Financial Ombudsman Service

The complaint

Mr L complains through his representative that Lendable Ltd lent him money on high cost loans that he couldn't afford to repay.

What happened

Lendable provided Mr L with the following loans:

	Date of loan	Amount lent	Monthly instalment)	Term of loan	Date repaid
Loan 1	8/8/2017	£3,500	£145	36 months	4/2/2019
Loan 2	26/6/2018	£3,000	£85	54 months	Still outstanding

*rounded up

He paid all the instalments and made an early repayment on loan 1, but got into difficulties with loan 2, missing several payments. I haven't seen any up to date position on this loan, but I believe it's still outstanding.

Mr L complained to Lendable that the loans were unaffordable to him. Lendable said that it carried out all necessary verification and credit checks on both loans and assessed both as being affordable.

Our adjudicator said that Lendable had made a fair lending decision in respect of loan 1, but that it shouldn't have lent the money for loan 2. This was because he thought Mr L's combined regular consumer credit repayments, including the monthly repayments for loan 2 represented a significant proportion of his income. So he said there was a significant risk that he wouldn't have been able to meet his existing commitments without having to borrow again.

Lendable didn't agree. It pointed out that firstly, his credit file showed he had two unsecured loans, a credit card, and a current account (with a £750 overdraft facility available to him). The information showed that Mr L had kept up with the repayments across these accounts for at least 36 months - but also that he was not using all of the credit available to him. For example, he had not spent to the limit of his credit card account and had not made use of his current account overdraft facility for at least eight months prior to his application. Secondly, a proportion of his debt consisted of repayments made to his hire purchase (HP) account. It would suggest that making repayments to this sort of account is not reasonably indicative of the customer being in financial difficulty - as it does not suggest a reliance on using credit to meet living costs.

The matter has been passed to me for further consideration.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Lendable complete reasonable and proportionate checks to satisfy itself that Mr L would be able to repay the loans in a sustainable way?

- If not, would those checks have shown that Mr L would have been able to do so?

The rules and regulations in place required Lendable to carry out a reasonable and proportionate assessment of Mr L's ability to make the repayments under the agreements. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Lendable had to think about whether repaying the loans would be sustainable. In practice this meant that Lendable had to ensure that making the repayments on the loans wouldn't cause Mr L undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Lendable to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr L. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications. I think that such a check ought generally to have been *more* thorough:

- The *lower* a consumer'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 *greater* the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

Both loans required repayment over a significant amount of time so Lendable should have carried out a thorough assessment in each case to ensure that the loans were affordable. In respect of both loans, Lendable has supplied the information it considered when issuing the loans. However, although I can see the information concerning Mr L's credit commitments, I haven't seen an assessment of his disposable income in either case, as Lendable assessed what percentage of Mr L's income was available for discretionary and living expenses, without specifying what it assessed those were. Mr L has supplied bank statements in respect of the first loan (although these weren't seen, or requested by Lendable), so I've drawn some assumptions from those statements.

loan 1

Mr L had a credit card with a balance on it of around £1,400, and an HP loan for which he was paying £177 a month. L assessed that after payment of his credit debts (allowing 3% a month of the balance in respect of the credit card), these amounted to around 24% of his monthly income which it assessed at £1,462. Looking at his bank statements I think Lendable made a reasonable assumption that Mr L would have the necessary disposable income to meet the new loan repayments. The credit report didn't show any defaults or recent use of an overdraft. So I think it made a fair lending decision in respect of this loan.

loan 2

This loan was issued whilst Mr L was still paying for loan 1 and had over two years left to pay. The new loan didn't pay off the old loan. So, taking into account both loan payments, a further loan, a credit card debt that had increased to over £2,350 and Mr L's HP loan, Lendable calculated that his credit to income ratio was nearly 40%. Considering how much this figure had increased since loan 1 I think this was very high. And, taking into account that Mr L's income was the same as at loan 1, I think at his was an indication that the loan was unaffordable.

Lendable has said that the existence of the HP account isn't indicative of financial difficulty. That may be so, but it still needs to be taken into account in calculating credit commitments. And the regulations say potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where the total value of the customer's outstanding debts relative to the customer's income is high. Further, although Lendable points out that Mr L hadn't spent to the limit of his credit card this was only because he had previously had a limit of £1,750, which by the time of the new application had increased to £2,500. He hadn't reached the new limit but was only £150 off it.

So I think, bearing in mind the change in Mr L's credit record since loan 1, with no increase in income, that loan 2 was unaffordable. I don't think Lendable made a fair lending decision.

Putting things right

Mr L has had the capital sum for loan 2 and it's fair that he repays this. So I will require Lendable to do the following:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr L as payments towards the capital amount.
- If Mr L has paid more than the capital, refund any overpayments to him with 8% simple interest* from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Lendable should come to a reasonable repayment plan with Mr L.
- Remove any adverse information about loan 2 from Mr L's credit file.

*HM Revenue & Customs requires Lendable to deduct tax from this interest. It should give Mr L a certificate showing how much tax it's deducted if he asks for one.

My final decision

I don't uphold the complaint concerning loan 1.

I uphold the complaint concerning loan 2 and require Lendable Ltd to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 July 2022.

Ray Lawley
Ombudsman