 Limited (trading as vivus.co.uk) ("Vivus") lent to him irresponsibly.

**background**

Mr S took out seven loans with Vivus during 2016. I've summarised these loans below:

Loan #	Date	Date repaid	Advance	Interest	Highest Payment
1	09/03/2016	01/04/2016	£225	£20	£245
2	06/04/2016	03/05/2016	£300	£55.00	£355.00
3	09/05/2016	31/05/2016	£200	£32	£232.00
4	10/07/2016	29/07/2016	£475	£72.20	£547.20
5	03/08/2016	25/08/2016	£200	£35.20	£235.20
6	30/08/2016	29/10/2016	£900	£432.00	£1,332.00
7	15/11/2016	08/12/2016	£375	£69.00	£444.00

Vivus has ceased trading and has not provided information to help us investigate the complaint, so the data in the table are based on the relevant transactions on Mr S's bank statements.

Mr S complained to Vivus in July 2017 that it had been irresponsible to give him these loans. He explained he was in a cycle of debt and had been borrowing from one short term lender in order to pay off another. Vivus did not respond to the complaint, so Mr S brought it to this service.

One of our adjudicators investigated the complaint. He concluded that Vivus should not have agreed loans 5 or 6, and Mr S should receive a refund of interest and charges in respect of these, along with an amendment to his credit file.

Vivus did not respond to the adjudicator's assessment, so the case 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. I've taken into account the law along with any relevant regulatory guidance and good industry practice at the time.

Vivus had to assess Mr S's applications for loans to check if he 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. It then needed to assess whether – based on the information it had gathered from its proportionate checks – Mr S could afford to meet the loan repayments sustainably. According to guidance from the industry regulator, repayments are sustainable if they're made from income or savings. So not, for example, if they're made from further borrowing.

Because Vivus hasn't responded to the complaint I don't know what checks – if any – it carried out before agreeing to lend to Mr S. I thought the fairest approach to take in this scenario would be to assume Vivus's checks were not proportionate to the circumstances.

I've then gone on to consider what checks I think a responsible lender should've made, and whether the results of these checks would have stopped it from lending to Mr S.

#### *loans 1 and 2*

Mr S's first loan was for the relatively small amount of £225. As a minimum, I think a responsible lender would've asked Mr S about his monthly income. At the time, Mr S earned around £3,250 per month and I've no reason to believe he'd have reported anything different to Vivus. I don't think a responsible lender would have seen a need to ask further questions before lending in this set of circumstances. I take the same view for loan 2 (£300), where I think Mr S would've reported an increased income of around £4,475 per month.

Ultimately I don't think Vivus was wrong to agree these loans for Mr S.

#### *loan 3*

Although this loan was for the smaller amount of £200, Mr S had now applied for three loans in as many months. Given the high income he'd have been reporting, I think this should have prompted further questions. I think it would've been proportionate to ask Mr S about his monthly expenditure on his regular financial commitments at this stage.

I've considered what Mr S has told us about his monthly commitments at the time, and compared this to his bank statements. I've been unable to confirm some of Mr S's expenditure, and in the end I can't be sure what he'd have reported to Vivus had it asked him about his other commitments.

However, based on my analysis of the evidence Mr S has provided, I don't think it's likely he'd have reported having a level of regular expenditure which would've made loan 3 appear unaffordable or unsustainable to a responsible lender. It follows that I don't think Vivus was wrong to agree this loan.

#### *loan 4*

Loan 4 represented a significant increase in Mr S's borrowing. Mr S received £475 and repaid over £540. I do think Mr S's repeated borrowing in light of his apparently large disposable income would have led a responsible lender to question whether there were other short term commitments Mr S had which could have been driving his borrowing behaviour. I think proportionate checks would've by now included asking Mr S specifically about other short term debts he had to pay imminently.

Had Vivus carried out such checks, it would've discovered that in the weeks leading up to his application for loan 4, Mr S had borrowed approximately £3,200 from other short term lenders. This is a considerable amount. However Mr S's income had grown to around £4,700 per month and I don't think the amount of *regular* expenditure he'd have reported would have been such that no responsible lender would have agreed loan 4.

It's also worth mentioning that some of Mr S's outstanding short term borrowing at this time was made up of instalment loans, which are paid back in smaller monthly amounts than a typical payday loan. In the end I can't conclude Vivus was wrong to agree loan 4.

#### *loans 5 to 7*

Mr S applied to borrow less money for loan 5 (£200), but I don't think Vivus should have relaxed the checks it was carrying out. Given what I think it should have known about Mr S's financial situation by this point, and his lending history, it would've been proportionate for Vivus to carry out a detailed assessment of his finances to verify his income and expenditure.

Had Vivus done this, I think it would have discovered Mr S spent a significant proportion of his income on gambling. In July 2016, for example, he spent at least £4,000 (around 72% of his salary that month) in this way. When combined with his regular expenditure and outstanding short term credit commitments, this caused Mr S's overall expenditure to exceed his income at around the time of loan 5. So this loan would not have appeared affordable to a responsible lender which had carried out proportionate checks.

Mr S applied for loan 6 on 30 August 2016. He'd spent almost £1,800 on gambling up to this point in the month, and had around £1,500 in short term loans outstanding. His income had increased to around £5,300 and he was expected to repay £1,332 to Vivus if his loan was approved. This left Mr S with around £600-700 to cover his regular financial commitments. I think these commitments came to at least £1,200 at this time, based on his bank statements, so loan 6 would not have appeared affordable to a responsible lender.

Loan 7 was for an amount of £335 and Mr S applied for this on 15 November 2016. Over the past month Mr S had spent just short of £4,500 on gambling – almost 80% of the £6,100 he was paid by his employer in November 2016. It seems Mr S made considerable winnings in the same period – at least £1,500, and possibly more than this. He also borrowed some money from relatives. His regular commitments remained around £1,200 and he had approximately £865 in other short term loan repayments to make before his prospective repayment to Vivus fell due.

On the face of it, loan 7 would have appeared affordable thanks to Mr S's recent winnings. But I don't think a responsible lender would have considered Mr S's financial situation was a sustainable one. Income from gambling cannot be guaranteed, so I don't think it's fair to count Mr S's winnings as income for the purposes of assessing whether he could afford to repay his loans in a sustainable way. Ultimately I don't think a responsible lender – having carried out proportionate checks – would've agreed loan 7.

### **putting things right**

Vivus shouldn't have agreed loans 5 to 7 for Mr S, so it's not right that he should have paid interest and charges on these, or have them affect his credit file in a negative way.

So Vivus must do the following:

1. Calculate the amount Mr S has paid in interest and charges on loans 5 to 7. To the individual amounts Mr S paid, Vivus must add 8% simple interest\*, calculated from the date Mr S paid each amount, to the date the complaint is settled. The overall total must then be paid to Mr S.
2. Remove any adverse information recorded on Mr S's credit file in relation to loans 5 to 7.

\*HM Revenue & Customs requires Vivus to deduct tax from this interest. Vivus must give Mr S a certificate showing how much tax it has deducted, if Mr S asks for one.

### **my final decision**

For the reasons explained above I uphold Mr S's complaint in part and direct V7 Limited (trading as vivus.co.uk) to take the actions set out in the "putting things right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 November 2017.

Will Culley  
**ombudsman**