

The complaint

Mr L complains PDL Finance Limited trading as Mr Lender didn't complete sufficient checks to see whether he could afford to pay back the loans.

What happened

Mr L was advanced five loans and a summary of his borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of instalments	highest repayment per loan
1	£300.00	23/11/2017	26/12/2017	3	£152.80
gap in lending					
2	£750.00	02/07/2018	21/11/2018	6	£275.00
3	£1,000.00	21/11/2018	15/12/2018	12	£198.69
gap in lending					
4	£500.00	05/07/2021	24/06/2022	12	£99.34
5	£600.00	24/06/2022	outstanding	12	£125.60

Following Mr L's complaint, Mr Lender wrote to him with a final response letter (FRL) and it explained that it had carried out proportionate checks for each loan which demonstrated Mr L could afford his repayments and so it didn't uphold the complaint. However, as a gesture of goodwill Mr Lender offered:

"... we would be willing to reduce your outstanding balance to the original capital amount borrowed on your fifth loan of £279.64. This new balance can be repaid via a repayment plan to support you in your current financial circumstances.

Upon acceptance of our offer, it would mean you would repay no interest towards your fifth loan."

Mr L didn't accept this offer and instead referred his complaint to the Financial Ombudsman.

Mr Lender sent its file into this matter and at this time, it explained that Mr L still owed it £166.64 of outstanding capital and it said that once the loan has been repaid it is willing to remove the loan from Mr L's credit file.

The case was then considered by an adjudicator, and in her assessment, she didn't uphold Mr L's complaint about loans 1 and 2. However, she did uphold Mr L's complaint about loans 3 – 5.

For loans 3 – 5 the adjudicator thought Mr Lender needed to have carried out further checks before granting the loans. Had it done so, by loan 3, it would've likely discovered that Mr L was spending a significant portion of income each month gambling. And further checks when loans 4 and 5 were granted would've shown Mr Lender that shortly before loan 4 was granted he had entered into an individual voluntary arrangement (IVA) and therefore loans 4

and 5 weren't sustainable for him either.

Mr L appears to have accepted the adjudicator's findings.

Mr Lender didn't agree with the outcome, and I've summarised its response below:

- Loan 3 was repaid much quicker than contracted and this was Mr L's second loan in the second chain of borrowing.
- There wasn't anything either in the checks or the way Mr L had repaid previous loans to indicate further checks were needed.
- Mr L told Mr Lender he was taking loan 3 for a holiday.
- Due to the gap in lending Mr L was treated as a new customer when he returned for loan 4.
- Proportionate checks were carried out for all loans that showed Mr L had sufficient disposable income to afford the repayments. The checks also didn't highlight that Mr L was subject to an IVA.
- Mr Lender can only make its lending decision based on the information that it received.

As no agreement was reached, the case was passed to me to resolve. I then issued a provisional decision explaining the reasons why I wasn't going to be upholding Mr L's complaint, but Mr Lender ought to carry out the offer it had made. Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 20 July 2023.

Mr Lender said it had nothing further to add.

Mr L asked for a further update, after the provisional decision was issued but didn't provide any further evidence or submissions.

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 Mr L 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 L'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 L. These factors include:

- *Mr L 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 L 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 L 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 L. The adjudicator didn't think this applied to Mr L's complaint.

Mr Lender was required to establish whether Mr L 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 L was able to repay his 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 Mr L's complaint.

The adjudicator didn't uphold Mr L's complaint about loans 1 and 2 and Mr Lender and Mr L appear to have agreed with those conclusions. As such, there is no longer any outstanding dispute and so I say no more about them. Instead, this decision will focus on Mr Lender's decision to provide loans 3 – 5.

Loan 3

For this loan, Mr L told Mr Lender his monthly income was £1,300 – which was the same amount he had declared for loan 2. Mr L also declared monthly outgoings of £798 across a number of different categories such as rent, food and other regular outgoings to name a few.

Mr Lender believed, based on the information Mr L had provided that he had around £502 per month in disposable income to afford the loan repayment of £198.60. Therefore, it would've been reasonable for Mr Lender to believe this loan was affordable.

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.

At this point in time, it was also reasonable for Mr Lender to have relied on the information it was given by the credit reference agency. So, I've looked at the results to see whether there was anything contained within it that would've either prompted Mr Lender to have carried out further checks or possibly have declined Mr L's application.

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

However, it did know that Mr L had one active payday loan. This may have been a concern but given there were no other repayment problems and the loan looked affordable, I think it was reasonable for Mr Lender to have granted the loan based on the credit checks results. Overall, there were no signs, from the credit check results, which indicated Mr L was in financial difficulties or was having problems managing his existing credit commitments.

I appreciate the adjudicator thought that further checks ought to have been carried out when

this loan was advanced, and I can understand why she may have felt that given this loan was larger and was to be repaid over a longer period of time compared to loan 2.

But I have also had to weight that up against the fact this was only the second loan in the chain of lending, and up to this point Mr L had only been indebted to Mr Lender for around five months. There also hadn't been any problems repaying loan 2 and the information it received from both Mr L and the credit reference agency didn't indicate any signs of financial difficulties or give Mr Lender any concerns that ought to have led it to carry out further checks.

I think for a second loan in the chain and considering what else Mr Lender knew, that the checks were proportionate and showed it that Mr L could afford the lending. I'm therefore not upholding Mr L's complaint about this loan.

Loans 4

There was a significant break of around 31 months between Mr L repaying loan 3 and returning for loan 4. This break is in my view, more than enough for Mr Lender to have treated Mr L as if he was a new customer.

So, although this was Mr L's fourth loan in total for the purposes of thinking about what checks it ought to have carried out, Mr Lender could treat Mr L's application afresh and as if it was his first loan. Which will impact the type and level of checks I think it ought to have carried out.

For this loan, Mr Lender carried out the same sort of checks as it had done for the previous loans. Mr L declared a monthly income of £1,400. Mr L also declared monthly outgoings of £799 across the same categories as he was previously asked about and which I commented on about loan 3.

Mr Lender believed, based on the information Mr L provided, he had around £601 per month in disposable income to afford the largest loan repayment of around £100. Therefore, it would've been reasonable for Mr Lender to believe this loan was affordable.

The adjudicator thought further checks were needed for this loan because of the term. I do accept that the loan was for 12 months but in my view that isn't solely enough to have triggered further checks. Instead, given the significant break in borrowing it was reasonable for Mr Lender to have relied on the information it was given by Mr L (as detailed above) and the information it received following the credit checks, which I comment on below.

Mr Lender also carried out the same sort of credit search and it has provided the summary of those results. I've had to think carefully about the credit check results because I know that Mr L had recently agreed to an IVA – and if Mr Lender knew about it or ought reasonably to have known about the IVA that could be a reason to either not lend to Mr L or to have prompted further checks.

However, based on the summary of the credit check results Mr Lender received, and what it has told us is that when the loan was approved, Mr L wasn't subject to any outstanding CCJs or IVAs which had been recorded within the previous 3 years.

However, I do know, because I've seen the paperwork which Mr L has provided that in April 2021 Mr L did indeed enter an IVA. So, this does contradict the information Mr Lender has been given by the credit reference agency and I can't explain why this is the case. One explanation could be a reporting delay from when the IVA was entered into and when the information was reported with the credit reference agencies.

So, the question for me to consider, whether it was reasonable for Mr Lender to rely on the results of the credit check which said that Mr L wasn't subject to an IVA? Bearing in mind that as part of the application for the loan Mr L also hadn't disclosed that he was subject to the IVA.

And I've decided in this case, that Mr Lender could rely on the credit check results that it was provided it. I've considered that the credit check results didn't indicate any financial difficulties and because this was the first loan after a significant break there wasn't any relevant recent lending history to indicate repayment problems.

And as I've concluded that further checks didn't need to have been carried, because that wouldn't have been proportionate it therefore follows that Mr Lender wouldn't have seen any information that suggested Mr L was subject to an IVA.

In my view, for this loan the checks carried out by Mr Lender showed it that Mr L had sufficient disposable income to afford the repayments. There also wasn't anything else in the information it obtained which suggested Mr L was having either financial difficulties or that the loan repayments would be unsustainable for him.

I'm not upholding Mr L's complaint about loan 4.

Loan 5

Mr L declared similar income and expenditure figures for this loan as he had done so for loan 4. The result of which showed Mr Lender that Mr L was likely to be able to afford the loan repayments.

This was the second loan in this lending chain, and it was a slightly larger capital loan to be repaid over the same term. The loan was also granted on the same day that Mr L's fourth loan was repaid.

The adjudicator upheld this loan for the same reason as loan 4 – further checks ought to have been carried out and these would've shown that Mr L was under the terms of an IVA. However, the credit checks Mr Lender carried out again didn't highlight that Mr L was under the terms of an IVA. This does seem unusual, considering this loan was taken more than a year after the IVA had been entered into and therefore there was more than sufficient time for the credit file to have been updated to reflect this.

However, as before, there were no other indicators from either the information Mr L provided or the credit search results that may have suggested to Mr Lender that he was either in financial difficulties, the loan was unsustainable, or he was subject to any insolvency proceeds.

And I also don't think it had yet reached the stage where Mr Lender needed to have carried out further checks, such as verifying the information Mr L had provided because I still think it was just about reasonable to have relied on the credit check result and the information provided by Mr L. I say this, considering this was his second loan and there hadn't been any obvious repayment problems while he repaid loan 4.

I am therefore intending to not uphold this loan either.

However, in saying all of the above, in the FRL Mr Lender made a goodwill offer (and clarified it in its submissions to the Financial Ombudsman) to put things right for Mr L about loan 5 only, which is to only collect the capital amount that was advanced and then once repaid remove the loan from the credit file. Given the circumstances of the complaint, I consider that offer to be fair and reasonable and so I am intending to recommend that Mr Lender honours this offer.

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.

As neither party provided any further submissions for my consideration, I see no reason to depart from the findings I reached in the provisional decision. I still don't think Mr Lender did anything wrong when it approved lending for Mr L.

However, Mr Lender made an offer to put things right for the final loan only. This offer is fair and reasonable in the circumstances, and if Mr Lender hasn't already done so, then it needs to do what it previously agreed.

My final decision

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

But PDL Finance Limited should, do what it has already agreed to do in order to put things right for Mr L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 August 2023.

Robert Walker
Ombudsman