

The complaint

Mr H complained that TM Advances Limited lent to him irresponsibly.

What happened

Mr H took out loans with TM Advances as follows:

Loan	Date taken	Loan amount	Term - months	Monthly repayment	Date loan settled	Total cost over full loan term shown on loan agreement
1	29/02/16	£1,500	48	£142.50	01/04/16	£6,840
2	01/04/16	£3,000	60	£222.50	15/08/16	£13,350
3	03/07/17	£1,500	60	£136.25	03/01/18	£8,175
4	03/01/18	£3,000	60	£222.50	13/03/20	£13,350

Mr H brought his complaint to us when he wasn't able to resolve it with TM Advances.

In summary, Mr H said that TM Advances would've seen it shouldn't have kept on lending to him if it had carried out proper credit checks. He told us that he struggled to pay various other creditors and he's been caused great stress and his finances have suffered badly.

One of our adjudicators looked at what had happened.

Our adjudicator didn't think TM Advances had provided loan 1 unfairly but he felt that the information TM Advances gathered about Mr H's financial situation, which included credit reports, should've prompted TM Advances to do more to check his financial situation – and had it done so, it should've found out that it was unlikely Mr H would be able to sustainably repay these loans. Our adjudicator set out directions indicating what TM Advances needed to do to put things right.

TM Advances disagreed with our adjudicator's view and asked for an ombudsman to review the complaint and so it comes 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here. I'd like to reassure TM Advances that I've looked at the complaint afresh – and I've independently reached the same conclusions as our adjudicator. Like our adjudicator, I don't think TM Advances should've provided loans 2, 3 and 4. I'll explain why I say this.

Before agreeing to lend, lenders must work out if a borrower can afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence

calculation. A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I've kept all these things in mind and I've thought carefully about the information TM Advances relied on when it decided to lend to Mr H.

Loan 1

As far as I can see, Mr H hasn't objected to what our adjudicator said with respect to not upholding his complaint about loan 1. So I don't think I need to say more about loan 1 except that I've reviewed this loan and independently reached the same conclusion as our adjudicator. I haven't seen enough to say that TM Advances shouldn't have provided this loan – so I'm not upholding this part of Mr H's complaint.

Loan 2

TM Advances asked Mr H about his income and expenses and carried out credit checks - and it sent this information to us. So I've been able to see information that TM Advances relied on when it agreed to provide this loan to Mr H.

Mr H declared his income as £2,100 and TM Advances phoned Mr H's workplace to check his employment. Looking at the information TM Advances gathered from Mr H about his regular monthly expenditure and including his spending on other credit it saw on the credit checks it carried out, this appeared to leave Mr H with at least £500 each month.

So TM Advances felt that the monthly repayments of £222.50 he would be making on this loan were affordable for Mr H.

But I think that TM Advances could see on its credit check that there was a default balance of £11,302 dating back to 2012 which Mr H was still paying. TM Advances could also see that Mr H had defaulted on a credit card in 2011 and on another account in 2014. He had an outstanding balance on £1,737 on a credit card with a credit limit of £1,750.

It was also apparent that he had a long established record of relying on what appeared to be expensive credit from finance houses.

So, although the loan might've *appeared* affordable to TM Advances, I think it's fair to say all this information painted a picture that was inconsistent with what it might have expected to see for someone who had been in his current job for the previous 2 years, living with his parents and with the living expenses Mr H had declared. I think TM Advances should have been prompted to do more to check that it had a proper understanding of Mr H's actual financial situation before providing this loan given that this credit history wasn't what it

might've reasonably expected to see for someone who appeared to have such a large amount of disposable income each month – especially, as our adjudicator mentioned, since taking this loan would mean Mr H was potentially signing up to make the monthly repayments over the next five years.

So, I've looked at what I think proportionate checks would likely have shown.

Mr H has provided his bank statements so I've looked through these to see what TM Advances was likely to have found out had it done more in-depth checks. To be clear, I'm not suggesting the lender should have necessarily asked to see Mr H's bank statements. TM Advances could decide for itself what it needed to do to meet its obligation as a lender to carry out checks that were reasonable and proportionate. But in the absence of other evidence, I think the bank statements Mr H has sent me give a reasonable insight into his finances at the time.

And had TM Advances done proportionate checking I think it would've likely found out that Mr H was spending significant amounts on gambling transactions. And so I think TM Advances should've realised that there was a serious risk that Mr H wouldn't be able to repay this loan in a way that was sustainable – so it shouldn't have lent to him. For these reasons, I uphold the complaint about loan 2.

Loans 3 & 4

I think the gap of 11 months between Mr H paying loan 2 and applying for loan 3 was long enough for TM Advances to treat this application as a fresh start in terms of Mr H's borrowing – and I've taken the same approach.

The information TM Advances gathered about Mr H's income and expenditure suggested that he would likely have ample surplus income to help him cover any unforeseen costs after making the monthly repayments on this loan. But I think TM Advances' credit checks showed some concerning information that didn't fit in with what Mr H had declared about his financial situation. Our adjudicator mentioned in his view the new credit that Mr H had taken out around the same time as he took out loan 2 – two additional credit cards that now had a combined balance owing of more than £1,400. There also seems to be some contradictory information shown suggesting payment arrangements were in place which Mr H said wasn't accurate – I can't see that TM Advances followed this up. It didn't appear that Mr H had made any inroads into the defaulted account that TM Advances already knew about - and an additional defaulted account dating back to 2011 was identified on this credit check.

As before, especially bearing in mind that Mr H was signing up to make the contractual repayments for the next 5 years, I think it would have been reasonable and proportionate for TM Advances to have done more before lending to Mr H to understand how loan 3 would impact on his financial situation – especially bearing in mind that he'd said the loan was to pay for a car, so it was reasonable to think he would be adding to his overall indebtedness.

If TM Advances had sought a fuller picture of Mr H's financial situation it wasn't likely to have been reassured that the loan would be sustainable for him. I think TM Advances should've realised (as I can see from his bank statements) that Mr H appeared to be spending significantly on multiple gambling transactions – as well as borrowing elsewhere.

I think TM Advances would've likely realised, had it done a proportionate check, that in reality Mr H had become reliant on expensive forms of borrowing, his available credit had already been mostly used and he was dependent on obtaining new credit in order to cover

his day to day costs and using it to fund extensive gambling. So TM Advances would've seen that further borrowing was likely to be unsustainable and it shouldn't have provided loan 3 or any further lending.

And I think that's borne out by the fact that Mr H found himself unable to make the payments due on loan 4 - which I think is unsurprising. I say this because proportionate checking, had TM Advances done this, would've likely shown that Mr H was continuing to borrow expensive loans to fund his gambling and facing serious difficulties managing his financial situation.

I don't think the fact that Mr H had made his loan payments on time and repaid loans early is enough to support TM Advances' assertion that this shows the lending was affordable.

So for all these reasons, I'm upholding this complaint about loans 2, 3 and 4.

Although there was a lot of interest payable, I think Mr H was aware he was taking high cost loans on terms he seemed happy to agree to at the time. I think it's fair to say that the loan agreements set out reasonably clearly both what the interest rate was and how much he would have to pay if the loans ran to term. And early repayment led to interest being rebated on these loans. TM Advances told us that when Mr H had problems making his repayments to loan 4 on time it showed forbearance and allowed him extra time to pay. It told us it also discounted his settlement quotation and accepted Mr H's payment offer to settle the loan early.

Looked at overall, I haven't seen enough to make me think that TM Advances acted towards Mr H in any other way that wasn't fair and reasonable. So I'm not awarding any additional redress over and above the steps I've set out below.

Putting things right

I think it is fair and reasonable for Mr H to repay the principal amounts that he borrowed because he had the benefit of that lending. But he has had to pay interest and charges on loans that shouldn't have been provided to him.

If TM Advances sold any outstanding debt it should liaise with the debt owner(s) to achieve the results outlined below and do the following:

For loans 2, 3 and 4:

- A) refund everything Mr H paid over the principal loan amounts and repay this to Mr H with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled
- B) remove any adverse information recorded on Mr H's credit file in relation to the loans.

*HM Revenue & Customs requires TM Advances to deduct tax from this interest. TM Advances should give Mr H a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold this complaint about loans 2, 3 and 4 and direct TM Advances Limited to take the steps set out above to put things right for Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 July 2021.

Susan Webb
Ombudsman