

complaint

Mr H complains that PDL Finance Limited trading as Mr Lender ("Mr Lender") gave him unaffordable loans. He wants a refund of all the interest he has paid.

background

In my provisional decision I set out why I intended to uphold Mr H's complaint. Mr H agreed with my provisional view, but Mr Lender didn't. It said it carried out eight of the ten checks listed as possibilities by the Financial Conduct Authority's ("FCA") guidance and thought the checks it carried out were proportionate. Mr Lender said it could only carry out the checks recommended by the FCA.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In my provisional decision I said:

When lending money to a consumer, lenders are required to ensure the consumer can repay the borrowing in a sustainable manner without it adversely impacting on their financial situation. A lender should obtain sufficient information to make an informed decision about the lending. Exactly what the lender should consider is for each lender to decide and the guidance and rules lists a number of things each lender may wish to consider. Any checks should be proportionate, based on the size of the borrowing.

Mr H's first loan, which was a payday loan and due to be repaid with interest within a month, was for £750. This is a significant sum, and including interest is about 46% of Mr H's net monthly pay. The repayment due was considerably more than his disposable income for one month.

Mr Lender says it carried out proportionate checks, but isn't able to show this service the all results as later checks are recorded over the old ones. I think it's more likely than not given its detailed response and the credit record information Mr Lender provided that it did carry out some checks, but I don't think that they were proportionate given this was a payday loan and such a large amount, or that Mr Lender can't show what it recorded at the time as Mr H's income. It only has a record of Mr H's disposable income.

When I looked to see if Mr H could've afforded this loan, it was clear from his bank statements that he couldn't. If Mr Lender had carried out more checks, it may've realised this, particularly given the large amounts Mr H spent gambling (though these amounts weren't enough to repay the loan). I agree with the adjudicator that Mr H couldn't afford to repay this loan and it's fair and reasonable for the interest and fees paid by Mr H to be refunded, together with 8% simple interest a year from the date of payment until the date of refund. It's also fair and reasonable for the loan to be removed from his credit records.

But I also disagree with the adjudicator that the second and third loans are different. They were instalment loans, which is a high cost short term credit usually paid off over a longer period. For the second loan, Mr Lender can't show me the results of all the checks it said it carried out, though I note it wouldn't lend as much as Mr H wanted. For the third loan, it has shown the final results of its checks.

But if Mr Lender had carried out further checks, it would've realised Mr H's disposable income was lower than it had recorded. More importantly, the loans were irresponsible given Mr H's gambling. He was spending considerable sums most months gambling. Mr Lender did ask each time a loan was applied for by Mr H for him to confirm that he wasn't gambling, and he didn't tell Mr Lender that he in fact was. But Mr Lender can't show me that it did carry out sufficient checks for the first two loans.

For the third loan, I can see the results of the last credit check on Mr H, which shows a significant increase in loans, including payday loans. I think Mr Lender didn't carry out proportionate checks for this loan either; if it had looked at Mr H's bank statements, it would've quickly realised Mr H was gambling and that Mr H couldn't afford to repay. I don't think Mr H's failure to tell Mr Lender about the gambling means he shouldn't receive compensation as Mr Lender didn't carry out proportionate checks.

I disagree with Mr Lender that it can only carry out checks which have been suggested by the FCA. The FCA is simply making suggestions, not giving instructions. The obligation is on Mr Lender to carry out proportionate checks, which may include taking steps such as looking at a consumer's bank statements. In my provisional view, I set out my thoughts about whether the checks carried out were proportionate and the loans affordable, and Mr Lender's response hasn't changed my view.

my final decision

My final decision is that I uphold the complaint and PDL Finance Limited trading as Mr Lender should take the following actions:

- refund all interest and fees paid by Mr H for all three loans;
- pay 8% simple interest from the date of payment until date of refund on the above amount;
- remove all the loans from Mr H's credit records;
- If PDL Finance Limited trading as Mr Lender considers it should deduct income tax from the interest element of my award it may do so but should give Mr H the necessary certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 October 2016.

Claire Sharp
ombudsman