

complaint

Mr W complains that PDL Finance Limited (trading as 'Mr Lender') lent irresponsibly to him.

background

Between May 2016 and December 2016, Mr W took out four loans with Mr Lender. His borrowing history is as follows:

| Loan number | Date taken out | Date repaid | Planned number of monthly instalments | Principal | Largest monthly instalment |
|-------------|----------------|-------------|---------------------------------------|-----------|----------------------------|
| 1 | 17/05/2016 | 16/06/2016 | 3 | £250.00 | £159.33 |
| 2 | 12/07/2016 | 13/09/2016 | 5 | £500.00 | £189.00 |
| 3 | 14/09/2016 | 05/10/2016 | 6 | £550.00 | £280.86 |
| 4 | 14/12/2016 | outstanding | 12 | £1,000.00 | £201.46 |

From the evidence Mr Lender provided to us, I can see that there appears to be an outstanding balance in respect of loan 4, but it isn't clear whether this outstanding balance has been passed to a third party collection agency.

Our adjudicator partly upheld the complaint in that she didn't think Mr Lender should have lent Loan 4 to Mr W. She said that a proportionate check at that stage would have shown that Mr W had difficulties managing his money. She thought Mr Lender should have known by then that Mr W could not sustainably repay Loan 4.

Mr Lender didn't agree with that view. It said that there were 70 days between Mr W taking out loans 3 and 4 and that showed that Mr W wasn't reliant on short term loans. It also said this borrowing gap showed that Mr W wasn't using short term loans to supplement his income.

Additionally, Mr Lender said that it listened to the telephone call it had with Mr W when he took this loan out. It says it asked specific questions about the purpose of this loan and that none of the answers Mr W would have given it cause for concern.

As the parties are not in agreement with our adjudicator, the matter has been passed to me to make a final decision.

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 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 Lender 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 W 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 the arguments, evidence and information provided in this context and what this all means for Mr W's complaint.

As I said above, early in the lending relationship, I wouldn't necessarily expect Mr Lender to have undertaken a full review of Mr W's circumstances. Early on, it is reasonable for Mr Lender to rely on what Mr W told it about his finances, as well as taking into account any other information it had about his circumstances at that time.

I can see that for loans 1 to 3, Mr Lender asked Mr W to set out his income and expenditure. Based upon the figures that Mr W provided, it reasonably appeared to Mr Lender that he had sufficient disposable income to be able to afford those loans. I can see that it also undertook a relatively simple credit check at the date of the various applications. I've been given a copy of those checks and there's nothing to suggest that Mr Lender should have had cause for concern about Mr W's ability to sustainably repay his loans. The checks it did were proportionate at this stage.

However, by the time Mr W applied for loan 4, I agree with our adjudicator that Mr Lender should have done more. This was the fourth loan that Mr W had applied for in just over six

months. The amount he was seeking to borrow at this stage had quadrupled. He had initially borrowed £250 in May 2016. By December 2016, he borrowed £1,000.

Over time, Mr W reported to Mr Lender that his expenditure had decreased gradually over the period of his borrowing. However, his indebtedness continued to grow. A reduction in his reported expenditure could be inconsistent with an increased need for borrowing. In addition to that, I can see that Mr W reported that his income had reduced when he applied for loan 4. Taking all of this into account, Mr W's increased indebtedness along with the reported changes in his income and expenditure should have prompted Mr Lender to undertake further checks in respect of Mr W's finances.

I know that in its response to our adjudicator, Mr Lender said that it asked some more questions about Mr W's financial circumstances. Although I haven't been given a copy of the call recording it referred to, I accept that Mr Lender did ask a little bit more about Mr W's finances and to check he wasn't using this loan to repay other loans. It also asked whether he was reliant on short term lending. But at this stage, it wasn't proportionate for Mr Lender to simply rely on what Mr W told it about his circumstances. It should have done more than that.

Mr Lender also asked me to consider that there was a gap of 70 days between Mr W repaying loan 3 and taking out loan 4. It says this gap shows that Mr W wasn't reliant on short-term lending. I disagree. As I set out above, the quadrupled borrowing in a space of just over three months indicates that Mr W was not likely borrowing to meet a temporary shortfall in his income – but to meet an ongoing need.

I'm satisfied that a proportionate check at loan 4 should have involved a full review of Mr W's financial circumstances.

So the question for me now is what would have happened if Mr Lender had undertaken that full review. Had it done so, I think it would have seen that Mr W had taken out a number of short-term loans in the month preceding his Mr Lender application. It would have also seen that his expenditure was considerably greater than that which was declared. It would have also seen that Mr W was spending considerable amounts gambling every month. His ability to repay this loan was likely to be dependent upon him gambling successfully. This is not sustainable.

In summary, if Mr Lender had conducted a proportionate check, it would have been clear that Mr W could not sustainably repay Loan 4. It follows that I am upholding this complaint in respect of Loan 4. Mr Lender will need to take action to put things right for Mr W
putting things right – what Mr Lender needs to do

Mr Lender shouldn't have given Mr W loan 4.

As I said above, it appears there is an outstanding balance in respect of this loan. If that is the case, if Mr Lender sold the outstanding debt in respect of this loan, it should buy it back if it can and then follow the steps set out below. If it cannot buy the debt back, it must liaise with the new debt owner to achieve the results outlined below.

- a) Mr Lender must remove all interest, fees and charges from the balance of loan 4, and treat any repayments made by Mr W as though they had been repayments of the principal on this loan. If this results in Mr W having made overpayments then Mr Lender must refund these overpayments with 8% simple interest* calculated on the

overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

- b) However, if there is still an outstanding balance then Mr Lender should try to agree an affordable repayment plan with Mr W. It must not pursue outstanding balances made up of principal it has already written-off.
- c) Mr Lender must remove any adverse information recorded on Mr W's credit file in relation to loan 4.

* HM Revenue & Customs requires Mr Lender to take off tax from this interest. Mr Lender must give Mr W 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 W'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 W to accept or reject my decision before 15 February 2020

Nicola Bowes
ombudsman