DRN-4419347

The complaint

Mr T complains PDL Finance Limited trading as Mr Lender ("Mr Lender") gave him loans and his finances weren't sufficiently checked before the loans were granted.

What happened

A summary of his borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of instalments	highest repayment per loan
1	£200.00	09/11/2021	26/11/2021	3	£96.35
2	£200.00	05/12/2021	31/01/2022	6	£79.88

Following Mr T's complaint Mr Lender wrote to him to explain that it wasn't going to uphold it because it had carried out proportionate checks. Unhappy with this response, Mr T referred the complaint to the Financial Ombudsman.

An adjudicator then considered the complaint. She said Mr Lender made a reasonable decision to provide loan 1. However, the adjudicator thought loan 2 shouldn't have been granted. She said this because after Mr T's income and expenditure information was considered (as well as the largest loan repayment) this left around £78 per month in disposable income – which the adjudicator thought wasn't a sustainable sum.

Mr T agreed with the proposed outcome, however, Mr Lender didn't, and I've summarised the points below:

- An expenditure assessment was carried out which showed loan 2 to be affordable.
- At this point in the lending relationship, it was entitled to rely on the information it had been provided. However, Mr Lender did use a precautionary uplift of Mr T's expenditure by a further £167 to cover extra expenditure on shopping and travel.
- This uplift was based on Office of National Statistics (ONS) data factoring in region and Mr T's age. Therefore, it isn't an exact reflection of the circumstances. But even without this uplift the loan was affordable.
- Each loan repayment reduced in value so by the final payment Mr T would've had to make he would've had more disposable income available to him.
- At the time of loan 2, from the credit checks, Mr Lender knew that there were no outstanding payday loans or any forms of insolvency.

As no agreement was reached, the case was passed to me to resolve. I then issued a provisional decision which gave reasons why I was intending to not uphold Mr T's compliant. Both sides were given an opportunity to provide further evidence.

Mr Lender acknowledged the provisional decision and explained that it had no further submissions.

Mr T didn't agree with the provisional findings, and I've summarised his response below

- After making the loan repayment he was left with too little to get through the month.
- Had there been any unexpected costs – such as needed a new tyre Mr T couldn't have afforded it.
- Mr T said he did have issues repaying the first loan because he retuned for a great sum (loan 2) within a matter of days. This should've "*raised alarm bells*".
- At the time no mainstream lender would provide credit to Mr T and so he had to take loans with an inflated interest rate – and for the second loan Mr T was offered less than what he had applied for.
- Mr T had some concerns about the uplift that Mr Lender applied to his declared outgoings – he also said that as he needed credit, he made his application appealing.
- Mr T is disappointed by the outcome but is concerned that Mr Lender has given loans to the most vulnerable in society.
- Mr T's bank statements show that he overspent each month and entered into an unarranged overdraft on a regularly basis – which further reduced his monthly disposable income.
- Mr T accepts the decision for loan 1 – as he was a new customer, but he said for loan 2, there are concerns such as; the volume of creditors; missed payments and a lack of disposable income to support his family. Mr T says all of these factors meet the definition of irresponsible lending.

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. And I've used that to help me decide this complaint.

Mr Lender had to assess the lending to check if Mr T could afford to pay back the amounts he'd borrowed, plus the interest due, 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 T'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 Mr T. These factors include:

- *Mr T 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 T 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);*
- *Mr T 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 T. The adjudicator didn't think this applied to Mr T's complaint.

Mr Lender was required to establish whether Mr T 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 T 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 T's complaint.

Both Mr T and Mr Lender agreed with the outcome the adjudicator reached for loan one, so I don't propose to reconsider that loan here because it is no longer in dispute. Instead, this decision will focus on whether Mr Lender was right (or wrong) to have granted loan two.

Loan two

For this loan, Mr Lender asked Mr T to declare his income and expenditure details and it also carried out a credit search.

Mr T declared his income as £2,000 per month and Mr Lender says this income was checked through a third-party report provided by a credit reference agency. Although, the exact results of this check haven't been provided.

Mr T was asked about his monthly expenditure. This was checked and Mr Lender used data from the ONS to where it was appropriate uplift some of the values that Mr T had provided. It's worth saying here that the ONS values work as an average based on region, age and homeowner status and so they aren't specific to Mr T. Following the check, Mr Lender assessed the loan on the bases that Mr T's outgoings were £1,842 per month. This left £158 per month to afford the loan repayments.

Based solely on the income and expenditure information Mr Lender gathered Mr T had enough disposable income to afford the loan repayments.

The adjudicator upheld this loan, because in her view, when the largest monthly repayment was taken into account – and when thinking about the income and the expenditure figures Mr Lender considered, it only left around £78 to cover any other expenses and so in the adjudicators view, this wasn't enough to say the loan was sustainable.

I've thought carefully about this and I do foresee situations where after taking account of all of the expenditure (as well as the loan repayment) a consumer could be left with so little that it just isn't reasonable to believe that the loan could be repaid in a sustainable manner.

However, having looked at the individual circumstances of this complaint, I don't think I can fairly conclude that having a disposable income of at least £78 per month meant this loan was unsustainable, and I say this for several reasons.

Firstly, the loan was structured in a way that meant each month Mr T's payments were slightly different – this is a result of interest being charged daily, and so as capital is repaid a smaller amount of interest can be charged. What this means is the amount of disposable income left over each month varied, and by the end of the loan term (assuming all payments were met) Mr T would've had disposable income of nearly £120 per month – which I do think is more than enough to cover any fluctuations in other expenditure.

Secondly, Mr T appeared to have repaid loan one without any difficulty, indeed, it was repaid much sooner than Mr Lender had expected, it was a three-month loan that was settled in around three weeks.

Thirdly, although Mr T had returned fairly quickly for a new loan – nine days later he hadn't borrowed any more capital. This is I think important when looking at the context of the relationship because it showed at the very least, that Mr T's need for credit wasn't deteriorating because he hadn't returned for a larger sum.

Overall, given what I've seen so far, I'm intending to conclude that the amount of disposable income Mr T had left over for one month, isn't enough to make me think that Mr Lender would've concluded the loan repayments were unsustainable for him. However, that doesn't mean Mr Lender did all it ought to have done before granting the loan.

Before the loan was approved Mr Lender also carried out credit searches and it has provided us 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.

Having looked at the credit results, Mr Lender knew Mr T wasn't insolvent either through an Individual Voluntary Arrangement, bankruptcy or a County Court Judgement within the three years preceding the loan.

In addition, it was given information to suggest that for the loan Mr T didn't have any outstanding "AAI" loans. These are advance against income and so Mr Lender was informed that there were no outstanding payday loans. This is evidence that could potentially show that Mr T wasn't reliant on lending and / or was likely having financial difficulties. However, as part of the credit search results (as well as the expenditure information) Mr T's outstanding "Loans" figure was calculated – which was the amount each month Mr T had to pay out.

This figure would include short term loans and Mr Lender has already shown that according to the credit search results Mr T didn't have any at the time. But Mr T has been recorded as having £887 worth of outstanding loan payments when loan two was advanced. And this is an increase to what Mr Lender knew at loan one – where the value was £700. So, Mr Lender knew, that in around one month Mr T's commitment to such expenditure had increased by £187.

In addition, Mr Lender was aware that Mr T was already committed to spending at least 44% of his income serving other loans – before any other costs are considered. And with the largest loan repayment due to Mr Lender this goes up to almost 49%.

So, after the credit search results as well as the other checks Mr Lender carried out I do think, it ought to have considered whether it knew enough about Mr T's circumstances given the large amount. And I say this because the greater the proportion of a consumer's income that is needed to service outstanding "Loans" and the fact that Mr T needed to make that repayment over a longer period of time, the greater the risk of a consumer finding the loan repayments unsustainable.

Given this, I do think Mr Lender ought to have carried out further checks to satisfy itself that Mr T wasn't overindebted elsewhere with other loans or was utilising other forms of high-cost credit. Mr Lender could've gone about doing this a number of ways, it could've asked to see an up-to-date copy of Mr T's credit file – as this may have shown Mr Lender information it didn't receive from the credit reference agency about the types of credit Mr T had outstanding. Or, perhaps, it could've questioned Mr T further about his credit commitments.

Mr T has provided a copy of the credit file – it is a different one than Mr Lender would've used, but it does given an overview of the outstanding commitments he had at the time. I've used Mr T's credit file, to work out what sort of credit he had outstanding at the time, and what his monthly commitments were. Having done so, I can see that Mr T didn't have any outstanding payday loans at the time. He did have a loan with a credit union, high-cost loan providers, one high cost instalment loan and a peer-to-peer lender – these loans were costing him around £683 per month to service.

On top of this, he had a number of credit cards that needed to be repaid.

So overall, I do think that the amount of credit commitments that Mr Lender used for the affordability assessment for this loan was likely to be broadly accurate – just under £900 per month. And it's clear, from the credit report that Mr T had provided, that at the time he had a *number of different loans and credit cards to service, but only one outstanding high-cost instalment loan.*

So, while in my view the affordability of the loan is quite tight and Mr Lender knew that Mr T already had to spend quite a bit of his income on existing credit commitments, I do think given what Mr Lender discovered in totality meant that it was just about reasonable for it to have advanced this loan.

I appreciate this will come as a disappointment for Mr T but I have provisionally decided, given all the evidence, to not uphold his complaint.

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 didn't have anything further to add and I've considered all of Mr T's points and while I know this will be disappointing for him, I have reached the same conclusions as before for the same reasons. I've explained why below.

Mr T has reiterated that his concerns lay with loan 2 only and so that is what I have focused on. The main crux here, is that Mr T is in effect saying that he was left with too little money each month to cover any unexpected costs – put simply he wasn't left with enough of a 'buffer'. Mr T provided the example that if needed a new car tyre he wouldn't have been able to afford it.

I've thought carefully about this and reconsidered everything that has been provided. In this case, Mr Lender can only assess the lending at the time when it is approved – and there wasn't any indication from the information Mr T provided that either his income would change over the life of the agreement or that his outgoings would materially change. The checks Mr Lender did, showrf he had sufficient disposable income to afford the repayments.

Of course, if the checks showed Mr Lender that Mr T was left with very little at the end of the month, for example £5 then I would've had concerns about Mr Lender providing this loan to Mr T over six months. Whereas, in this case, I do think, given the regulations don't mention how much of a 'buffer' should be left after the loan repayments are considered, that it was reasonable, based on the information Mr Lender obtained, for it to be confident that Mr T could afford his repayments – which is what it was required to do by the regulations.

I've also considered the fact and go into more detail about this below that Mr Lender did apply some uplifts to the figures Mr T had provided. In terms of the uplifts that Mr Lender applied, it said for example that it thought travel of £50 wasn't right and so lifted that up to £90 per month. Overall, the uplifts amended Mr T's outgoings by a further £130.

So, what Mr Lender did was in fact decrease the disposable income of Mr T when it would've been reasonable of it to have relied on the information he had provided. And while Mr T has been honest about making the application look as appealing as possible, I can't say in the circumstances that Mr Lender was wrong to have relied on what it was told or that it was wrong of it to add the uplifts. And with or without the uplifts the loan looked affordable.

I appreciate, Mr T says that Mr Lender ought to have been alarmed when he retuned around a week later and was advanced the same amount of money. This was only the second loan so Mr Lender didn't have other previous lending to review in order to consider whether this potential quick update was out of character or not for Mr T.

But in saying that I can't fairly conclude that for a second loan, for the same sum, that it would've necessarily set alarm bells ringing. I do think, if this was later in the lending chain, for example at loan 4, then that may have been a concern but by that point there would've been a longer lending relationship for Mr Lender to have thought about.

Mr T says for the second loan he applied to Mr Lender for a larger amount, I don't know what the larger amount he applied for was – Mr T hasn't said and that information isn't contained with the file Mr Lender has provided.

It is of course possible that Mr T wanted a larger sum and Mr Lender wouldn't lend that to him – and instead provided him with a loan of £200. The reasons for doing that are likely that it thought Mr T couldn't afford to take on a larger loan. But in any event, as a loan of £200 was advanced that is what I have to consider – did Mr Lender carry out a proportionate check for that sum of money? Having reviewed everything, I think it did.

Mr T says had Mr Lender reviewed his bank statements it would've seen his disposable income would've been reduced further due to having to pay and service an overdraft. While this may be the case, I don't think it had reached the point where it would've been proportionate for Mr Lender to have reviewed bank statements for a £200 loan over six months and I say this because, the credit file indicated no insolvency and loan 1 did appear to have been repaid without any obvious difficulties.

I know Mr T considers the interest to be high and he had no choice but to take the loan because no mainstream creditor would lend to him. I do think it is fair to say that these loans attract a higher rate of interest than loans that can be typically provided from a high street bank.

However, since 2015, there has been a cost cap that was put in place by the industry regulator. Simply put, it means a lender can't collect more than 100% of the amount borrowed so for example, loan 2 would mean Mr Lender couldn't collect more than £400 in capital, interest and charges.

Having looked at the amount Mr T repaid to Mr Lender for loan 2; the loan was covered by the cost cap – and the repayment didn't exceed it or go beyond what was stipulated in the credit agreement.

I can tell from Mr T's response that he is concerned about Mr Lender's behaviour not just towards him but also towards more vulnerable members of society. But I am limited in scope to what I can actually review as part of the complaint.

I can only consider the action of Mr Lender in relation to Mr T. I can't for example review Mr Lender's lending practices more widely. The point Mr T has raised is more to do with the regulation of Mr Lender, which isn't something I can comment on or investigate.

So, having considered everything again, I am still of the view that Mr Lender carried out a proportionate check which showed it that Mr T could afford the loan and the repayments would be sustainable for him.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 December 2023.

Robert Walker
Ombudsman