

## The complaint

Miss C complains PDL Finance Limited trading as Mr Lender (“Mr Lender”) gave her loans she couldn’t afford to repay.

Miss C says that, had Mr Lender looked at her credit file, it would’ve seen a County Court Judgement (CCJ) as well as other debt and so wouldn’t have agreed to lend to her.

## What happened

Miss C was advanced five loans by Mr Lender and a summary of her borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of instalments	highest repayment per loan
1	£200.00	13/04/2018	10/09/2018	3	£127.46
2	£500.00	10/09/2018	21/03/2019	6	£239.33
3	£1,000.00	21/03/2019	01/03/2020	12	£219.29
gap in lending					
4	£500.00	23/05/2021	15/12/2021	6	£199.33
5	£600.00	15/12/2021	29/06/2023	12	£147.20

Following Miss C’s complaint, Mr Lender wrote to her to explain why it wasn’t going to uphold it. Unhappy with this response, Miss C referred the complaint to the Financial Ombudsman.

The case was then considered by an adjudicator, and he explained why he didn’t think Mr Lender had made an error when it approved loans 1, 4 and 5. These loans weren’t upheld.

However, he upheld loans 2 and 3. He said loan 1 was paid late and Miss C incurred late payment fees. And as loan 2 was granted on the same day as loan 1 was repaid, Mr Lender ought to have conducted further checks. And these further checks would’ve shown Mr Lender that Miss C was in financial difficulties.

Miss C appears to have accepted the outcome the adjudicator reached.

Mr Lender didn’t agree with the outcome about loans 2 and 3, in summary it said:

- Miss C didn’t miss any payments when she repaid loan 1. Any interest only payments (deferrals) were agreed.
- A screen shot was provided to show that on 13 April 2018 a deferral was agreed with Miss C – this was the day loan 1 was advanced.

- Only one deferral was granted during the course of loan 1 because one was agreed at the point of sale and the second deferral was made after Miss C had made her first two payments.
- To review bank statements before loan 2 was advanced would've been disproportionate.

The adjudicator explained to Mr Lender why its comments hadn't changed his mind and he was satisfied that loan 1 was repaid later than planned. Mr Lender didn't agree and in addition to the points it made in response to the assessment it also said:

- Miss C (for loan 1) successfully made her payments on time either when the loan payment was rolled over or when a contractual payment was due.
- Mr Lender wasn't made aware of any financial difficulties that Miss C may have been having.
- Allowing up to two deferrals is in line with the regulations (Consumer Credit Sourcebook (CONC) 6.7.23) – this is a feature of the product and not considered forbearance.
- There wasn't any indication from the credit search results Mr Lender received to indicate Miss C was subject to a CCJ.
- Mr Lender was entitled to rely on the information it received from the credit reference agency.

The complaint was then passed to me, I then issued my provisional decision explaining the reasons why I was intending to not uphold Miss C's complaint. Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 17 August 2023.

Mr Lender acknowledged the provisional decision but didn't have anything further to add.

Miss C didn't respond to the provisional decision.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

### **What I said in my provisional decision:**

*"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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.*

*Mr Lender had to assess the lending to check if Miss C could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Mr Lender's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss C's income and expenditure.*

*With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Mr Lender should have done more to establish that any lending was sustainable for Miss C. These factors include:*

- *Miss C having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*

- Miss C having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Miss C coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

*There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Miss C. The adjudicator didn't think this applied to Miss C's complaint.*

*Mr Lender was required to establish whether Miss C could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss C was able to repay her loans sustainably. But it doesn't automatically follow that this is the case.*

*Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.*

*I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Miss C's complaint.*

*Miss C appears to have accepted the findings the adjudicator reached, which included not upholding her complaint about loans 1, 4 and 5. In addition, Mr Lender also appears to have agreed with the adjudicator – that it was reasonable for it to have advanced those loans. To me, these loans appear to no longer be in dispute.*

*What I would say is that given there was two loan chains, due to a break in borrowing between loans 3 and 4 I don't think the outcome the adjudicator reached for these loans was unreasonable. I therefore say no more about them and instead this decision focuses on what happened when loans 2 and 3 were provided.*

### **Loans 2 and 3**

*For both loans, Miss C told Mr Lender she earned £1,130 each month and Miss C had declared monthly outgoings of £530 for loan 2 and £651 for loan 3, to cover a number of different items including food, other credit commitments and utilities.*

*Based solely on the information Miss C declared to Mr Lender, it would've been reasonable for it to believe Miss C would be able to afford her largest repayment of around £296 per month. The loans were structured in a way which meant Miss C's largest payment was due for both loans in the first month, and then each payment subsequently decreased in value.*

*Mr Lender has also said it conducted a credit search and it has provided the Financial Ombudsman with the summary of the results it received. It is worth saying that there is no requirement within the regulations at the time to have done a credit search let alone one to a specific standard.*

*Both credit searches showed that Miss C didn't have any other active payday loans at the time and that Miss C hadn't been subject to any insolvency such as a CCJ within three years of each loan application.*

*However, the adjudicator upheld these loans due to the way loan 1 was repaid which indicated Miss C may have been having some problems and so Mr Lender ought to have done some further checks before granting these loans.*

*I've thought about this carefully and I disagree with the adjudicator, and I've explained why below.*

*Firstly, with reference to loan 1, the credit agreement is clear, that Miss C was due to make payments over three months, with payments due on 21 May 2018, 21 June 2018 and 20 July 2018. Given the loan was repaid in September 2018 the loan was clearly repaid later than the credit agreement had expected.*

*However, I've also considered the regulations and what has actually happened in this complaint. Mr Lender has signed posted us to CONC 6.7.23 which says:*

*"A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions."*

*And Mr Lender has already shown, that on the day the loan was granted, it agreed the first deferral – it isn't clear why one was granted so soon after the loan being advanced and / or what Mr Lender was told to facilitate the deferral.*

*What this meant, was for the first payment due on 21 May 2018, instead of Miss C paying £127.47 (to cover interest and capital) she only paid £60.80 which was the contracted amount of interest.*

*Miss C then paid the full contracted payment due on 21 June 2018 - as expected. Before she again, deferred the 20 July 2018 payment – by only making a payment to cover the interest that had been charged over the last month. Following this, two further monthly repayments were made which successfully repaid loan 1.*

*However, Miss C wasn't charged late fees for making interest only repayments in May and July 2018. The only cost was the amount of extra Miss C paid to defer the loan. The industry regulator has foreseen that at times a consumer may wish to roll over payments – which has happened here - as long as there are no more than two roll overs – as the above guidance says. While Miss C has taken advantage of the two roll overs, I don't necessarily think that means she was having financial difficulties.*

*It is, unusual, for a loan have a deferral agreed on the day credit is advanced as per Mr Lender's screen shot and not be reflected in the credit agreement repayment structure. I have some concerns that loan 2 was advanced on the same day loan 1 was repaid and was for more than twice the value to be repaid over a longer term of six months.*

*In saying that, Miss C wasn't late with any of her payments due for loan 1 (albeit there were deferrals) and the credit search conducted by Mr Lender for both of these loans didn't show it that either Miss C was having financial difficulties or was subject to any sort of insolvency.*

*While, Mr Lender clearly hasn't breached the regulations by allowing two deferrals for loan one, I have had to consider whether that on its own means that it has treated Miss C fairly. The deferrals have allowed Miss C some flexibility in her repayment of the loan and it isn't clear why Mr Lender agreed to the deferrals in the first place. However, given that after the deferrals were agreed, Miss C repaid her loan without any obvious problems – indeed the final repayment was made earlier than planned.*

*I do think, in those circumstances, Mr Lender hasn't made an error in allowing the roll overs, and I don't think the fact that loan 1 was rolled over ought to have led Mr Lender to do further checks for the later loans.*

*The information Mr Lender received before loan 2 was granted, showed that Miss C could afford the repayments she was committed to making and didn't show any signs of insolvency. I accept the adjudicator found a CCJ being recorded in the months before the loan was approved, but this wasn't reflected in the information Mr Lender received from the credit reference agency. Which is peculiar given the CCJ is a public record, but the summary provided does show it wasn't told about the CCJ. And, Miss C went on to repay loan 2 without any obvious difficulties – all her repayments were made on time and without the need for a deferral.*

*Turning to loan 3, I've already explained above, what the checks showed Mr Lender when it considered Miss C's applications – which again didn't show any signs of insolvency or CCJs. And loan 2, was also repaid without any difficulties. And given the structure of loan 3, Miss C's largest repayment was due when the first repayment was due.*

*Taking account of all these factors, there wasn't anything else in the information that I've seen that would've led Mr Lender to believe that it needed to go further with its checks before it granted loan 3. At this point it would've been disproportionate of it to have asked for bank statements.*

*Given it was early on in the lending relationship, I think it was reasonable for Mr Lender to have relied on the information Miss C provided about her income and expenditure to show she had sufficient disposable income to afford the repayments for both loans 2 and 3. And in my view, the deferrals that occurred when loan 1 was repaid, isn't sufficient to have prompted Mr Lender to have done further checks.*

*Finally, there also wasn't anything else to suggest that Miss C was having financial difficulties or that the loan repayments would be unsustainable for her.*

*I am therefore intending to not uphold Miss C's complaint about loans 2 and 3.*

### **What I've decided – and why**

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

Mr Lender has agreed with the conclusions I was intending to reach, and we've not heard back from Miss C since I issued my provisional decision. Therefore, as no further submissions have been made, I see no reason to depart from the findings I made in the provisional decision.

So, I've reached the same conclusions I reached before, for the same reasons. I still don't think, given the deferrals on loan one that it would've been sufficient for Mr Lender to have done further checks before it granted loans two and three. And the checks it did do before it granted these loans suggested Miss C could afford her repayments.

I am therefore not upholding Miss C's complaint.

### **My final decision**

For the reasons I've explained above and in the provisional decision, I'm not upholding Miss C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 15 September 2023.

Robert Walker  
**Ombudsman**