DRN-5090714

The complaint

Mr M complains PDL Finance Limited trading as Mr Lender ("Mr Lender") gave him loans without carrying out sufficient affordability checks.

What happened

A summary of Mr M's borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number monthly instalments	largest repayment per loan
1	£300.00	14/11/2023	22/12/2023	6	£141.20
2	£500.00	06/02/2024	outstanding	6	£195.33

All of the loans were structured so that payments decreased each month.

Following Mr M's complaint, Mr Lender wrote to him to explain that it wasn't going to uphold the complaint as it had conducted proportionate checks. Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman.

An investigator then considered the complaint, and he didn't uphold the complaint about either loan. He concluded proportionate checks were conducted which suggested the loans were affordable for Mr M.

Mr M didn't agree saying Mr Lender's website says a check is carried out for each loan and it can't show that it did that for loan 1. Mr M says his credit report changed between the first and second loan. And finally, he had taken other payday loans from other lenders at around the time of the Mr Lender loans and these other lenders have upheld his complaints.

Mr M's comments didn't change the investigator's mind about the complaint and as no agreement has been reached, the case has been passed to me for a decision.

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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website. And I've used that to help me decide this complaint.

Mr Lender had to assess the lending to check if Mr M 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 M'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 M. These factors include:

- Mr M 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 M 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 M 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 M. The investigator didn't think this applied to Mr M's complaint and I agree, considering the number and value of the loans.

Mr Lender was required to establish whether Mr M 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 M 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 M's complaint.

Mr M has provided copy final response letters from a number of other payday loan providers which have upheld his complaints – this does provide some useful context to show that around the time Mr M was taking loans 1 and 2 he was borrowing from other lenders.

However, and as the investigator pointed out, two of the final response letters deal with loans taken *after* Mr M's final loan with Mr Lender. Another one had a loan taken on the same day as the second Mr Lender loan. Finally, a final response was provided covering loans that were taken the day before the first loan and shortly before loan 2. These letters do show that around the time of Mr M borrowing from Mr Lender he was taking loans from other companies.

While I've considered the content of the final response letters, my role is to consider the complaint independently, taking account of industry guidance, rules and regulations and any relevant law. That does mean, there are occasions where what appears to complaints made about the same issue at around the same time can lead to different outcomes. There isn't anything unusual about that. But what I have to consider is whether Mr Lender conducted proportionate checks based on the information Mr M gave it and what it saw after carrying out any other checks that it may done.

This does mean that just because other lenders have upheld complaints for Mr G that doesn't mean this complaint will automatically be upheld.

Mr M declared his monthly income was £3,500 for loan 1 and £3,614 for loan 2. The income is marginally larger for loan 2, but as the loans were taken out a few months apart that wouldn't – on its own, have triggered further checks. For the first loans I think it was entirely proportionate of Mr Lender to have relied on what Mr M told it. But, for loan 2, Mr Lender says the income was electronically verified with a tool provided by a credit reference agency.

And I've not seen anything to suggest that had Mr Lender carried out the same sort of income check for loan 1 that it would've led it to make any adjustments to the declared income figure.

Mr M declared monthly outgoings of £2,248 for loan 1 and £2,547 for loan 2 – this was across a number of different categories including rent/mortgage, utilities, food, transport and other credit commitments to name a few.

Based solely on the income and expenditure information Mr Lender gathered, Mr M had enough disposable income to afford the largest repayment for each loan. The difference in expenditure isn't so great that I would've considered that Mr Lender needed to do further checks to verify what Mr M had provided.

Before each loan was approved, Mr Lender carried out credit searches 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.

Further, Mr Lender has said the information provided to the Financial Ombudsman is the only information it collected as part of the credit search. For example, for both loans it made enquiries about whether there were any insolvencies and / or whether there was any outstanding "*AAI*" – an AAI is an advance against income or another name for a payday loan.

As I've said above, as there was no requirement to do a credit search let alone one to a specific standard, I can't uphold the complaint purely because Mr Lender's credit search results only looked at a few different metrics, rather than, for example, receiving a full copy of a credit report that Mr M may be able to obtain.

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 M wasn't insolvent either through an Individual Voluntary Arrangement, bankruptcy or a County Court Judgement within the three years preceding each loan.

In addition, it was also told that Mr M didn't have any other outstanding "*AAI*" loans and so there was no indication that Mr M was reliant on this sort of credit. And as I said above, while I know Mr M did have other payday loans both before and after these loans these don't appear to have filtered through to the results given to Mr Lender.

It doesn't seem that Mr Lender was aware of the other payday loans that Mr M may have had outstanding at the time, and as such, wasn't in a position to make adjustments to its affordability assessment.

I don't think the information Mr M declared (or what Mr Lender received from the credit reference agency) would've prompted Mr Lender to have checked the information it was given by Mr M. This means I don't think it would've needed to have carried out any further checks.

And for loan 2, Mr Lender could see that loan 1 had been repaid without any apparent difficulties which would've further reassured it that Mr M could afford his second loan. I don't consider that to be an unreasonable position to have taken.

Overall, it was reasonable for Mr Lender to have relied on the information Mr M provided about his income and expenditure as well as the credit check results which showed sufficient disposable income to afford the repayments. There also wasn't anything else to suggest that

Mr M was currently having financial difficulties or that the loan repayments would be unsustainable for him. It therefore follows that I can't uphold Mr M's complaint about these loans.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Mr Lender lent irresponsibly to Mr M or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

An outstanding balance remains due for loan 2, and I would remind Mr Lender of its regulatory obligation to treat Mr L fairly and with forbearance.

My final decision

For the reasons given above, I am not upholding Mr M's complaint.

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

Robert Walker
Ombudsman