DRN-2360931

The complaint

Mr M complains that TM Advances Limited ("TMA") lent to him in an irresponsible manner. He also complains that the lender failed to treat him fairly when he faced difficulties repaying his borrowing.

What happened

Mr M was given a single loan by TMA. He borrowed £1,500 in April 2016 that he agreed to repay in 24 monthly instalments. Shortly afterwards Mr M faced problems repaying the loan and agreed a reduced repayment plan with the lender. More recently, following an offer from TMA to reduce the outstanding balance, Mr M has repaid his borrowing with the assistance of a loan from a relative.

Mr M's complaint has been assessed by one of our adjudicators. She didn't think the checks TMA did before agreeing the loan had been sufficient. And she thought that better checks would have led to TMA declining Mr M's application for the loan. So she asked TMA to pay Mr M some compensation. But our adjudicator didn't think TMA had treated Mr M unfairly in the way it had sought repayment of his borrowing.

TMA didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr M accepts my decision it is legally binding on both parties.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr M's complaint.

The rules and regulations at the time TMA gave this loan to Mr M required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so TMA had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr M. In practice this meant that TMA had to ensure that making the repayments wouldn't cause Mr M undue difficulty or adverse consequences. In other words, it wasn't enough for TMA to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr M.

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.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);

- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);

- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether TMA did what it needed to before agreeing to lend to Mr M.

TMA gathered some information from Mr M before it agreed the loan. It asked him for details of his income, and his normal expenditure. And it validated what he had said about his income using a third-party system.

Mr M was entering into a significant commitment with TMA. He would need to make monthly repayments for a period of two years. So I would expect that TMA would want to gather, and independently check, some detailed information about Mr M's financial circumstances before it agreed to lend to him. I don't therefore think that the checks it did were enough. I think it would have been proportionate for TMA to independently check the true state of Mr M's finances before agreeing the loan.

But although I don't think the checks TMA did before agreeing the loan were sufficient, that in itself doesn't mean that Mr M's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown TMA that Mr M couldn't sustainably afford the repayments. So I've looked at Mr M's bank statements, and what he's told us about his financial situation, to see what better checks would have shown TMA.

At this stage I want to be clear that I am not suggesting that this is the exact check that TMA should have carried out. I do think TMA needed evidence to corroborate what Mr M said was happening with his finances. And looking at his bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Mr M's bank statements I can get a good idea of what better checks might have shown.

Mr M's bank statements show clear evidence that he was facing problems managing his expenditure. In the month before the loan was agreed I can see that Mr M spent a significant amount on what appear to be online gambling transactions. He regularly supported his expenditure by taking short term loans. Although I understand that Mr M told TMA that he intended to use its loan to consolidate his other borrowing I haven't seen anything that suggests Mr M's gambling spending was a one-off or likely to reduce in the future.

I’ve looked closely at the communications between Mr M and TMA when he was finding it difficult to repay his loan. The regulator at the time expected lenders to ensure that borrowers in financial difficulties were treated fairly, with forbearance and with due consideration. It provided firms with a number of examples of this sort of behaviour including the consideration of reducing or waiving future interest charges, allowing the payment of arrears to be deferred, or accepting token payments for a reasonable period of time.

But it is my understanding that the regulator’s guidance isn’t intended to leave debts outstanding for an indefinite period of time. Instead the requirement for lenders to show forbearance and due consideration to consumers who are facing financial difficulties is to allow a reasonable period of breathing space for consumers, facing an unexpected fall in their disposable income, to review their options. So I don’t think it was unreasonable for TMA to expect Mr M to repay what he owed. I think that by allowing Mr M to reduce his monthly repayments for a period of time, and by waiving some of the interest that had been added to the loan, TMA treated him fairly.

In summary, I don’t think the checks TMA did before agreeing this loan were sufficient. And I think better checks would have identified Mr M’s gambling expenditure. That would have led a responsible lender to conclude that he wouldn’t be able to afford his repayments in a sustainable manner and so decline his loan application. So I don’t think TMA should have given this loan to Mr M and needs to put things right.

Putting things right

I don’t think TMA should have lent to Mr M in April 2016. So for that loan TMA should;

- refund all the interest and charges Mr M paid on the loan.

- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†

- remove any adverse information recorded on Mr M’s credit file in relation to the loan.

† HM Revenue & Customs requires TMA to take off tax from this interest. TMA must give Mr M a certificate showing how much tax it’s taken off if he asks for one.

My final decision

My final decision is that I uphold Mr M’s complaint and direct TM Advances Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 30 March 2021.

Paul Reilly
Ombudsman