DRN-2779194

Financial Ombudsman Service

**The complaint**

Mrs H complains about three personal loans provided to her by TM Advances Limited, trading as TM Advances, ("TMA"), which she says were irresponsibly lent.

**What happened**

TMA agreed three loans for Mrs H. All the loans have been repaid. Some of the information TMA provided about the loans is shown in the table below.

| Loan number | Start date | End date | Loan amount | Monthly repayments | Term (months) |
|---|---|---|---|---|---|
| 1. | 5/8/2015 | 1/8/2017 | £1,500 | £156.13 | 24 |
| 2. | 6/10/2017 | 18/10/2017 | £2,000 | £215 | 24 |
| 3. | 16/3/2018 | 22/3/2020 | £3,000 | £297.50 | 24 |

Mrs H says that TMA had approved three loans for her at a time when she was going through a number of health issues, she had other payday loans and large loans from other lenders, and she was on a debt management plan ("DMP"). She said that TMA knew she had defaults plus high cost short term loans and issued her with an even higher interest loan to settle these. She also had a huge £5,000 overdraft. She said that she was coming out of a DMP at the time, but TMA didn't ask her about that. Mrs H felt that TMA should have asked more questions to understand the overall picture rather than concentrating on what she was earning at the time. Mrs H also said that the interest rate on the loans was unreasonably high and she didn't believe that TMA was treating her fairly in offering her the loans. She is seeking a refund of interest on Loans 1 to 3.

In its final response letter TMA provided information about Mrs H's declared income and expenses, her credit commitments, the purpose of the loans and some information about Mrs H's circumstances. It said that Loans 1 and 2 had been repaid without any missed payments. TMA said that it could be seen from all three of its affordability assessments that Mrs H could afford the repayments easily. She did not have any adverse credit to suggest financial difficulty. It went through her affordability in detail and this included conducting credit searches and verifying the income paid into her account with her bank turnover data along with obtaining land registry searches for the properties she owned.

*Our adjudicator's view*

Our adjudicator assessed the complaint and recommended that Mrs H's complaint about Loan 3 should be upheld. She hadn't seen enough to say it was unfair for TMA to provide Loan 1 to Mrs H. She hadn't considered Loan 2 in her assessment as she said that Mrs H hadn't paid interest or charges on it. The adjudicator didn't think the checks TMA carried out before Loan 3 were proportionate. She thought proportionate checks should've included obtaining a thorough knowledge of Mrs H's financial circumstances including verifying this information. With this in mind, the adjudicator said that by the time of Loan 3, Mrs H's circumstances didn't seem to be improving and TMA shouldn't have lent Loan 3 to her.

TMA disagreed and responded to ask about the information Mrs H had provided to this Service and how that would be different from the information it had seen on its credit checks. TMA also said that Loan 3 was to be used to pay off one small loan with a balance of £259, and not a monthly payment of £259 (which the adjudicator had referred to in her view). The remaining money was for car repairs. TMA noted that the loan application for Loan 3 said that Mrs H had done work on one of her houses and this could have been a reason why her credit commitments had increased. TMA also said that Mrs H wasn't using short term loans and she had a monthly disposable income figure of over £1,000 to cover its monthly loan repayment of £297, after it had taken off living costs, allowances for vehicles and childcare costs. TMA also said that Mrs H had a partner who was contributing to the household.

The adjudicator responded to say that Mrs H had provided her bank statements to this Service. She had also considered Mrs H's borrowing history and her credit reports. She noted the loan balance of £259 but said that this didn't affect her view. She noted that following Loan 1 Mrs H was in a cycle of debt, using loans to repay existing commitments, and TMA allowing further borrowing was only worsening the consumer's position.

TMA responded by asking for an ombudsman to review the file.

As this complaint hadn't been resolved informally, it came to me, as an ombudsman, to review and resolve.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mrs H and to TMA on 25 March 2021. I summarise my findings:

I firstly said that I was sorry to hear about Mrs H's health difficulties.

I noted that when TMA lent to Mrs H the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). Its rules and guidance obliged TMA to lend responsibly. As set out in CONC, this meant that TMA needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an "affordability assessment" or "affordability check". Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

The checks had to be "borrower" focussed – so TMA had to think about whether Mrs H could sustainably repay her loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn't cause Mrs H 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 loan repayments on Mrs H.

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the lower a person's 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 higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the longer the term of the loan (reflecting the fact that the total cost of the credit was likely to be greater and the borrower was required to make payments for an extended period);
- the greater the number and frequency of loans, and the longer the period of time during which a person had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

Bearing all of this in mind, in coming to a decision on Mrs H's case, I'd considered the following questions:

- Did TMA complete reasonable and proportionate checks when assessing Mrs H's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did TMA make a fair lending decision?

*Did TMA complete reasonable and proportionate checks when assessing Mrs H's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way?*

As set out above, TMA gathered some information from Mrs H about her income and expenses before it agreed the loans. It also carried out a credit check.

*Loan 1*

Although Mrs H's loan application form showed she applied for a loan of £750, she'd received a loan of £1,500. I'd noted that the interest rate on Loan 1 was 74.9%, (185.3% APR). The loan was to be repaid over 24 months with monthly repayments of £156.13. If Mrs H had made each payment when it was due, she'd pay £3,747.12 in total. Mrs H told TMA that she wanted the loan to consolidate two short term loans.

TMA gathered information about Mrs H's income and expenses including information about her partner's income and his contribution to joint expenses. TMA asked Mrs H about her mortgage payments, living costs, child costs, and car costs. It also checked her credit commitments through its credit checks.

In its final response letter, TMA said that Mrs H had a disposable income of £1,066. I was concerned that TMA seemed to have accepted at face value that Mrs H would have a disposable income of £1,066 a month (after settling some short term loans) yet needed to borrow £1,500 at an APR of 185.3%, for the purpose of repaying some short term loans.

I was also concerned that TMA appeared to have relied on Mrs H's statement of her expenses without verifying them. CONC 5.3.1(4) said:
*If a firm takes income or expenditure into account in its creditworthiness assessment required under CONC 5.2.2R (1):*

*1. (a)*

*The firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it would differ from actual current income or expenditure over the anticipated repayment period of the agreement;*

*2. (b)*

*it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer;*

So, I thought in Mrs H's circumstances, it would have been proportionate to have verified her expenses. I'd noted that TMA said that it had verified Mrs H's income with bank turnover data.

I'd reviewed TMA's credit checks. TMA was likely aware from these that Mrs H had two defaulted accounts from 2011 and 2012. I didn't think it was unreasonable for TMA to be more interested in Mrs H's more recent credit history for the purposes of assessing whether Loan 1 was affordable.

TMA's credit checks also showed that Mrs H had 10 active accounts with a total credit balance of £8,775 outstanding (excluding her mortgages). The checks showed that Mrs H had three credit cards with a total balance of around £2,500, and that she was very near the credit limit on one card. They also showed that Mrs H had three current accounts and she was very near the overdraft limit of £5,000 on one of the accounts. The checks also showed that Mrs H had received two loans totalling about £750 around two months earlier which were still outstanding and three other short term loans had been settled in the six months prior to the loan application. TMA was also aware from its checks that Mrs H had a debt management plan ("DMP") that was due to finish shortly. She was paying £364 to the DMP.

Overall, I thought the results of its credit checks were likely to have caused TMA concerns as Mrs H's finances appeared to be under pressure as shown especially by her recent need for credit and her current account and one credit card being very near their respective credit limits. I didn't think TMA treated Mrs H fairly when it agreed to lend to her based on the information it would have seen on its credit checks because this showed it was likely that agreeing more credit for her would simply add to her debt levels, notwithstanding that Mrs H had said that Loan 1 was being used to repay two outstanding short term loans.

I'd also thought TMA might have been concerned as to why someone with a relatively large amount of available income (according to her declared income and expenses) would need to borrow expensive credit. It calculated that Mrs H had a disposable income of £1,066. So, I thought it ought to have been concerned that she wanted to borrow high cost credit of £1,500 from it to repay credit of around £750.

So, in these circumstances and in line with CONC 5.3.1 (4), I didn't think it was reasonable for TMA to have relied on the information provided by Mrs H without verifying it. I thought TMA should reasonably have taken steps to gain a more thorough understanding of Mrs H's financial position in order to satisfy itself that she could sustainably repay the loan. TMA didn't say that it had taken steps to do this, other than to verify Mrs H's income using bank turnover data. So overall, I didn't think the checks TMA had carried out on this occasion were reasonable and proportionate.

But that in itself didn't mean that Mrs H's complaint should succeed. I also needed to be persuaded that what I considered to be proportionate checks would have shown TMA that Mrs H couldn't sustainably afford the loan.

*Loan 2*

Mrs H applied for Loan 2 around two months after repaying Loan 1. Although her loan application form showed she'd applied for a loan of £1,500, she'd received a loan of £2,000. The loan was to be repaid by 24 monthly payments of £215. I'd noted that the interest rate on Loan 2 was 79%, (198.6% APR). If Mrs H had made each payment when it was due, she'd pay £5,160 in total. The purpose of the loan was shown as a holiday and car repairs.

TMA's application form showed Mrs H's income of £4,391 after tax and that she received a contribution from her partner of £1,620. It showed total expenses of £3,420 plus credit repayments of around £1,130. TMA's final response letter showed a disposable income of £1,103.

I was again concerned that TMA seemed to have accepted at face value that Mrs H would have a disposable income of £1,103 and yet she'd originally applied to borrow high cost credit of £1,500 which then increased to £2,000 at an APR of 198.6%, for the purpose of a holiday and car repairs.

I'd reviewed TMA's credit checks. They showed that Mrs H had 11 active accounts with a total credit balance of £14,889 outstanding (excluding her mortgages). So, her credit had increased by around 70% since taking out Loan 1. The checks showed that Mrs H had five credit cards, and that she was very near the credit limit on two of the cards. Although the checks didn't show that she had taken out recent short term loans, she did have two high cost loans outstanding. One of these had a balance of around £6,500. Overall, I thought the results of its credit checks should have caused TMA some concerns as Mrs H's finances appeared to be under pressure as shown especially by her relatively high cost credit balance and two credit cards being very near their respective credit limits.

Again, I didn't think TMA's checks went far enough given Mrs H's circumstances and the provisions of CONC 5.3.1(4) referred to above. So, I didn't think it was reasonable for TMA to rely on the information provided by Mrs H without verifying it. She was applying for a second high cost loan from it relatively soon after repaying her first one and she already had two other high cost credit loans despite having a relatively high disposable income. I thought TMA should again have taken steps to gain a more thorough understanding of Mrs H's financial position in order to satisfy itself that she could sustainably repay the loan. So overall, I didn't think the checks TMA carried out on this occasion were fair.

Mrs H repaid Loan 2 after 12 days as she said she'd obtained a cheaper loan elsewhere. She had to pay charges of £51.96 to repay the loan. But five months later she was seeking more credit again and applied for Loan 3.

*Loan 3*

Loan 3 was for £3.000 and was her highest loan from TMA. I noted that the interest rate on Loan 3 was 69%, (166.9% APR). The loan was to be repaid over 24 months with monthly repayments of £297.50. If Mrs H made each payment when it was due, she'd pay £7,140 in total.

Mrs H told TMA that she wanted the loan to repay a short term loan of £259 and for car repairs.

TMA again gathered information about Mrs H's income and expenses including information about her partner's income and his contribution to joint expenses. TMA asked Mrs H about her mortgage payments, living costs, child costs, and car costs. But it didn't appear to have verified the expenses in line with CONC 5.3.1(4). It had also checked her credit commitments through its credit checks.

In its final response letter, TMA said that Mrs H had a disposable income of £1,039. I was again concerned that TMA seemed to have accepted at face value that Mrs H would have a disposable income of £1,039 a month yet needed to borrow £3,000 at a high interest rate for the purpose of repaying a short term loan which was likely repayable at a much lower interest rate than Loan 3, and for carrying out car repairs.

I'd reviewed TMA's credit checks.

TMA's credit checks showed that Mrs H had 12 active accounts with a total credit balance of £22,726 outstanding (excluding her mortgages). So, her borrowing had increased by around 52% since taking out Loan 2, around five months earlier. The checks showed that Mrs H had four credit cards with a total balance of around £6,000 and that she had received three loans totalling over £15,000 in the five months prior to the application for Loan 3. Mrs H told TMA that one of these loans of around £3,000 had been repaid. But I could see that a loan taken out in the month prior to the application for Loan 3 had a balance of over £7,500. It had been partly used to repay a previous loan.

I'd thought TMA ought to have been concerned about Mrs H's ability to repay Loan 3 out of her usual means, without borrowing, as she wasn't managing to do so with her existing debt. It's clear that her finances were already pressured, and she'd also taken on substantially more debt within the previous five months. I didn't think it was likely Mrs H would be able to meet further debt sustainably if she was just servicing her existing debt.

I didn't think TMA treated Mrs H fairly when it agreed to lend to her based on the information it would have seen on its credit checks because this showed it was likely that agreeing more credit for her would simply add to her debt levels, notwithstanding that Mrs H had said that Loan 3 was being used to repay an outstanding loan.

At the least and in line with CONC 5.3.1.(4), I thought it would have been reasonable and proportionate for TMA to have verified Mrs H's spending to gain a more thorough understanding of Mrs H's financial position in order to satisfy itself that she could sustainably repay Loan 3. TMA didn't say it took steps to do this. So overall, I didn't think that the checks that TMA carried out before agreeing to the loan were reasonable and proportionate.

*What would reasonable and proportionate checks have shown? And did TMA make a fair lending decision?*

*Loan 1*

Mrs H had provided some bank statements and a credit report from around the time she'd applied for Loan 1. I didn't suggest that these were the checks that TMA should have done. But I thought looking at these gave me the best picture of what the lender should have seen. Had it sought some verification of Mrs H's finances, I thought TMA would've been in a better position to understand her financial situation before it decided to lend to her.

I'd reviewed Mrs H's bank statements for the three months before she'd applied for Loan 1 (May to July 2015). It was clear from the May and June 2015 statements that Mrs H was gambling heavily. Her spending on gambling was higher than her income in these two months. The gambling had reduced in July 2015 but was still a significant percentage of her income and frequent enough that I thought it was more likely than not that the gambling would have continued in the same pattern. It pointed to a pattern of spending that posed a risk to Mrs H being able to repay the loan sustainably.

So, if TMA had carried out the independent view of Mrs H's circumstances that I thought was needed for this loan, I thought TMA ought reasonably to have realised that it was unlikely that Mrs H would have been able to sustainably repay Loan 1. So, it should reasonably have concluded that it wasn't appropriate to lend to her and so I considered it was irresponsible to have done so. So, I thought TMA treated Mrs H unfairly when it agreed to lend Loan 1 to her.

*Loan 2*

I'd reviewed Mrs H's bank statements and credit report from around the time of Loan 2. I could see that Mrs H's income was around the region of the income amount she'd declared to TMA. I could also see that her expenditure on living costs was a little more than she'd declared although her financial commitments were similar to those TMA had found in its credit checks. It also appeared that Mrs H had stopped gambling by the time of Loan 2. Overall, I didn't think further probing would have led TMA to decline to lend Loan 2 to Mrs H. And taking everything into account, I couldn't say that TMA was irresponsible to have agreed this loan for Mrs H.

*Loan 3*

As I'd concluded above, I didn't think TMA should have agreed this loan for Mrs H based on the information it had. And I didn't think further checks would have provided any assurance that she could repay the loan sustainably.

Mrs H had provided some bank statements and a credit report from around the time she'd applied for Loan 3.

I'd reviewed Mrs H's credit report and bank statements for the two months prior to her application for Loan 3. I'd noted that Mrs H's monthly income was in the region of the amount she'd declared to TMA. But had TMA sought some verification of Mrs H's spending, I thought TMA would've been in a better position to understand Mrs H's financial situation before it decided to lend to her.

I'd thought if TMA had carried out what I considered to be proportionate checks, it was likely it would have discovered more about Mrs H's financial position and her financial difficulties. The bank statements that Mrs H provided to us show that around the time she'd applied for Loan 3, her financial circumstances were somewhat strained. In each of the two months, she'd had to borrow a high cost loan to supplement her income – she'd borrowed loans of £230 and £1,000 in those two months. I'd also noted that she borrowed a short term loan of £1,500 in December 2017. Mrs H's total expenditure on living costs, financial commitments and contributions to commitments shared with her partner exceeded her income in each of those two months.

I'd also noted that TMA said that Mrs H's declared disposable income was £1,039 and that she could afford all her repayments easily. But it seemed to me that TMA was focussing on its calculation of whether the loan was affordable for Mrs H on a pounds and pence basis. But the lender was required to establish whether Mrs H could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might have been an indication that a consumer could sustainably make the repayments. But it didn't automatically follow that this was the case. And as a consumer shouldn't have to borrow further in order to make her payments, it followed that a lender should have realised, or it ought fairly and reasonably to have realised, that a consumer wouldn't be able to sustainably make her repayments if it was on notice that she would be unlikely to be able to make her repayments without borrowing further.

So, if TMA had carried out the independent view of Mrs H's circumstances that I thought was needed for this loan, I thought TMA ought reasonably to have realised that it was unlikely that Mrs H would have been able to sustainably repay Loan 3. So, it should reasonably have concluded that it wasn't appropriate to lend to her and so I considered it was irresponsible to have done so. So, I'd thought TMA treated Mrs H unfairly when it agreed to lend Loan 3 to her.

So, subject to any further representations by Mrs H or TMA my provisional decision was that I intended to say that TMA had treated Mrs H unfairly when it agreed to lend Loans 1 and 3 to her, and that TMA should put things right as shown below.

**Putting things right – what TMA needs to do**

TMA should:

a) refund the interest and fees Mrs H paid for Loans 1 and 3;
b) pay interest on these refunds at 8% simple* per year from the dates of payment to the date of settlement; and
c) remove any adverse information about Loans 1 and 3 from Mrs H's credit file.

*HM Revenue & Customs requires TMA to take off tax from this interest. TMA must give Mrs H a certificate showing how much tax it has taken off if she asks for one.

Mrs H responded to my provisional decision to say that she was pleased with it and had nothing more to add.

TMA didn't respond to my provisional 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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Given that Mrs H and TMA have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require TMA to pay Mrs H some compensation and take the steps as set out below.

## My final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order TM Advances Limited, trading as TM Advances, to

1. Refund the interest and fees Mrs H paid for Loans 1 and 3;
2. Pay interest on these refunds at 8% simple* per year from the dates of payment to the date of settlement; and
3. Remove any adverse information about Loans 1 and 3 from Mrs H's credit file.

*HM Revenue & Customs requires TMA to take off tax from this interest. TMA must give Mrs H a certificate showing how much tax it has taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 24 May 2021.

Roslyn Rawson
**Ombudsman**