

## The complaint

Mrs O complains about a loan from 1Plus1 Loans Limited, ("1Plus1"), which she says was unaffordable. The complaint is brought to this service on Mrs O's behalf by a claims' management company. But for ease I have referred below to all actions being taken by Mrs O.

## What happened

1Plus1 provided Mrs O with a loan of £3,000 in March 2015. The loan was secured by a guarantor who would be responsible for repaying it if Mrs O failed to make her repayments. The interest rate was 23%, (45.4% APR). The loan was to be repaid by 36 monthly repayments of £140.84. If Mrs O made each payment when it was due, she'd pay £5,070.24 in total. The loan was repaid in October 2017. Mrs O said that the loan was to be used for buying a car.

Mrs O said that 1Plus1 didn't properly undertake affordability checks when granting credit or assess signs of her over-indebtedness. The unaffordable high cost loan worsened a financial situation which was already poor.

## *Our investigator's view*

Our investigator assessed the complaint and recommended that it be upheld. She said that 1Plus1 hadn't carried out reasonable and proportionate checks before this loan. 1Plus1's credit checks seemed to indicate that Mrs O was in financial difficulty. And had 1Plus1 evidenced what Mrs O told it, 1Plus1 would most likely have seen that Mrs O wasn't managing her finances well and that she wouldn't be able to repay the loan in a sustainable way.

1Plus1 disagreed. It responded to say, in summary, that:-

- Mrs O did not have an excellent credit rating, but its business model was focused on a demographic customer that might not have a good credit history.
- It queried what further checks should have been made other than the steps 1Plus1 had already taken. 1Plus1 said there was no requirement to view bank statements.
- It considered this loan to be a small loan and reviewed Mrs O's income level, and monthly repayment to assess affordability and not the overall costs.
- It made employment checks to check that Mrs O received the income she stated.
- Mrs O's credit file evidenced her non-essential expenditure.
- It included a buffer to account for fluctuations in discretionary expenditure, to check that Mrs O could afford to meet the contractual instalments as and when they fell due.
- Mrs O had suggested to 1Plus1 that she had an arrangement to pay with her existing creditors and that she was given advice by a debt company to say that she could offer any payment and creditors would have to accept this. 1Plus1 said this was indicative of Mrs O's attitude towards credit as opposed to suggesting that she did not have the disposable income to repay the loan.

As this complaint hasn't been resolved informally, it has come to me, as an ombudsman, to review and resolve.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mrs O and to 1Plus1 on 9 March 2022. I summarise my findings:

When 1Plus1 lent to Mrs O, the regulator was the Financial Conduct Authority (FCA) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). Its rules and guidance obliged 1Plus1 to lend responsibly. As set out in CONC, this meant that 1Plus1 needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet their loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an "affordability assessment" or "affordability check". Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

The checks had to be "borrower" focussed – so 1Plus1 had to think about whether Mrs O could sustainably repay her loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn't cause Mrs O undue difficulty or adverse consequences. In other words, it wasn't enough for 1Plus1 to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mrs O.

And as in this case, where Mrs O had a guarantor who had agreed to meet repayments in the event that she couldn't, 1Plus1 was still obliged to assess whether in the first instance Mrs O could meet her repayments without undue difficulty.

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the lower a person'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 was likely to be greater and the borrower was required to make payments for an extended period);

I'd noted that before agreeing the loan, 1Plus1 spoke to Mrs O on the phone and gathered some information from her about her income and expenses. I'd listened to a recording of the call. 1Plus1 also carried out a credit check.

Mrs O told 1Plus1 that she lived with her partner and had no dependents. She was a tenant and she paid £200 rent and her partner paid for all the household bills. She told 1Plus1 she paid monthly amounts totalling £104 for three phones, £50 per week on petrol and £100 per month on clothing. In its final response letter, 1Plus1 said Mrs O's expense figures matched or exceeded statistical information from the Office for National Statistics ("ONS"), and she would be left with much more than the monthly loan repayment and a buffer of at least £100 for emergencies. 1Plus1's affordability assessment form shows Mrs O's expenses totalled £1,114 including her credit commitments and a buffer of £200. So, she was left with a disposable income of £886 from which to pay the monthly loan repayment. But 1Plus1 was required to establish whether Mrs O could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I'd noted that Mrs O had told 1Plus1 that her net monthly income was "roughly £2,000". 1Plus1's final response letter said it verified Mrs O's income electronically, but I noted that it didn't ask for Mrs O's payslips. So, I couldn't be sure that 1Plus1 used an accurate figure for Mrs O's income when calculating her disposable income.

I also couldn't see that 1Plus1 had asked for evidence of Mrs O's living costs. I didn't think it was reasonable for 1Plus1 to rely on ONS's statistical information about Mrs O's living costs. ONS data is based on the finances and expenditure of the average consumer. But 1Plus1 knew when it lent to Mrs O, that it was providing a loan to someone whose credit file suggested they fell outside this average portfolio.

Bearing all this in mind, I thought it would have been proportionate for 1Plus1 to have taken steps to verify Mrs O's actual expenditure in line with CONC 5.3.1(4) instead of choosing to rely on a potentially inaccurate comparison with ONS data.

CONC 5.3.1(4) said:

*If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):*

1. (a)  
*the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;*
2. (b)  
*it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer;*

I appreciated that 1Plus1 had used higher expenditure figures compared to the amounts Mrs O had declared at the time of her application. I thought this suggested it wasn't confident in the information Mrs O had provided. But I also didn't think that the lender could be confident that the adjusted figures were accurate either. And I didn't think that 1Plus1's checks were enough here to get a clear picture of Mrs O's finances at the time of her loan application for the lender to be confident that she would be able to make her loan repayments sustainably.

1Plus1 had also provided this Service with a summary of Mrs O's credit commitments from its credit checks. The summary didn't show either the dates the credit was taken out or the original loan amounts.

1Plus1's summary of Mrs O's credit commitments showed that Mrs O had three accounts defaulted in the six months prior to the loan application, with the most recent default only around three months before the application. The three default balances totalled £2,766. But this wasn't the only sign of adverse credit on the checks. There were also six accounts on which Mrs O had recently missed payments. There were missed payments in the month prior to the loan application on five of the accounts, and two of these accounts appeared to have been in arrears for at least six months. One of these accounts was Mrs O's mortgage. The sixth account, a loan with a balance of £9,176, appeared to have been six months in arrears four months prior to the loan application. Only two accounts with total monthly payments of £66 appeared to be paid satisfactorily.

I'd said that simply performing credit checks wasn't enough. A lender needed to react appropriately to the information that any checks showed. Altogether I thought the three relatively recent defaults and the six accounts with relatively recent missed payments should have put the lender on notice that Mrs O's finances had been significantly under pressure for some time. And I thought they might also have reasonably caused doubt on the accuracy of the expenditure information Mrs O had provided and the disposable income it had calculated. It didn't appear from the phone call that 1Plus1 had any concerns about the defaults and missed payments. Mrs O said on the call with 1Plus1 that she had an arrangement with her creditors to make monthly repayments of £10, although this didn't appear on the credit checks for all her adverse credit.

I didn't think 1Plus1 had thought carefully enough about what the information it had gathered suggested about Mrs O's overall financial situation and the likelihood of her being able to pay its loan in a sustainable manner. Although 1Plus1's affordability form showed that Mrs O had a disposable income before making the loan repayment of £886, I thought 1Plus1 should've realised that it couldn't rely on this information which was significantly at odds with what 1Plus1 saw on its credit checks. I thought 1Plus1 should have realised that what it saw on its credit checks painted a very different picture of Mrs O's financial situation and strongly suggested Mrs O was experiencing significant money problems.

It seemed to me that 1Plus1 was focussing on its calculation of whether the loan was affordable for Mrs O on a pounds and pence basis. But the lender was required to establish whether Mrs O could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it didn't automatically follow that this was 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 wouldn't be able to sustainably make their repayments if it was on notice that they were unlikely to be able to make their repayments without borrowing further.

Overall, I thought 1Plus1 ought reasonably to have realised that Mrs O was most likely over committed financially, that there were strong indications she was having difficulty managing her finances and it was likely she would need to borrow elsewhere to repay the loan. I thought 1Plus1 ought reasonably to have realised that it was unlikely that Mrs O would have been able to sustainably repay her loan over the 36 months' term. So, I didn't think 1Plus1 made a fair lending decision here when it agreed to lend to Mrs O based on the information it had gathered.

I haven't gone on here to consider here what proportionate checks would likely have shown 1Plus1, because as I'd explained above, I thought 1Plus1 was irresponsible to have agreed the loan on the basis of the information it already had.

But I thought it worth mentioning that I'd reviewed credit information on another complaint Mrs O had brought to this Service. I could see that this showed that Mrs O had other recent defaulted accounts which were not shown in 1Plus1's credit checks. The mortgage account I'd referred to above and the loan account with a £9,176 balance were both defaulted in the month prior to the loan application. There was also an unsatisfied county court judgement for £538 made around three months before the loan application.

I'd also noted from 1Plus1's contact notes that Mrs O's first loan repayment was made late. And her account was again in arrears four months later. I'd noted that Mrs O had said that she had to take out a payday loan in order to repay 1Plus1's loan. I thought all this was foreseeable.

So, subject to any further representations by Mrs O or 1Plus1, I said that I intended to uphold Mrs O's complaint. I didn't think 1Plus1 had made a fair lending decision here when it agreed to lend to Mrs O based on the information it held and I intended to say that 1Plus1 needed to put things right as follows:-

### **Putting things right – what 1Plus1 needs to do**

I understand that the loan has been repaid. As I intend to conclude that 1Plus1 was irresponsible to have lent to Mrs O, she shouldn't have to pay any interest, fees or charges on the loan.

So, 1Plus1 should:

- Refund any interest and charges paid by Mrs O on the loan;
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement\*; and
- Remove any adverse information recorded on Mrs O's credit file in relation to the loan.

\* HM Revenue & Customs requires 1Plus1 to take off tax from this interest. 1Plus1 must give Mrs O a certificate showing how much tax it's taken off if she asks for one.

Mrs O responded to my provisional decision to say that she was happy with it.

1Plus1 disagreed with my provisional decision and responded to say:-

- Mrs O's income was verified using information from a credit reference agency and then followed up with calls to Mrs O's bank through third party links to confirm her income received.
- It noted that I had referred to another complaint made by Mrs O. It didn't consider that this was fair on the basis that the complaint should be dealt with on the information at the time the loan was inception.
- There was no requirement to obtain evidence for Mrs O's living costs from any FCA rules/legislation.
- The credit file information it obtained was via a third party and it could only act on the information obtained by the company it used.
- It queried whether I had obtained evidence that the loan was unaffordable via Mrs O's bank statements at loan inception. It referred to another decision of this Service regarding a complaint being upheld without proof of non-affordability.

### **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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I have considered 1Plus1's response to my provisional findings. I appreciate that this will be very disappointing for it but I am still of the view that it was irresponsible for it to have agreed the loan for Mrs O. I've explained my reasons in my provisional decision and I've also responded to its main points in response to my provisional decision below.

I note what 1Plus1 has said about verifying Mrs O's income. But it hasn't provided any details of this. So I don't know whether 1Plus1 checked that Mrs O was in receipt of "roughly £2,000" each month or whether her income varied due to items such as overtime and the refund of expenses.

I note that 1Plus1 is unhappy that I referred to another complaint. But I had reached my decision here on the basis of the information known to 1Plus1 at the time of the loan. I thought that the information 1Plus1 had seen in its credit checks strongly suggested Mrs O was experiencing significant money problems.

I note that 1Plus1 said that there is no requirement to obtain evidence for Mrs O's living costs from any FCA rules/legislation. As I'd said above, 1Plus1 was required to establish whether Mrs O could make her loan repayments without being caused undue difficulty or adverse consequences and not just to ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting bank statements from Mrs O, asking for copies bills and/or receipts for her expenses and by asking her for more information about her existing credit commitments.

I note what 1Plus1 says with regard to its credit checks. I wasn't suggesting that 1Plus1 obtain numerous credit check reports. But I thought Mrs O's credit payment history was concerning especially considering her relatively recent defaults and missed payments. In Mrs O's circumstances, I don't think 1Plus1 could be satisfied from the information it had seen that it could safely conclude that its loan would be sustainably affordable for Mrs O. I think 1Plus1 should have realised that it wasn't reasonable to base its lending decision on that information.

I hadn't seen Mrs O's bank statements in this case. But for the reasons set out above, I thought 1Plus1 was irresponsible to have agreed the loan on the basis of the information it already had.

1Plus1 has also referred to another decision of this Service. However, as 1Plus1 knows, we assess each case on its own merits and it isn't appropriate to compare the outcomes of complaints as the circumstances may be very different.

So, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint and require 1Plus1 to take the steps set out above under the heading "Putting things right - what 1Plus1 needs to do".

## **My final decision**

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order 1Plus1 Loans Limited to put things right as I've set out above under the heading "Putting things right – what 1Plus1 needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 6 May 2022.

Roslyn Rawson

**Ombudsman**