

The complaint

Miss R, through her representative, complains that 1Plus1 Loans Limited (1Plus1) lent to her when she could not afford it and she says 1Plus1 only approved the loan because of the guarantor it required before lending.

What happened

Miss R applied for a loan of £1,250 in May 2022 which was due to be repaid over 30 months at £66.57 each month. I have rounded the repayment figure to £67 in the decision for ease of reading. The total to repay was £1,997.10. The term lasts until December 2024 and so Miss R is still within that loan term. Miss R had explained to 1Plus1 that the loan was for an *'unexpected expense'*.

1Plus1 required that there be a guarantor as well and the agreement I have seen is between Miss R and 1Plus1 as well as between a third party I will call Mr X and 1Plus1. It was a fixed sum unrestricted-use loan secured by way of a personal guarantee and indemnity and regulated under the Consumer Credit Act 1974. The funds were paid into Mr X's account with instructions that they be paid to Miss R. Mr X has not complained and is not a party to this complaint.

Miss R's representative complained to 1Plus1 in March 2023 and then referred it to the Financial Ombudsman Service in December 2023 as Miss R's representative said no final response letter (FRL) had been received. 1Plus1 was given eight weeks to respond and sent in a FRL dated 29 January 2024. It did not uphold her complaint.

It has told us that Miss R is up to date with her repayments towards the loan, the latest one being 12 June 2024.

One of our investigators looked at the details both parties had sent to us and thought that 1Plus1 ought not to have lent to Miss R.

Miss R's representative agreed with the outcome on Miss R's behalf. 1Plus1 did not agree. Its comments included:

- A 'gift' account in arrears our investigator had focused on was not one it saw on the credit report research it had carried out and was not apparent from the bank statements it viewed. So, it was inappropriate for these arrears to be included as one of the deciding factors in our investigator's assessment.
- Similarly with an April 2022 default on her phone account of which 1Plus1 was unaware
- Two obligations with two other lenders which had one month of payments left on each of them were not included in the 'income and expenditure' analysis by 1Plus1. It did not consider these to be a 'continuing financial obligations'
- 1Plus1 would not have been aware of any new loans Miss R may have taken out or extended after she had agreed to the 1Plus1 loan
- It had calculated Miss R's monthly disposable income at £219.36, before accounting for any loan repayments or buffers. After including its own loan

repayment, her disposable income was adjusted to £152.79. It added a £100 emergency buffer. It added:

'Although this buffer is not mandated by regulation, it was implemented to ensure she could manage any unforeseen expenses.'

So 1Plus1 justified its lending decision and our investigator sent a second view with no alteration to the outcome. Our investigator listed a series of details about Miss R's credit situation and the defaults but appeared to have been using the personal credit file Miss R's representative had supplied to it.

1Plus1 picked up on this and said:

'...assessments should be based solely on the information from our credit checks and not on third-party reports that were not part of the original assessment.'

It sent a list of the information it had gathered from its own research which I come back to later in the decision. But in summary 1Plus1 was aware that Miss R had the following:

- A credit card with a debt balance of £221 – no issues with repayments
- A current account with no reported repayment issues
- A loan in severe arrears ('6') with £462 still to repay and £15 a month scheduled repayments
- A loan with a balance of £51 and the repayment of £57 due to be paid
- A payday/short term loan with a balance of £118, the scheduled repayments for which were £75 a month – effectively one and half months of repayments still due
- A mail order account with a debt balance of £179 being repaid at about £8 a month
- A telephone supplier account showing no balance and no arrears.
- A telephone supplier with a £97 balance in default (2016) and no payments being made on it but with a debt collector
- A mail order agency in default (2019) with a balance of £329 and being paid for through a debt collection agency
- A telephone supplier with a debit of £621 which had defaulted in 2021 and had no link with a debt collector and no payments being made towards it.
- Two other loans – each had defaulted in 2021 - with a combined debt balance of £709 for which £20 and £18 was being paid on the two loans. But on the recorded call Miss R did not seem to be aware of these.

Its own records showed that Miss R's total debt balance was £2,787, and with two debts (£51 and £118) about to be paid off that figure would have been less at £2,618.

1Plus1 Loans considered that it had

'...gone to great lengths to build a detailed and accurate picture of [Miss R's] financial situation. The income and expenditure assessment, coupled with the review of her bank statements, clearly shows that the customer had sufficient disposable income to afford the loan sustainably. There was no evidence to suggest otherwise.'

1Plus1 asked that the complaint be reviewed by an ombudsman so the unresolved complaint was passed to me to decide.

I chose to issue a provisional decision on 21 June 2024 and that is duplicated in smaller type here to give all parties a complete decision document.

What I've provisionally 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 approach to complaints about high-cost credit on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding Miss R's complaint.

1Plus1 needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Miss R irresponsibly. I need to be satisfied that 1Plus1 carried out reasonable and proportionate checks before approving the loan application. And if it did not do that, what would have reasonable and proportionate checks shown if it had.

It goes further than 1Plus1 assessing the likelihood of it being repaid. 1Plus1 had to consider the impact of the loan repayments on Miss R. The fact that the loan was guaranteed by a third party and the potential for 1Plus1 to pursue the guarantor instead of Miss R, doesn't alter or lessen the obligation. Lenders are required to ensure a loan can be repaid sustainably by the borrower; that is, they should be able to repay the credit without undue difficulty, while being able to meet other commitments and without having to borrow further.

There is no set list of checks that 1Plus1 had to do, but what makes up a proportionate affordability check will be dependent upon several factors including – but not limited to – the circumstances of the consumer. For example, their financial history, any foreseeable changes in future circumstances, and any indications of vulnerability or financial difficulty.

The amount, type, length of borrowing and cost of credit they have applied for would also be considered. Considering this, I think the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way, the more thorough a reasonable and proportionate check ought to have been.

Miss R has told us that she had a car accident just before she applied for the loan and had to take time off work. Miss R has explained to us that a payment of over £2,300 paid to her in March 2022 was following a personal injury claim and linked with that car accident. I was sorry to read of this. That sum was paid into her savings account on 18 March 2022. And although Miss R has told us of changes to her working situation these post-dated the lending decision in May 2022 and so not relevant for my purposes which is resolution of the complaint.

Miss R says that if 1Plus1 had seen her bank statements at the time it would have seen she had hardly any money and had direct debits returned and had missed payments. I've evidence which shows me that 1Plus1 did view her bank account statements and discussed her finances with her on the telephone before lending. I'll address these points in the decision.

Miss R applied to 1Plus1 and told it she was working full time and her declared income was £1,035 a month. She did receive child benefit as well of £87 each month and had a partner. I consider £1,035 a month a modest wage.

1Plus1 has explained that it carried out a credit check as well as obtaining details of Miss R's outgoings each month. So, it was able to add in the figure it thought correct for the monthly credit commitments Miss R already had. These included credit cards and loans with outstanding balances on them.

1Plus1 has said in its FRL and to us that it had noted that there were several unsatisfied defaults on her credit report plus some late payments on more than one record. Miss R was making two sets of payments using debt collectors linked with two accounts in default. And there were at least two defaults from 2021 about which Miss R appeared not to know. The total number of defaults was 5 of which 4 had been relatively recent.

So, I think it's right that 1Plus1 did more checks before lending, and it asked Miss R to see

her bank transactions through a secure Open Banking platform. It confirmed that it did gain full access to the accounts to review Miss R's finances. 1Plus1 has explained in the FRL that it asked to review these because of what it had seen in her credit file report and considered this to have been additional checks. It looked at the period of 90 days leading up to the application date in May 2022. I consider this to have been reasonable and proportionate as 1Plus1 had some justifiable queries to be answered.

Miss R has sent me copy bank statements of her current account and of her savings. And close inspection of the transaction lists 1Plus1 has sent me from the Open Banking review, and Miss R's copies, demonstrates that the 'balance' in the 1Plus1 copies were the combined total balance across both accounts – current and savings. I consider that to have been comprehensive information 1Plus1 had before lending.

So, I disagree with Miss R or any suggestion that 1Plus1 did not carry out reasonable and proportionate checks or that it lent to her just because it had asked her for a guarantor to be involved.

When I reviewed all the sets of bank statements and transactions list from both parties, I could see there were many transactions back and forth between accounts often several times each day. It seems that Miss R moved her money around a lot. The figure is the equivalent of around £20,000 being moved in and out of her current and savings account in the months leading up to her applying to 1Plus1. Having reviewed it all I am satisfied that it was all the same money being moved around.

This makes Miss R's current account transactions difficult to follow and I think that some details were missed.

Before lending, 1Plus1's customer support team member called Miss R and spoke to her and to Mr X. We have been given a copy of the call recording with Miss R and I have listened to it.

During that call the 1Plus1 representative was able to view details from Miss R's bank account statements and from her credit file. 1Plus1 established that Miss R's partner, Mr X, paid for the mortgage on the home and all essential bills. Miss R paid for TV licence, water bill, groceries, travel, and mobile phone. The bank statements 1Plus1 viewed (as have I) confirm this arrangement as the transactions by Miss R demonstrate this. And they do not reveal anything untoward that 1Plus1 did not already know about from its own research into her credit history using the CRA. But they do reveal that Miss R paid for Council tax as well, at least once in March 2022.

1Plus1 has told us that it did not include the monthly repayments for two of the loans it knew Miss R had as they had one repayment left on each. A lender can consider future changes of that nature where, in my view, they are proximate to the application date. And in Miss R's case, I consider it fair and reasonable as these loans were due to be paid off very soon after she'd applied to it.

1Plus1 was aware that Miss R had two debt collection accounts she was paying into already and other defaults that it seemed Miss R was going to have to look into. And so that would have indicated additional debt collector's payments going forward. Despite this, 1Plus1's view, stated in its FRL, was that it did an income and expenditure analysis (I&E) and did not see any signs of financial difficulties. And its view was she had enough disposable income (including a £100 'buffer' or financial margin) for Miss R to be able to make 30 sets of repayments at just under £67 each.

I do consider that what 1Plus1 did was proportionate before lending. I do accept some of its submissions to us about our investigator's view that it is not appropriate for us to add in details of loans approved after Miss R had taken the 1Plus1 loan, and arrears about which it knew nothing. So, my opinion differs to that of our investigator on these points. I agree with 1Plus1 on this.

But 1Plus1 was also aware that Miss R had at least £621 worth of debts (possibly more) she had not made any payment arrangements for and another loan which was in serious arrears (£462 debt balance) and likely posed a problem going forward. And the smaller, earlier defaulted account which had a balance of £97 had a debt collector involved but was showing no payments which may have indicated that it was a failed arrangement. I consider these were missed details.

Miss R's record does indicate a regular mismanagement of money and failure to be able to repay credit accounts when they have been in place in the past.

In addition, Miss R's savings account funds reduced slowly as Miss R used them up and by 2 May 2022, the 1Plus1 transaction list shows me that Miss R had £527 in total across both her accounts. And by 19 May 2022 Miss R had £107.40 as a total in both of her accounts. This shows me that 1Plus1 was aware of her depletion of funds over the months and that by the time she was applying for this loan from 1Plus1, Miss R's 'back-up' funds had gone.

When I reviewed the bank transactions 1Plus1 had, it was clear to me that Miss R did pay the council tax for at least one month and paid her partner £20 a month towards bills. And I saw many direct debit failures across the 90 day period 1Plus1 would have seen this. For example – two direct debit failures occurred within days of each other in early March 2022. And although she was often able to cure these direct debit failures by transferring money across from her savings account to cover it when the direct debit was presented again, it indicates poor management and with no back-up funds this was not likely to have been possible.

These direct debit failures were followed by Miss R obtaining a £200 payday loan a few days later. And 1Plus1 asked her about this on the telephone call it had with her in May 2022. Which adds to the poor financial management picture.

Added to which, my review of the 1Plus1 bank transactions showed a larger amount than £473 spent on food each month which is the figure it used. And it seems money from her father (which she mentioned in the recorded call) appeared each month for about £200 or £100. So it was more regular and another indication that she was not managing without parental help.

Sometimes, complaints can turn on details and 1Plus1 knew quite a lot about Miss R including her car accident circumstances, the reason for the loan, her financial issues. What it had gleaned from the recorded call was described to us as follows:

'...disclosed financial difficulties arising from misuse of credit by an ex-partner. She confirmed managing repayments for two defaults through [two debt collectors], which was supported by her bank statements. She was uncertain about other defaults and a mobile phone account due to unresolved issues with her mail going to a former address.'

And these points are not minor within the context of this set of circumstances for Miss R as she was a modest wage earner. I consider that these points listed here all lead me to decide that this was a not the right decision to lend to her again:

- the combination of her savings which had been supplementing her income for some of the 90 days Open Banking period being depleted leaving her with no back-up at all,
- her additional payments for bills and sometimes what appeared to be council tax,
- use of payday loans
- her credit file about which 1Plus1 was aware which had at least three accounts heading for difficulties – a loan account in severe arrears and two defaulted telecoms accounts about which either Miss R knew nothing or had no arrangements to pay showing
- the multiple failed direct debits across those 90 days, the latest being late April 2022 and May 2022 when her savings had fallen to a low level,

- historic lack of financial management leading to five defaults, of which three had been in 2021, so within 12 months of her applying for this loan,
- the 30 months loan term which was not a short term and for which the £67 had to be paid consistently,

And I say this having balanced with the above that Miss R would have had the benefit of the £1,250 loan funds. But Miss R had explained this was for an '*unexpected expense*' and not for paying down her debts. On the recorded call Miss R made it clear that these 1Plus1 loan funds were not going to be used to pay down a credit card or some other debt. And yet 1Plus1 knew she had debt about which Miss R had not seemed to be aware or had made no arrangements for.

And I consider the statement by Miss R she was not intending to use the loan funds for debt plausible in Miss R's circumstances because of the car accident she had experienced earlier. It's highly likely she had costs from that ongoing.

I appreciate that 1Plus1 had taken time to gather the detail before making a lending decision in May 2022, but in these circumstances surrounding Miss R I plan to uphold the complaint. But I stress that this was a finely balanced decision and because Miss R's income was a modest one, then the smaller sums involved could, and I think did, make a difference.

Miss R's representative emailed to say it agreed and had not further points to add.

1Plus1 disagreed with my provisional decision and made many points explaining why. I do not set them all out here in full but I summarise each point. 1Plus1's points were:

- it was not a high cost loan
- it referenced Miss R's savings account and the personal injury payment paid into it in March 2022
- it disputed one payment to a council
- it described Miss R's three defaulted accounts from 2021 as '*minor debts*' rather than '*substantial debts indicative of financial distress*'
- Miss R demonstrated responsible financial management
- Defaults in Miss R's credit history ought not to mean it shouldn't lend to her
- It was aware of the defaults stemming from an ex-partner's misuse of credit and that Miss R was uncertain about these and had no arrangements in place for them
- Her failed direct debits were easily rectified with savings monies
- It did an I&E and she had sufficient to pay down its loan
- Its 30 month loan term was designed to provide smaller, more manageable repayments
- Miss R's debt to income ratio was 20%
- It applied an emergency buffer to the I&E
- It agreed that it knew when lending that the loan funds were for an '*unexpected expense*' and not to pay down existing debt
- It made a fair lending decision.

The response date has passed and so I reviewed the complaint again accounting for all the submissions.

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.

All my findings in my provisional decision are repeated here and form part of this final decision. The outcome is unchanged. I uphold the complaint. All the points I made in that earlier provisional decision are not, in isolation, the reason I upheld the complaint. It is the

cumulative total of all that I observed was known to 1Plus1 at the time it lent to Miss R.

The irresponsible lending provisions set by the FCA are unchanged whether it was a high cost loan or otherwise. So, I do not consider that point by 1Plus1 relevant.

The open banking transaction lists I know 1Plus1 obtained incorporated Miss R's current and savings account. And as I said in my provisional decision the fact that the March 2022 personal injury funds were depleted to hardly anything by the time she applied for the 1Plus1 loan was known to it. And the significance being that going forward, the failed direct debits and additional debt repayments (for the items it knew about) which had occurred in the past were not going to be able to be 'cured' by a transfer from her savings account.

One £60 payment to a council and 1Plus1's assumptions on that do not persuade me to alter my outcome.

I disagree that there's a distinction between '*minor*' and '*substantial*' debts within the financial life of a low income earner such as Miss R. The significance is that 1Plus1 knew about them all including the recent defaulted accounts (and another in serious arrears) about which she'd made no arrangements to cover off going forward. And with little or no savings was unlikely to be able to do that.

The checks 1Plus1 were required to carry out go further than a 'pounds and pence' calculation in assessing the likelihood of the loan being repaid. 1Plus1 had to consider the impact of the loan repayments on Miss R. The fact that the loan was guaranteed by a third party and the potential for 1Plus1 to pursue the guarantor instead of Miss R, doesn't alter or lessen the obligation. Lenders are required to ensure a loan can be repaid sustainably by the borrower; that is, they should be able to repay the credit without undue difficulty, while being able to meet other commitments and without having to borrow further.

Miss R's record does indicate a regular mismanagement of money and failure to be able to repay credit accounts when they have been in place in the past.

I am not persuaded to alter my view having reconsidered the complaint. I uphold it.

Putting things right

My understanding is that Miss R was up to date with the repayments to May 2024 and that she was due to repay the June 2024 payment as well. So, it seems Miss R is not in arrears. Since the provisional decision I have not been told anything to contradict this. Therefore 1Plus1 can put things right in this way:

- Remove all interest, fees and charges applied to Miss R's loan from the outset. The payments she's made should be deducted from the new starting balance – the £1,250 originally lent. If Miss R has already paid 1Plus1 more than £1,250 then it should treat any extra as overpayments. And any overpayments should be refunded to Miss R; and
- Add interest at 8% per year simple interest on any overpayments, if any, from the date they were made by Miss R to the date of settlement*;
- if no outstanding balance remains after all adjustments have been made, all adverse information (if any) 1Plus1 has recorded about this loan with the CRAs should be removed from Miss R's credit file.

- If an outstanding balance remains, as Miss R has said she cannot afford the current £67 monthly repayments, then 1Plus1 needs to come to a suitable payment arrangement with her. And in these circumstances, Miss R needs to be aware that the credit file will remain unamended and that 1Plus1 has an obligation to report accurately and fairly to the CRAs going forward.

I've considered whether the relationship between Miss R and 1Plus1 might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed should be carried out for Miss R results in fair compensation for her in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

*HM Revenue & Customs usually requires 1Plus1 to deduct tax from this interest. It should give Miss R a certificate showing how much tax it has deducted if she asks for one.

My final decision

My final decision is that for the reasons given in my provisional decision and in this final decision I uphold the complaint and I direct that 1Plus1 Loans Limited should do as I have set out in the 'putting things right' section of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 5 August 2024.

Rachael Williams
Ombudsman