

The complaint

Mr S complains that PDL Finance Limited, trading as Mr Lender ("Mr Lender"), lent to him irresponsibly. Mr S says he had lots of other loans at the time and Mr Lender ought to have known that.

What happened

A summary of Mr S' borrowing can be found below:

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£200.00	31/01/2021	03/06/2021	3	£108.26
2	£500.00	04/06/2021	03/12/2021	6	£183.23
Gap in lending					
3	£300.00	05/06/2022	28/09/2022	3	£155.20

Mr Lender has told us that Mr S instigated two deferrals – which is where he paid an interest only payment – twice for loan 1, once for loan 2, and once for loan 3. Mr Lender has also pointed out the gap in lending between loans 2 and 3 and this has been addressed in this decision.

Mr Lender received Mr S' complaint which said that Mr Lender ought to have realised he had a poor credit rating, with loan 1 he deferred the payment twice and then wanted to borrow more than double at loan 2. So, Mr Lender ought not to have lent to him.

Mr Lender issued him its final response letter (FRL) on 8 December 2022. In the FRL it explained what it had done before approving the loans and it had explained that it offered a facility which allowed Mr S to pay interest only. It also explained that gave Mr S flexibility and did not necessarily mean that it was a sign of 'financial difficulties'.

Mr S then referred his complaint to the Financial Ombudsman Service along with two sets of personal credit file search documents.

One of our adjudicators looked at the complaint and issued two letters of opinion in which her view was that she was not satisfied with the CRA search results Mr Lender had sent to the Financial Ombudsman. So, she had used one of the credit files from Mr S – the one which was issued by the same CRA Mr Lender had used.

Our adjudicator's view was that the deferrals ought to have led to further checks before loan 2. And the information she had seen from the personal credit file showed that Mr S had a lot of outstanding debt and Mr Lender ought not to have approved loans 2 and 3.

Mr S was content with that outcome and from that it seems loan 1 is not in dispute - it appears to have been resolved.

Mr Lender disagreed. I have summarised the two sets of objections sent in by Mr Lender

here. The reference to 'CONC' is the Financial Conduct Authority (FCA) Consumer Credit Sourcebook. Mr Lender in summary said:

- the credit checks completed were not different for each loan
- CONC 6.7.23 says two interest only payments on an agreement is acceptable;
- Mr Lender applied multiple uplifts to Mr S' credit commitment declarations, and to his expenditure declarations based on ONS data. It sent screenshots of those records and uplifts.
- Mr Lender made several points about our adjudicator's use of Mr S' personal CRA report. It cited several ombudsman decisions it had received in the past to illustrate that it is entitled to rely on the CRA information it obtained at the time.

The unresolved complaint was passed to an ombudsman colleague of mine to decide, and she then issued a provisional decision outlining her thoughts on the case and why she was intending to not uphold it. A summary of her conclusions from the provisional decision are outlined below.

- A proportionate check was carried out before loan 1 was approved, and while Mr S did defer payment on two occasions this was the number allowed under CONC 6.7.23 and Mr Lender was entitled to not treat those deferments as forbearance.
- For loan 2, although she wasn't convinced of the persuasiveness of the credit result summary provided by Mr Lender she then used Mr S' credit file from July 2022 to see what Mr Lender may have seen at the time and she was satisfied, that on balance, Mr Lender wouldn't have seen anything of concern.
- Mr Lender uplifted some of the expenditure details it was given by Mr S and having done so the loans still looked affordable.
- There was then a break in lending between Mr S repaying loan 2 and returning for loan 3, thinking about this break she thought proportionate checks had been conducted which showed Mr S could afford the final loan.

She then gave both parties the opportunity to provide any further submissions for consideration. Mr S didn't agree with the ombudsman's provisional decision and in summary said:

- He provided a breakdown of the active payday loans he had at around the time loan 2 was advanced. Based on Mr S' calculations he was paying over £1,000 per month to service around 10 loans.
- He also provided copy bank statements.
- Mr S says around the time of loan 2, his credit score was about 489 – which puts him into the "*very poor*" category.

Mr Lender didn't respond to the provisional decision, but a senior investigator did request further information from Mr Lender – that my colleague wanted a response to. Mr Lender then provided further information about the uplifts it undertook for each of Mr S' loan applications as well as provided some raw credit file data, that related to loan 3.

The complaint was then passed to me to consider afresh and as a new ombudsman was considering the complaint it was fair and reasonable to give both parties a further opportunity to respond. I then issued a provisional decision explaining the reasons why I was intending to not uphold Mr S' complaint. Both parties were given a further opportunity to provide new submissions but these needed to have been received as soon as possible, but in any event, no later than 8 December 2023.

Mr Lender responded to say that it didn't have anything further to add and Mr S 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.

Mr Lender had to assess the lending to check if Mr S could afford to pay back the amounts he'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 Mr S' income and expenditure.

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 Mr S. These factors include:

- *Mr S 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);*
- *Mr S having a large number of loans and/or having these loans over a long period (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);*
- *Mr S 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 Mr S. But I don't consider that this applied to Mr S' circumstances given the value of the loans and the gap in borrowing. I therefore, can't reasonably conclude that a lending pattern had developed.

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

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr S' complaint.

Having considered everything afresh, I am like the last ombudsman intending to conclude that Mr Lender carried out proportionate checks – given there are two chains of borrowing and I've explained why below.

Loan 1

Mr S doesn't appear to dispute the outcome for loan 1, but for completeness I have considered what has happened.

Briefly, Mr S was a new customer of Mr Lender, borrowing a modest loan with a three-month repayment term. In my view – which is shared by the adjudicator who assessed the complaint as well as my ombudsman colleague the checks carried out were proportionate and likely showed that Mr S could afford the loan repayments. So, I plan not to uphold Mr S' complaint about this loan.

To echo, what my colleague said, I also agree that the number of deferrals on this loan wasn't anything, at this time, for Mr Lender to have been concerned about. Mr S deferred payment twice and the relevant paragraph in the rules is CONC 6.7.23R. This relates to post contract business practices. It says:

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

The regulations allow a lender to in effect allow a customer to pay two interest only repayments during the loan term – which is what happened here when Mr S deferred the first two payments of his first loan. It therefore follows that I agree, that had Mr S needed more than two roll-overs on the same loan then that could be an indicator of financial difficulties.

And so having provisionally come to that view on these interest-only repayments then I do not consider that it ought to have prompted any further checks when Mr S applied for loan 2.

Loan 2

Having considered everything that Mr Lender did before it lent this loan – along with the comments Mr S has provided, I am satisfied that a proportionate check was carried out by Mr Lender which showed it, that Mr R would likely be able to afford his repayments, and I've explained my reasoning below.

Loan 2 was applied for the day after Mr S settled loan 1 – and he had borrowed more than the twice the amount. But I don't think the loan available increasing (on its own) would've led Mr Lender to conclude it needed to carry out further checks before lending.

For this loan, Mr Lender asked Mr S to declare his income and expenditure details and it also carried out a credit search. Mr S declared that his net monthly income was £2,460 I think it was reasonable and proportionate for Mr Lender to have relied on what Mr S declared.

Mr S was asked to declare monthly outgoings across a number of different categories including mortgage / rent, credit commitments, utilities and travel to name a few. Mr S declared these costs came to £320 per month.

As part of the application process, Mr Lender compared what Mr S declared with information it received from the credit report and data from the ONS and having considered the information it increased Mr S' monthly expenditure to £641 per month. It has also provided a screen shot from its system to show all the uplifts it applied and to what categories. An example of one of the adjustments is for utilities, where it increased Mr S' declared figure of £20 and uplifted this to £55 per month.

Based solely on the income and expenditure information Mr Lender gathered Mr S had potentially enough disposable income to afford the largest repayment for each loan.

It's also worth saying that Mr S didn't declare any housing costs. But Mr S declared he lived at home with parents so that would explain why his costs were so low compared to someone with rent or a mortgage. I see no reason as to why Mr Lender couldn't rely on what it was told, so I don't think it needed to have verified what Mr S' living arrangements were or ask further questions about his housing costs.

Before the loan was approved Mr Lender also carried out a credit search and it has provided the Financial Ombudsman with a summary of the results it received from the credit reference agency. I want to add that although Mr Lender carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

This does mean and can mean that the results a lender may see could be different to the information that a consumer can see in the credit report they can download from a credit reference agency.

There are a number of reasons why the information could differ, it could be that Mr Lender only asked for certain pieces of information and not for example an entire copy of the credit report. Or other loans that Mr S may have recently taken may not yet have been recorded or updated with the credit reference agencies and therefore Mr Lender wouldn't have known about them.

While I do acknowledge the information Mr S has provided to us in response to the provisional decision, which he says shows at the end of May 2021 – so shortly after this loan was taken, Mr S paid over £1,200 to 13 different payday, instalment and high cost credit providers. I can see many of these payments from the bank statements that Mr S has provided, but what I have to be satisfied is whether that information was provided to Mr Lender.

If the information was given to Mr Lender, then of course, it needed to react to that and possibly take a different course of action. However, if the credit check results didn't show that Mr S had a significant number of outstanding payday loans, I wouldn't at this early point in the lending relationship have expected Mr Lender to know about these.

Having looked at the credit results summary Mr Lender has provided, there wasn't anything in my view, that would've led Mr Lender to have carried out further checks. It knew Mr S wasn't insolvent either through an Individual Voluntary Arrangement, bankruptcy or a County Court Judgement within the three years preceding the loans.

It was also told that Mr S had only one outstanding "AAI" – which means advanced against income which is another name for a payday loan. So superficially, the information Mr Lender received suggested that Mr S wasn't reliant on or had the number of outstanding loans that Mr S said he had.

Since my colleague's provisional decision, Mr Lender has been able to provide the raw data from its credit search that it received when loan 3 was advanced. But it has explained that as Mr S had the same address when he applied for loan 2, it is able to infer what its credit checks would've shown it at the time of this loan application.

As part of this, Mr Lender provided an explanation as to what payday loans would be coded as within the credit file data – and what Mr Lender explained is consistent with my understanding of such searches.

Having reviewed the credit search results that Mr Lender provided it accepts what would've likely been visible to it at the time that loan 2 was advanced, there was only one outstanding payday loan which had been opened on 10 May 2021 and was costing Mr S £141 per month. So, the summary that Mr Lender provided showing that it was only aware of 1 outstanding payday loan is consistent with the raw data provided at loan 2.

It's worth adding here that the data does show that Mr S had taken other payday loans, earlier on in the year but all of these had been repaid by the time loan 2 was advanced. I also don't think the number of accounts that were classed as payday loans would've been of a concern to Mr Lender.

I mention previously about the uplifts, and following the credit check for loan 2, it uplifted Mr S' monthly credit commitments from the £50 he had declared to £187 and it was this larger sum that was used for the affordability assessment and I do think that was the right thing for Mr Lender to have done.

But the information Mr Lender received from the credit reference agency does significantly differ from what Mr S has provided. I've already given some examples as to why there may be a difference but given it was early on in the lending relationship, I do think it was

reasonable for Mr Lender to have relied on what it was told by the credit reference agency because there wasn't anything else that contradicted what Mr Lender was told.

There were also no triggers in the way the loan 1 was repaid or in the loan values to have prompted Mr Lender to do better checks, such as reviewing Mr S' bank statements. So, while Mr S has provided copy bank statements to us from around this time the loan was advanced it would've been, in my view disproportionate for Mr Lender to have asked for them at the time.

Overall, it was reasonable for Mr Lender to have relied on the information that Mr S provided about his income and expenditure as well as the credit check results that Mr Lender received. The checks Mr Lender carried out were proportionate and showed Mr S should be able to afford the repayments. There also wasn't anything else to suggest the loans would either be unaffordable or unsustainable for him.

I am therefore intending to not uphold Mr S' complaint about loan 2.

Loan 3

There was then a break in lending of around six months after loan 2 was repaid and before loan 3 was granted, so it was entirely reasonable for Mr Lender to have treated Mr S' application afresh for the loan and so treated him as a new customer. This means while it was Mr S' third loan it was in effect loan 1 of a new chain of borrowing. I've kept this in mind when thinking about whether Mr Lender's checks went far enough.

Loan 3 was also a smaller sum than loan two, and as before it was entirely reasonable for Mr Lender to have relied on Mr S' declared monthly net income of £2,500.

Mr Lender also carried out the same sort of checks on Mr S' declared monthly expenditure (which Mr S declared to be £475). After reviewing his credit file and using ONS data it believed Mr S' monthly outgoings came to £1,148.

As before a credit search was carried out and the same sort of caveats apply to this loan as they did for loan 2. Once again there were no signs of any defaults, delinquencies or insolvencies. Finally, this time Mr Lender was told that Mr S didn't have any outstanding payday loans – and this is supported by the raw data that Mr Lender provided.

Overall, for a first loan in a new chain – for a modest loan. Asking Mr S about his income and expenditure, as well as carrying out a credit search was in view Mr Lender carrying out a proportionate check. So, I consider that Mr Lender was not acting irresponsibly to treat loan 3 as the first of a new loan chain and that it was not irresponsible when it determined that Mr S had enough to repay a £300 loan over three instalments.

I do not uphold Mr S' complaint about loan 3.

Finally, Mr Lender has said that it made a gesture of goodwill in the final response letter which was to "remove each of your loans with Mr Lender entirely from your credit file". Mr Lender appears to be suggesting this offer is still available to Mr S and so I leave it up to him discuss this with Mr Lender if he wishes to accept it.

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.

No new submissions have been provided in response to the most recent provisional decision. I therefore see no reason to depart from the findings I made in the provisional decision and which can be found above. I still think Mr Lender carried out proportionate

checks that demonstrated that Mr S would likely be able to afford the repayments he was committed to making.

As before, I leave it up to Mr S to contact Mr Lender to discuss removing these loans from the credit file.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 January 2024.

Robert Walker
Ombudsman