

complaint

Mr M says PDL Finance Limited, trading as Mr Lender ("Mr Lender") irresponsibly lent to him.

background

This complaint is about eight instalment loans Mr Lender provided to Mr M between October 2015 and May 2018. Mr M's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	20/10/2015	10/02/2016	5	£500.00	£248.00
2	22/02/2016	03/08/2016	6	£500.00	£176.66
3	03/08/2016	19/09/2016	6	£1,000.00	£390.66
4	24/09/2016	21/12/2016	3	£500.00	£294.66
5	21/12/2016	09/01/2017	12	£1,500.00	£314.00
6	14/01/2017	05/07/2017	6	£700.00	£295.86
7	08/07/2017	10/05/2018	12	£1,500.00	£298.25
8	10/05/2018	Outstanding	9	£1,450.00	£396.01

Mr M has said he should not have been given the loans and better checks should have been done. He's told us he was spending significant amounts on gambling and was in a huge amount of debt. Mr Lender has said the appropriate checks were completed with every new application.

Our adjudicator upheld Mr M's complaint in part and thought the loans from loan 4 onwards shouldn't have been given. 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 Mr M 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 consumer'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 M 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 relevant regulations define 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 M's complaint.

Mr M hasn't disagreed with our adjudicator's opinion on loans 1 to 3 so I won't be looking at these any further as there is no ongoing disagreement about them. But I will bear them in mind when I'm looking at Mr M's other lending.

But by the time Mr M asked for loans 4 and 5, I think Mr Lender should have done more than relying on the information he was providing about his finances – it should have carried out a full financial review. This was Mr M's fourth loan in quick succession and in less than a year. And he'd borrowed relatively high amounts. And whilst the loans were intended to be repaid over a number of months Mr M had repaid loan the month after taking which meant he'd repaid much more than Mr Lender recorded his disposable income to be.

If Mr Lender had done proportionate checks, it would have seen that Mr M had several short-term loans with other providers as well as having credit cards and overdrafts. He was also spending a significant amount on gambling. So I think it's likely Mr M couldn't sustainably repay loans 4 and 5 and Mr Lender shouldn't have approved them.

I've also looked at the overall pattern of Mr Lender's lending history with Mr M, 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 Mr M's case, I think that this point was reached by loan 6. I say this because:

- At this point Mr Lender ought to have realised Mr M was not managing to repay his loans sustainably. Mr M had borrowed on six occasions in 15 months and whilst the amounts fluctuated, they didn't significantly decrease over this period and for the rest of the borrowing relationship with Mr Lender. So Mr Lender ought to have realised it was more likely than not Mr M was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr M's indebtedness was increasing unsustainably.
- Mr M's first loan was for £500 and loan 6 was for £700. At this point Mr Lender ought to have known that Mr M was not likely borrowing to meet a temporary shortfall in their income but to meet an ongoing need.
- Up to loan 6 and going forward Mr M was provided with a new loan within a short time of settling a previous one.
- Mr M wasn't making any real inroads to the amount he owed Mr Lender. Loan 8 was taken out two years and seven months after Mr M first borrowed from Mr Lender.
- Mr M had paid large amounts of interest to, in effect, service a debt to Mr Lender over an extended period.

I think that Mr M lost out because Mr Lender continued to provide borrowing from loan 6 onwards because these loans had the effect of unfairly prolonging Mr M's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time. The number of loans and the length of time over which Mr M borrowed was likely to have had negative implications on Mr M's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I'm upholding the complaint about loans 4 and 5 and loans 6 to 8 and Mr Lender should put things right.

putting things right – what Mr Lender needs to do

- refund all interest and charges Mr M paid on loan 4 to 8;
- 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 4 and 5 from Mr M's credit file;
- the number of loans taken from loan 6 onwards means any information recorded about them is adverse. So all entries about loans 6 to 8 should be removed from Mr M's credit file.

If Mr M still owes Mr Lender any of the principal balance he borrowed on his final loan Mr Lender should remove all the interest and charges applied to the outstanding balance. Mr Lender should then re-work the account as if all payments made by Mr M went to towards the principal. But importantly, Mr Lender needs to make sure that Mr M doesn't repay more than the principal amount borrowed.

If after doing this Mr M hasn't repaid the principal she borrowed Mr Lender can deduct this from the remainder of the compensation. If, Mr M has already paid enough to repay the principal then any overpayment should be refunded to him with 8% simple† interest from the date of payment to the date of settlement

And if Mr Lender no longer owns this debt, and it wants to make a deduction due to the amount owed, then it should buy it back. If it doesn't then it isn't entitled to make any deductions for it from the amount it needs to pay Mr M.

† HM Revenue & Customs requires Mr Lender to take off tax from this interest. Mr Lender must give Mr M a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons given above, I'm partially upholding Mr M's complaint. PDL Finance Limited should put things right as set out above.

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

Sonia Hussain
ombudsman