

complaint

Miss T says PDL Finance Limited (trading as “Mr Lender”) irresponsibly lent to her as it ought to have seen that she had previously had problems managing debt.

background

This complaint is about five High-Cost Short-Term Credit instalment loans Mr Lender provided to Miss T between November 2017 and July 2018. Miss T’s lending history is as follows:

- Loan 1 taken in November 2017 for £200.
- Loan 2 taken in April 2018 for £300.
- Loan 3 taken in May 2018 for £750.
- Loan 4 taken in June 2018 for £400.
- Loan 5 taken in July 2018 for £400.

Our adjudicator upheld Miss T’s complaint and thought the loans from loan three onwards shouldn’t have been provided. Mr Lender disagreed and the complaint was passed to me.

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 Miss T 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 the 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 Miss T could sustainably repay her 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, in my view, 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 do so without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss T's complaint.

I think that a proportionate check for loans three and four, which given the circumstances will have required Mr Lender to get to the crux of why Miss T had required this many loans in this period of time, would more than likely not have shown that Miss T was gambling a significant proportion of her income. In my view, Mr Lender being aware of this, as I think it ought fairly and reasonably to have been, should've alerted it to the fact that Miss T was unlikely to have been able to repay these loans without undue difficulty, or having to borrow further.

I've also looked at the overall pattern of Mr Lender's lending history with Miss T, with a view to seeing if there was a point at which Mr Lender should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Mr Lender should have realised that it shouldn't have provided any further loans. Given the particular circumstances of Miss T's case, I think that this point was reached by loan five.

I say this because by this stage Miss T was approaching for a fifth loan in a nine month period. And she was being expected to make payments for a further six months. Mr Lender says that our adjudicator failed to take into account that loans four and five were for lower amounts than loan three. But this is only because loan three was for so much more. And Mr Lender also appears to be ignoring the fact that loans four and five were for significantly more than what Miss T was first lent in November 2017. So I don't think that loans four and five being for lower amounts is indicative of Miss T's financial position improving.

I've thought about Mr Lender's points regarding the Financial Ombudsman Service's obligations under DISP 3.6.1R and DISP 3.6.4R. I'd like to assure Mr Lender that I'm fully aware of these rules. And I'm satisfied that our adjudicator explained why she thought it was unfair for Mr Lender to have provided loans three to five. So I think that Mr Lender ought reasonably to have understood why she partially upheld Miss T's complaint.

But for the avoidance of doubt and in the spirit of aiding Mr Lender's understanding of my decision (and Mr Lender learning from it) I want to be clear in stating that I'm partially upholding Miss T's complaint because:

- proportionate checks for loans three and four would have shown the amount of Miss T's income going towards gambling. And this ought fairly and reasonably to

have shown Mr Lender it was irresponsible to provide these loans bearing in mind Mr T was more likely than not unable to sustainably repay them; and

- by the time of loan five, the pattern of lending itself ought fairly and reasonably to have alerted Mr Lender that any further lending was simply unsustainable for Miss T.

Miss T lost out because she paid interest and charges on loans that she shouldn't have been provided with. So I think that Mr Lender should put things right.

putting things right – what Mr Lender needs to do

- refund all interest and charges Miss T paid on loans three to five;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†;
- remove any negative information about loans three and four from Miss T's credit file;
- the number of loans taken in the circumstances they were, by the time of loan five, means any information recorded about loan five is adverse. So all entries about loan five should be removed from Miss T's credit file.

† HM Revenue & Customs requires Mr Lender to take off tax from this interest. Mr Lender must give Miss T a certificate showing how much tax it's taken off if she asks for one.

my final decision

For the reasons given above, I'm partially upholding Miss T's complaint. PDL Finance Limited should pay Miss T compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 23 September 2019.

Jeshen Narayanan
ombudsman