

The complaint

Mr A complains that PDL Finance Limited, trading as Mr Lender (“Mr Lender”), lent to him irresponsibly because at the time he had a number of missed payments and defaults on his credit file.

Mr A is also unhappy about the help and support he received from Mr Lender after he says he told them about his mental health and the impact that it has had on him in 2022. He also says Mr Lender didn’t acknowledge or respond to his complaint.

What happened

Mr A was granted one loan for £300 on 27 June 2022 and he was due to make three monthly repayments of decreasing value. The largest payment he was due to make was £176.80 with the smallest being £124. Had Mr A repaid the loan in line with the credit agreement he would’ve repaid a total of £453.60.

Mr A had some problems repaying his loan, he made the first contractual payment as expected but then no further payments have been made. Mr Lender has said the outstanding balance of £336 has been sold to a third-party collection agency and the third party has confirmed no further payments have been made.

Mr A emailed a complaint to Mr Lender, and when he didn’t hear from it and after eight weeks, he referred the complaint to the Financial Ombudsman Service.

One of our investigators looked at the complaint and he explained why he wasn’t going to uphold it. The investigator thought the checks Mr Lender carried out showed that Mr A would likely be able to afford his repayments. He also said there wasn’t anything to suggest that Mr A had told Mr Lender about how his mental health and how it had impacted him and he also concluded the letter of complaint had been sent to the wrong email address.

Mr A didn’t agree with the investigator’s assessment saying in summary:

- he provided screen shots of an email he sent to Mr Lender in 2022
- the email address that he used to submit his complaint was given to him by a representative of Mr Lender
- he provided further details as to why he couldn’t deal with this complex matter in 2022 which resulted in the debt being sold to a third party
- Mr A provided further details of the accounts that had been defaulted before the loan was approved.

A different investigator reviewed the complaint, and these comments didn’t change his mind. He said that the email Mr A had sent to Mr Lender in 2022 hadn’t been received because the wrong email address had been used. Mr A had used a ‘.com’ address when it needed to have been a ‘co.uk’ address.

As no agreement could be reached the complaint was passed to me for a decision. I then issued a provisional decision explaining why I was partly upholding the complaint. Both

parties were asked to provide any further comments as soon as possible, but in any event, no later than 3 May 2024.

Mr A didn't respond to or acknowledge the provisional decision. Mr Lender, responded and didn't agree and in summary it said;

- A credit search was conducted and the results were put through its "API" in order to ensure there was nothing to be concerned about. The API summary – that was contained with the case file showed there was no cause for concern – had there been any 'flags' than further information may have been gathered.
- Or if Mr A had taken further loans, then a more detailed check may have been undertaken.
- In Mr A's case, he had a good credit score, zero other searches within the last three months which showed he wasn't reliant on other borrowing.
- Mr A's income wasn't just declared – it was verified using information taken from an Open Banking check.
- Mr Lender is sympathetic to his personal situation, but it wasn't made aware of the information either at the point the loan was approved or before the loan was passed to the third party. Had it know, its own, in-house team would've taken on handling Mr A's debt. Since the information is now known – Mr Lender says the third party has moved Mr A's account to its "customer care team".

A copy of the provisional findings follow this in smaller font and should be read in conjunction with the final decision below.

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.

For ease of reading, I've split this decision into several parts, I've firstly addressed Mr Lender's lending decision, I then go on to deal with the complaint email and thirdly, I'll deal with what happened in 2022.

Lending decision

Mr Lender had to assess the lending to check if Mr A could afford to pay back the amount 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 A'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 A. These factors include:

- *Mr A 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 A 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 A 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 A. But I don't consider that this applied to Mr A's circumstances given only one loan was advanced.

Mr Lender was required to establish whether Mr A could sustainably repay the loan – 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 A 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 A's complaint.

Having considered everything that Mr Lender did before it lent this loan – along with the comments Mr A has provided, I am satisfied that a proportionate check was carried out by Mr Lender but the information contained within the credit search results indicated Mr A was already experiencing financial difficulties. I've explained my reasoning below.

Mr A has shared a significant amount of personal information about his circumstances at the time the loan was approved and what he was going through while trying to repay what he owed. I haven't gone into any detail about these here because I've not needed to, and also to protect Mr A's privacy. But I want to reassure Mr A that I have read everything he has told us and I'm sorry to hear about what he has gone through. I do hope the help and support he is receiving has meant that things have improved for him.

Before the loan was advanced, Mr Lender asked Mr A to declare his income and expenditure and it also carried out a credit search. Mr A declared that his net monthly income was £1,400 a month.

Mr A 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 A's outgoings have been recorded as being £784 per month. Based solely on the income and expenditure information Mr Lender gathered Mr A had potentially enough disposable income to afford the largest repayment for the loan - £176.80.

Mr Lender also carried out a credit search and it has provided the Financial Ombudsman with a summary of the results as well as the raw data 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 summary Mr Lender has provided, there wasn't anything in my view, that would've led it to have carried out further checks. It knew Mr A wasn't insolvent either through an Individual Voluntary Arrangement, bankruptcy or had a County Court Judgement within the three years preceding the loan.

It was also informed that Mr A didn't have any outstanding "AAI" – which means advanced against income which is another name for a payday loan. So, the information Mr Lender received suggested that Mr A wasn't reliant on payday loans at the time. The information, Mr Lender collected from Mr A as part of his affordability assessment also didn't suggest that he was reliant on other loans either.

The raw credit file data showed Mr Lender that Mr A owed other creditors just over £7,300 and this was spread across six active accounts. However, having a closer look at the raw data that it provided, there is in my mind some cause for concern because Mr Lender was told that Mr A was having problems managing the majority of his existing credit commitments.

Mr A had a credit card, that was over its credit limit – only by £37 but it had been that way for two months because the provider was now reporting that Mr A account was in arrears. In addition, Mr A had an outstanding loan that was due to cost him £413 per month. However, like the credit card this was also in arrears and seemed to have been that way since November 2021. The arrears markers were increasing indicating that Mr A wasn't and hadn't

made payments to that account for some time.

Overall, Mr A was now in delinquency with nearly £7,200 of his outstanding balance – which was basically all his total debt. Based on the credit check results, I think that I can fairly conclude Mr Lender was aware that Mr A was likely already having significant financial difficulties.

Now in some situations, I'd maybe conclude that a customer showing signs of financial difficulties ought to have led Mr Lender to carry out further checks such as perhaps verifying the information which had been provided. But I don't think it's necessary to do that in this case.

In the individual circumstances of this case, I'm satisfied that the repeated missed payments on a personal loan and a credit card which accounted for basically all of Mr A's debt ought to have prompted Mr Lender to realise he couldn't service his existing debts, and so was unlikely to be able to be able to sustainably repay the new Mr Lender loan.

I am therefore planning to uphold Mr A's complaint and I've set out at the end of the decision what it should do to put things right for him.

Complaint email

Mr A has sent a screen shot of the email complaint he sent to Mr Lender on 24 December 2023. I can see that he sent it to a particular email address, which he later clarified was one that was given to him by a representative of Mr Lender.

Mr Lender says the email address Mr A used to submit his complaint isn't one that the case handler recognised and isn't one that is currently used for logging complaints. Mr Lender therefore says it didn't receive Mr A's complaint and that is why no response was provided to him.

Mr Lender has been quite categorical that the email Mr A used was incorrect and so I can't explain why he may have been told this by a member of staff. My research has led me to believe that the email Mr A used may have once, historically been used by Mr Lender but that would've been a number of years ago.

However, Mr A was unhappy that no response was received and or an acknowledgment of what happened. But, having thought about my role and considering customer service the impact on Mr A, while he didn't receive an outcome to his complaint he hasn't as far as I can see been impacted by his ability to refer the complaint to the Financial Ombudsman or to have his complaint investigated. I therefore, won't be upholding Mr A's complaint about this matter.

Repaying the loan

After Mr A was granted the loan it's clear that he had difficulties repaying what he owed, and I can see that Mr Lender temporarily froze interest on the account after it was told Mr A was working with a well-known debt advice charity. Given what Mr Lender was told I consider these steps to be appropriate and it had treated Mr A with forbearance.

However, Mr A nor the third-party debt advice charity contacted Mr Lender again, and so it says that as a result the loan account was defaulted and then sold to a third-party debt collection company. Superficially this doesn't seem an unreasonable course of action to take given that only one payment had been made towards the loan.

However, Mr A has also provided screen shots of an email that he says was sent to Mr Lender in October 2022. This email is important, because Mr A provided lots of information about his current personal situation and the context around that. As I've said above, it's clear Mr A has been through a lot and I do hope things have improved for him.

These screen shots have been provided to Mr Lender to find out why it didn't respond to or react to the information it was provided. This was done, because given what Mr A has shown was disclosed Mr Lender needed to have done something. In my view, it couldn't just ignore the content of the email.

Mr Lender has explained that it never received Mr A's email because it was sent to an incorrect email address. Mr A had sent it to an address which ended in ".com" whereas Mr Lender says the correct email address for it at the time was "co.uk". As a result of the email being sent to an incorrect address, Mr Lender wasn't aware of Mr A's circumstances and so couldn't react to the information Mr A wanted to disclose to it.

So, I don't think Mr Lender acted unreasonably with regards to the help and support it provided after the loan was granted. In saying that, now I've decided the loan ought not to have been granted it therefore follows that interest fees and charges will now need to be removed and Mr A should only have to repay the capital that he borrowed.

Mr A in the 2022 email provided a lot of information about his circumstance, and as part of a discussion about the balance Mr Lender (or the third party) will need to work with Mr A to discuss a way forward, but I would remind it of its obligation to treat Mr A fairly and with forbearance.

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.

Having considered Mr Lender's points carefully, I am still of the view the complaint should be upheld and I've provided further findings below.

Firstly, as I commented on in the provisional decision, Mr A attempted to let Mr Lender know about his personal situation – I think that was quite clear. But due to the wrong email address being used Mr Lender didn't know about Mr A's vulnerabilities either at the point the loan was approved or at a later date. It is good to hear that Mr Lender has proactively contacted the third party and that the third party is taking steps to assist Mr A – I think this was the correct approach here.

Secondly, Mr Lender says the income was checked through "Open Banking API" – I thank Mr Lender for this clarity, but this is the first time this has been mentioned, no final response was issued and this information isn't contained within the business file that was sent. But in any event, the complaint doesn't turn on what Mr A's income was at the time – but it does seem based on what Mr Lender said that it had an accurate idea of what Mr A's income was.

The crux of why I proposed to uphold this complaint is down to the credit search results Mr Lender obtained. I accept, based on the information provided in the business file, that there superficially didn't seem to be any cause for concern. As Mr Lender pointed out Mr A had no active payday loans at the time and there was no evidence of any defaults or insolvencies. Mr Lender in response to the provisional decision said;

"... we obtain just the core information from the CRA in relation to the customers credit file through our API to make sure there is nothing that would be cause for concern or any initial red flags"

Mr Lender may have focused on the core information, but it would be incorrect to say that's all it had at the time. I say this because in addition to the core data, Mr Lender also had the raw data of the credit searches available to it at the time the loan application was considered. Indeed, it confirmed;

“As requested, please find attached the raw data from the credit search that was carried out upon application.”

I appreciate that Mr Lender says it would've potentially carried out more detailed checks (which I take to mean further explored the raw data information that it already had) if Mr A had already taken a number of loans from it or if the “core” information gave it cause for concern. But the data Mr Lender received from the credit reference agency did show Mr A was having financial difficulties.

Equally the raw data available to it and I don't think that it was fair and reasonable for it to just ignore what the data showed and so should've been fully considered. As such it is entirely fair and proportionate in my view and in no way controversial to have reviewed the raw data to see what Mr Lender was told about Mr A's financial position at the time.

Having reviewed the raw data Mr Lender received, I'm satisfied that Mr Lender at the very least ought to have been on notice that Mr A was already having financial difficulties given he was over his credit limit and in arrears on a personal loan. As such, I don't think Mr Lender could've been confident that Mr A would be able to repay the loan in a sustainable manner.

I am therefore for the same reasons as outlined in the provisional decision, upholding Mr A's complaint and I've set out below what it needs to do in order to put things right for him.

Putting things right

In deciding what redress Mr Lender should fairly pay in this case I've thought about what might have happened had it not lent to Mr A, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr A may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr A in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr A would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Mr Lender's liability in this case for what I'm satisfied it has done wrong and should put right.

Mr Lender shouldn't have lent to Mr A.

Mr Lender has sold the outstanding debts. Mr Lender should buy it back if it is able to do so and then take the following steps. If Mr Lender isn't able to buy the debt back then Mr Lender should liaise with the new debt owner to achieve the results outlined below.

- A. Mr Lender should remove all interest, fees and charges from the balance of the loan, and treat any repayments made by Mr A as though they had been repayments of the principal. If this results in Mr A having made overpayments then Mr Lender should

refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

- B. However, if there is still an outstanding balance then Mr Lender should try to agree an affordable repayment plan with Mr A. Mr Lender is required to treat Mr A fairly and with forbearance and take account of the information it has now received about his circumstances and his mental health in deciding the next steps.
- C. Mr Lender should remove any adverse information recorded on Mr A's credit file in relation to this loan.

*HM Revenue & Customs requires Mr Lender to deduct tax from this interest. Mr Lender should give Mr A a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr A's complaint.

PDL Finance Limited, trading as Mr Lender should put things right for Mr A as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 June 2024.

Robert Walker
Ombudsman