complaint

Mr D complains about a multi-pay loan Inventive Finance Limited (trading as Ladder Loans) lent to him. He says he couldn't afford the loan.

background

Ladder Loans lent Mr D one loan in June 2013 for £1,500. The loan was due to be repaid in 18 monthly instalments.

I issued a provisional decision on this complaint on 4 March 2019 where I set out a detailed background to this complaint. I've attached a copy of my provisional decision as an appendix to this final decision.

In my provisional decision, I reached significantly different conclusions to the adjudicator and so I gave Mr D and Ladder Loans the opportunity to provide further comments before making a final decision. In my provisional decision, I explained that I didn't think Ladder Loans did enough before agreeing to lend to Mr D and had it carried out sufficient checks, it's likely to have found Mr D couldn't sustainably afford to repay the loan.

Both Ladder Loans and Mr D have now responded to my provisional decision and both parties agree with the conclusions I reached. Ladder Loans also provided some clarification about the expenses figure provided in its file to this service which I referred to. Ladder Loans acknowledges that this doesn't impact the outcome I've reached.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As both parties agree with the conclusions in my provisional decision, I see no reason to depart from those conclusions.

Mr D has lost out as a result of being lent this loan and Ladder Loans needs to put things right.

putting things right

To put things right, Ladder Loans should:

- remove all interest, fees and charges added to the loan from the outset. The repayments Mr D made should be deducted from this amount. Any payments made after the total which exceeds the amount of money Mr D was given (in other words£1,500) should be treated as overpayments;
- add interest at 8% per year simple on the above overpayments from the date they were paid by Mr D, if they were, to the date of settlement*;
- remove any adverse information recorded on Mr D's credit file in relation to the loan.

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

my final decision

I uphold Mr D's complaint and require Inventive Finance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 April 2019.

Oyetola Oduola
Ombudsman

appendix

provisional decision

complaint

Mr D complains that Inventive Finance Limited (trading as Ladder Loans) gave him a loan he couldn't afford.

background

Ladder Loans gave Mr D a loan in June 2013 for £1,500. The loan was a multi-pay loan due to be repaid in 18 monthly instalments of £209.64. Mr D fully repaid the loan in December 2014.

When Mr D complained to Ladder Loans, it didn't uphold his complaint. It said it carried out sufficient checks and there was nothing within its checks that suggested Mr D couldn't afford the loan repayments.

Unhappy with Ladder Loans' response, Mr D referred his complaint to this service where it was looked at by one of our adjudicators. Our adjudicator initially thought Ladder Loans carried out sufficient checks before lending to Mr D and so didn't recommend that this complaint should be upheld. Mr D disagreed with the adjudicator and provided further information. The adjudicator then reconsidered the complaint and thought that Ladder Loans' checks should have gone further and Ladder Loans ought to have checked Mr D's monthly living expenses and regular credit commitments. But our adjudicator thought that further checks would have shown that Mr D could afford the loan. So they didn't recommend that the complaint should be upheld.

Mr D remained unhappy with our adjudication and said that Ladder Loans should have seen from the credit search it carried out that he had large debts and should have known that he'd struggle to repay. So Mr D asked for an ombudsman to review his complaint.

As this complaint remains unresolved, it has been passed to me – an ombudsman for a decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When Ladder Loans lent to Mr D, these types of loans were regulated by the Office of Fair Trading (OFT). Ladder Loans 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 D could repay his loans in a sustainable manner. The Office of Fair Trading (OFT) Irresponsible Lending Guidance states *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

Section 4.2 of the OFT's 'Irresponsible Lending Guidance' (ILG) says:

"Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner."

And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

And Section 4.4 defines undue difficulty as the borrower being able to make repayments:

- *while also meeting other debt repayments and other normal/reasonable outgoings and;*
- *without having to borrow further to meet these repayments.*

The guidance goes on say that repaying credit in a sustainable manner means being able to repay credit "out of income and/or available savings" and without "undue difficulty." And it defines "undue difficulty" as being able to repay credit "while also meeting other debt repayments and normal/reasonable outgoings" and "without having to borrow further to meet these repayments".

These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr D'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.

Bearing all of this in mind, I think that there are two key questions for me to consider in order to fairly and reasonably determine Mr D's complaint. These questions are:

1. Did Ladder Loans complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay in a sustainable way? If not, would those checks have shown that Mr D would have been able to do so?
2. Did Ladder Loans act unfairly or unreasonably in some other way?

I've carefully thought about all of these questions and what they mean for Mr D's complaint.

<u>did Ladder Loans complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay in a sustainable way? If not, would those checks have shown that Mr D would have been able to do so?</u>

As stated above, in the early stages of a lending relationship, less thorough checks might be reasonable. But certain factors might point to the fact that a lender should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. I think that a reasonable and proportionate check ought generally to have been more thorough:

- 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 longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- 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 also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've thought about all the relevant factors in this case.

Ladder Loans says it carried out a number of checks before it decided to lend to Mr D. It says it "takes the income figure given by the customer, subtracts (i) any regular declared (or evidenced) expenditure and (ii) an allowance for general living expenses based upon ONS figures. We then consider if there is sufficient surplus income to repay the loan." However,
I can't see that it asked Mr D about his monthly expenses at the time the loan was approved. But in the file Ladder Loans sent to this service, there's a recorded figure of £285.79 which appears to be what Ladder Loans derived from checking the Office of National Statistics (ONS) living expenses for Mr D's application and this, as I understand it, is the figure it has used to work out what Mr D's disposable income was.

But Ladder Loans hasn't provided any specific details about how it worked out the ONS figure in Mr D's specific circumstances and I get the impression that it expects us to simply accept that this standard check resulted in a fair lending decision.

Given Ladder Loans insists that Mr D's loan was responsibly lent, it ought to know – and have explained – how it interpreted the information it gathered and how it led to a responsible lending decision being made in this case. Without this explanation from
Ladder Loans, I can't take it as read that this lending decision was fair. I'd also point out that the use of industry standard software isn't in itself demonstrative of the fact that the lending decision was fair.

In this case, this was Mr D's first and only loan with Ladder Loans and it says it checked his income which Mr D declared to be £2,000. It also said it searched his credit file before agreeing to lend. Ladder Loans has provided the results of its search into Mr D's credit file and from what I've seen there were no active defaults or county court judgements (CCJs) at the time of this loan.

However, I can see from the results of the search into Mr D's credit file that Ladder Loans provided that there was an entry on the total monthly payments that were active at the time and a figure of £1,589 was recorded against that. Also, the result shows that Mr D had 34 loan and instalment credit accounts and the total value of these accounts was £2,837. I think given the results of this search, - the total monthly payment on active loans was taking a considerable portion of his income and it's likely that Mr D would've struggled to repay this loan in the circumstances. Ladder Loans should have been concerned about Mr D's level of indebtedness and should have wanted to take further steps to understand more about his financial circumstances. I don't think it was reasonable here for Ladder Loans not to react to this information and take its checks further.

Also, although this was Mr D's first and only loan, I think the 18 month term of the loan and the fact that Mr D would be tied into repaying around £210[1] per month - a substantial commitment - for the entire period of the loan should also have led Ladder Loans to go further with its checks. For the loan amount of £1,500, Mr D was due to repay a total of nearly £3,775, I think given the commitment Mr D was about to enter into, it needed to look to build a clearer picture of Mr D's financial circumstances. As well as asking him his income, Ladder Loans should have been asking Mr D about his expenses and taking steps to verify what it was being told by Mr D. It could have done this by asking for information such as bank statements, copies of bills, or even proof of Mr D's income.

<u>what would reasonable and proportionate checks have shown?</u>

[1] Rounded up

As I don't think that the checks carried out by Ladder Loans went far enough, I've considered what it's likely to have found had it carried out what I consider to be proportionate checks.

Mr D has provided copies of his bank statements from the time of the loan and I've used this to attempt to reconstruct his circumstances at the time, the loan was given. I'm not suggesting here that Ladder Loans had to request Mr D's bank statements but that is what I've used.

Of course, I accept different checks might show different things. And just because something shows up in the information Mr D has provided, doesn't mean it would've shown up in any checks Ladder Loans might've carried out. But in the absence of anything else from Ladder Loans showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr D's financial circumstances were likely to have been at the time.

And from what I can see, in the month before this loan was agreed, Mr D's income was around £2,402.88 – this amount included reimbursement from his employer for work related travel and his monthly income. And at the time, his normal living costs were around £1,080 – this included things such as his insurance premiums, bank fees, credit card payments,
mobile phone and food. As I haven't seen details about Mr D's housing and utility payments in the period leading up to the loan, I haven't been able to take those into account. But it's reasonable to believe that he had housing and utility expenses as well.

I can also see that Mr D was borrowing from at least two other short term lenders. Around the time of this loan, he repaid about £1,935 in short term loans and had over £1,400 outstanding – and would've been due to be repaid during the life of this loan.

Even without Mr D's housing and utilities expenses, these short term commitments and regular expenses suggest Mr D wasn't in a position to sustainably afford the first loan repayment and Ladder Loans wouldn't have been confident that Mr D could afford the remaining contractual repayments over the term. I think Mr D would have struggled to sustainably repay this loan and even though I can see that he managed to fully repay the loan, I'm not persuaded he did so in a sustainable manner. Mr D continued to borrow from other lenders and I think he was using these loans to supplement his income which increased his level of indebtedness.

As a responsible lender, Ladder Loans shouldn't have given him this loan in the circumstances.

Did Ladder Loans act unfairly or unreasonably in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Ladder Loans acted unfairly or unreasonably towards Mr D in some other way.

how Ladder Loans should put things right

As I don't think Ladder Loans should've given Mr D this loan, to put things right, Ladder Loans should;

- remove all interest, fees and charges added to the loan from the outset. The repayments Mr D made should be deducted from this amount. Any payments made after the total which exceeds the amount of money Mr D was given (in other words £1,500) should be treated as overpayments;
- add interest at 8% per year simple on the above overpayments from the date they were paid by Mr D, if they were, to the date of settlement†;
- remove any adverse information recorded on Mr D's credit file in relation to the loan.

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