

Complaint

Miss A has complained that 1plus 1 Loans Limited (trading as “1plus 1 Loans”) provided her with an unaffordable guarantor loan at a time when she had a gambling addiction.

Background

1plus 1 Loans provided Miss A with a loan of £4,000.00 in May 2018. This loan had an APR of 47.93% and a 48-month term. This all meant the total amount repayable of £8,000.16 was due to be repaid in 48 monthly instalments of around £167.67.

One of our investigators looked at this complaint and thought that 1plus 1 Loans had unfairly provided Miss A with this loan. So she recommended the complaint be upheld. 1plus 1 Loans disagreed with our investigator and asked for an ombudsman to review this complaint.

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 unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I’ve referred to this when deciding Miss A’s complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss A’s complaint. These two questions are:

1. Did 1plus 1 Loans complete reasonable and proportionate checks to satisfy itself that Miss A would be able to repay her loan in a sustainable way?
 - o If so, did it make a fair lending decision?
 - o If not, would those checks have shown that Miss A would’ve been able to do so?
2. Did 1plus 1 Loans act unfairly or unreasonably in some other way?

Did 1plus 1 Loans complete reasonable and proportionate checks to satisfy itself that Miss A would be able to repay her loan in a sustainable way?

1plus 1 Loans provided this loan while it was authorised and regulated by the Financial Conduct Authority (“FCA”). The rules and regulations in place required 1plus 1 Loans to carry out a reasonable and proportionate assessment of Miss A’s ability to make the repayments under this agreement. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so 1plus 1 Loans had to think about whether repaying the loan would cause significant adverse consequences *for Miss A*. In practice this

meant that 1plus 1 Loans had to ensure that making the payments to the loan wouldn't cause Miss A undue difficulty or adverse consequences.

In other words, it wasn't enough for 1plus 1 Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss A. The existence of a guarantee and the potential for 1plus 1 Loans to pursue the guarantor instead of Miss A, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, 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 carefully thought about all of the relevant factors in this case.

Were 1plus 1 Loans' checks reasonable and proportionate?

1plus 1 Loans says that it carried out an income and expenditure assessment with Miss A prior to providing her with his loan. It also carried out a credit check, checked Miss A's income electronically and cross-referenced Miss A's expenditure against data from the Office of National Statistics ("ONS"). All of these checks indicated that Miss A was earning around £1,719.20 a month and had total expenses of £1,148.00 leaving her with £570.70 in monthly disposable income.

The credit check 1plus 1 Loans carried out showed that Miss A had three other existing guarantor loans from other providers. Although the conversation suggested 2 of them might be repaid with the proceeds of this loan. 1plus 1 Loans says Miss A had enough left to be able to comfortably make the required monthly loan payments, when the living costs and the

monthly payments left needed to meet the credit commitments shown on the credit check once they were consolidated by this loan, were deducted from Miss A's monthly income.

I've carefully thought about what 1plus 1 Loans has said. But simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

The credit check 1plus 1 Loans carried out indicated that Miss A had three guarantor loans already as well as a default on her credit file. Equally while there might have been some suggestion Miss A would use the proceeds from this loan to consolidate 2 of her existing guarantor loans, Miss A was hardly unequivocal over this. I'm also mindful that the funds advanced weren't even enough to have consolidated the loans in question. I also have to question how 1plus 1 Loans can reasonably have believed Miss A would take this course of action for a marginal monthly saving in circumstances where she supposedly had a monthly disposable income approaching £600.

Bearing in mind the regulatory rules place an obligation to carry out a borrower focused check, where previous repayment difficulties are apparent, I would expect a lender to take additional steps to verify that a consumer can take on an additional commitment before providing it.

I also have concerns with 1plus 1 Loans' use of ONS data to calculate Miss A's living expenses. 1plus 1 Loans may say the FCA permits the use of statistical data to estimate a prospective borrower's non-discretionary expenditure. I accept that this is the case but it's also fair to say it also states that it is unfair to rely on such data where it is unlikely to be reasonably representative of the prospective borrower's situation.

1plus 1 Loans used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Miss A's living expenses. But 1plus 1 Loans knew, when it lent to Miss A, that it was providing a loan to someone whose credit file suggested they fell outside this average portfolio. I don't think that using ONS data – which was unlikely to reflect the existing commitments and expenditure of someone in Miss A's position is fair, reasonable and proportionate.

Furthermore, I'm also concerned how 1plus 1 Loans seems to have accepted at face value that Miss A had a monthly disposable income of approaching £600. This is despite the fact that this disposable income was clearly at odds with what her credit file was displaying and her apparent need for a fourth guarantor loan.

I want to confirm that I've also seen what 1plus 1 Loans has said about outcomes reached in another unrelated case confirming that its checks were proportionate. But I don't think that it is appropriate for me to review the conclusions reached by other casehandlers on a completely separate and unrelated case.

In any event, I've already explained that 1plus 1 Loans was required to carry out a borrower focused check. And it is the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) together with the type, amount and cost of credit being provided that's the main driver in determining whether a check is proportionate. So it's entirely possible that a proportionate check – for similar loan amounts - could look different depending on the individual circumstances of the prospective borrower.

Bearing all of this in mind, I think that 1plus 1 Loans needed to take steps to verify Miss A's expenditure and consider what it was made up of instead of choosing to rely on an over optimistic calculation of her monthly disposable income based on data and declared income.

As I can't see that 1plus 1 Loans did do this, or in fact take any steps at all to address the apparent mismatch between Miss A's credit file and the disposable income arrived at, I don't think that the checks it carried out before providing Miss A with her loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to 1plus 1 Loans that Miss A would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told 1plus 1 Loans that Miss A would've been unable to sustainably repay this loan.

Miss A has now provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Miss A has provided, it doesn't mean it would've shown up in any checks 1plus 1 Loans might've carried out.

But in the absence of anything else from 1plus 1 Loans showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Miss A's financial circumstances were more likely than not to have been at the time. To be clear, I've not looked at Miss A's bank statements because I think that 1plus 1 Loans ought to have obtained them before lending to her – although it does appear as though 1plus 1 Loans did obtain some open banking information. I've consulted Miss A's bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check 1plus 1 Loans should have but failed to carry out.

As I've already explained, 1plus 1 Loans was required to establish whether Miss A could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation, or simply proceed on the basis that it, in any event, had a second bite of the cherry in terms of being able to recover payments from the guarantor.

Of course the loan payments being affordable on a strict pounds and pence basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Miss A has provided in light of all of this.

The information provided shows that Miss A's income wasn't too dissimilar to what she'd declared and what was confirmed by 1plus 1 Loans' electronic checks. But 1plus 1 Loans is aware that significant sums of money were being gambled from Miss A's account. And the sums of money involved are a clear indication that Miss A was unlikely to be able to repay this loan without borrowing further or suffering undue financial difficulty. In other words, there was a realistic prospect the funds would be used for unsustainable purposes.

In reaching my conclusions on this matter, I've considered what 1plus 1 Loans has said about it being possible that someone else might have been using Miss A's account to gamble. But there is absolutely no evidence of this. And Miss A most likely stopped gambling

as much when the credits referred to were no longer going into her account because she did no longer have the funds to be able to do so.

In any event, even if 1plus 1 Loans' observation is accurate, I want to make it clear that I don't think that this is the case, I don't think it would have been fair and reasonable to advance funds in circumstances where it ought to have been apparent the funds might well be gambled – irrespective of who might have taken that course of action.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss A was unlikely to have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted 1plus 1 Loans to the fact that Miss A would not be able to sustainably make the repayments to this loan.

Did 1plus 1 Loans act unfairly or unreasonably towards Miss A 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 1plus 1 Loans acted unfairly or unreasonably towards Miss A in some other way.

So I find that 1plus 1 Loans didn't act unfairly or unreasonably towards Miss A in some other way.

Did Miss A lose out as a result of 1plus 1 Loans unfairly providing her with this loan?

As Miss A has paid or is being expected to pay interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what 1plus 1 Loans did wrong.

So I think that 1plus 1 Loans needs to put things right.

Fair compensation - what 1plus 1 Loans needs to do to put things right for Miss A

Having thought about everything, I think it's fair and reasonable in all the circumstances of Miss A's complaint for 1plus 1 Loans to put things right by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Miss A has made should be deducted from the £4,000.00 she was originally lent. 1plus 1 Loans should treat any payments made if and when the £4,000.00 has been cleared as overpayments. And any overpayments should be refunded to Miss A;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Miss A to the date of settlement†;
- removing any adverse information recorded on Miss A's credit file as a result of this loan.

† HM Revenue & Customs requires 1plus 1 Loans to take off tax from this interest. 1plus 1 Loans must give Miss A a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss A's complaint. 1plus 1 Loans Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 26 April 2021.

Jeshen Narayanan
Ombudsman