Financial Ombudsman Service

complaint

Mrs M says PDL Finance Limited, trading as Mr Lender, irresponsibly lent to her.

background

This complaint is about four loans Mr Lender provided to Mrs M between May 2014 and October 2015. Mrs M's borrowing history is as follows:

Loan	Date taken out	Loan Type	Date Repaid	Loan amount	Highest Instalment
1	07/05/2014	payday	25/07/2014	£300.00	£405.00
2	28/07/2014	instalment	23/01/2015	£600.00	£280.00
3	29/01/2015	instalment	06/05/2015	£750.00	£293.00
4	02/10/2015	instalment	12/01/2017	£500.00	£205.60

A number of adjudicators have looked at this case. Most recently our adjudicator looked at all the latest evidence and information on file and upheld Mrs M's complaint about loans 3 and 4 and thought theses loans shouldn't have been given. Mr Lender disagreed with this latest opinion and so 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 Mrs 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 Mrs M 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 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 Mrs M's complaint.

In the most recent opinion our adjudicator felts loans 1 and 2 shouldn't be upheld, and Mrs M seems to have accepted this. So as these loans are no longer in dispute, I haven't considered these in my decision. However, I have kept these loans in mind when looking at Mrs M's overall lending history with Mr Lender.

Mr Lender says it carried out an income, expenditure and credit check before lending any of the loans to Mrs M. And I think this approach was reasonable and proportionate for Mrs M's first two loans. I say this because for loan 1 Mrs M was required to only make one monthly payment and the amount she was required to pay seemed affordable in relation to her income and expenses for a one off payment. I also think these checks were proportionate for loan 2 because Mrs M had then decided to switch to an instalment loan, which allowed her to make the payments over a number of months. And looking at the maximum amount she was liable to pay per month under the agreement, I think this was affordable - and being early in the lending relationship there was nothing to suggest a reason to do any further checks.

However, I think that at the time Mrs M was applying for loans 3 and 4 Mr Lender ought to have completed a full review of Mrs M's circumstances before agreeing to lend. I say this because Mrs M asked for loan 3 just days after paying off loan 2 and the amount she requested to borrow for loan 3 had increased from loan 2 and was more than double of loan 1. Mrs M seems to have had some difficulty repaying loan 1 as she rolled over twice before paying off this loan. And at the time of applying for loan 3 Mrs M had been in debt to Mr Lender for around 8 months. While this may not be enough to suggest Mr Lender shouldn't have lend Mrs M this loan so early in their relationship, I think this is enough evidence to prompt a responsible lender to complete further checks into her financial situation before agreeing to lend Mrs M loan 3 or any subsequent loans.

A proportionate check of Mrs M's circumstances for loans 3 and 4 would've most likely shown that Mrs M had a number of payday loans with other providers and was regularly overdrawn across her current banking accounts. I've also seen that Mrs M was often gambling large amounts of money.

This evidence suggests Mrs M was struggling with her finances and it's unlikely she would be able to repay her loans sustainably. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed by, gambling, then a responsible lender ought not to have lent to Mrs M further in her situation.

Overall, I think it's clear that this is someone who is not coping well with their finances and potentially becoming reliant on short-terms loans. And that a properly carried our affordability assessment was likely to lead to a responsible lender to conclude that loan 3 – or any subsequent loans - were not affordable for an applicant in this situation.

So for these reasons I'm also upholding the complaint about loans 3 and 4 Mr Lender should put things right.

putting things right – what Mr Lender needs to do

- refund all interest and charges Mrs M paid on loans 3 and 4**;**
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†;
- remove any negative information about loans 3 and 4 from Mrs M's credit file;

† HM Revenue & Customs requires Mr Lender to take off tax from this interest. Mr Lender must give Mrs M 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 Mrs M's complaint. PDL Finance Limited should put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 March 2020.

Sienna Mahboobani
ombudsman