

The complaint

Miss V complains that TM Advances Limited lent to her irresponsibly.

What happened

In early August 2019, Miss V took out a loan with TM Advances for £2,000. This was to be repaid over 35 months and had an APR of 180.8%. The total amount re-payable was therefore £6,615 with monthly repayments of £189.

Miss V says the repayments were unaffordable and that at the time of lending she had a debt management plan in place in addition to other debts. She also says it was wrong for TM Advances to have taken into account the finances of her partner (at the time), given the loan was in her sole name.

TM Advances says it completed an affordability assessment by determining Miss V's income and expenditure at the time of the loan application. It said it also conducted two credit searches and verified Miss V's income.

The investigator upheld the complaint; in summary they didn't think TM Advances had undertaken reasonable and proportionate checks to establish whether this loan was affordable for Miss V. They thought it was likely further checks would have identified that Miss V couldn't have sustainably repaid the borrowing.

Miss V accepted this finding, but as TM Advances didn't agree the complaint was passed to me to decide.

I let TM Advances know that I agreed it hadn't carried out proportionate affordability checks in the circumstances and I shared further details with TM Advances about what Miss V's statements would have shown at the time.

TM Advances said it had verified Miss V's income and accepted her explanation in relation to her credit card default. It also said that Miss V's statements don't show her partner at the time wasn't contributing financially.

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.

Having done so, I'm upholding this complaint. I'll explain why.

The relevant regulations and guidance are included in the Financial Conduct Authority's Consumer Credit Sourcebook (CONC). TM Advances was entering a regulated credit agreement and it was required to take reasonable steps to be satisfied Miss V would be able to make repayments sustainably without having to resort to further finance.

Checks had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number

of factors including – but not limited to – the particular circumstances of the consumer. For example, their financial history, any foreseeable changes in future circumstances, and any indications of vulnerability or financial difficulty. The amount, type, length of borrowing and cost of credit they have applied for would also be considered.

In light of this, I think the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way, the more thorough a reasonable and proportionate check ought to have been.

TM advances undertook credit checks at the time of the lending. One of these warned on the cover page that Miss V had a very high level of indebtedness, was very high risk, and that most applicants with her credit score would experience serious repayment problems if the application was accepted. It also showed she was behind on repayments for a loan and had a defaulted credit card.

Given the terms of the loan and the adverse information shown on Miss V's credit checks, I don't think it was reasonable for TM advances to have approved the loan at this point. This is because there were clear indicators that she was already struggling financially.

This doesn't mean TM Advances ought to have declined Miss V's loan application at this point, and I accept it's relevant when Miss V defaulted on her credit card. But I think further checks than it undertook would have been proportionate in the circumstances to satisfy its obligation to ensure the repayments were sustainable for Miss V.

We can't now know exactly what further checks by TM advances would have looked like, so I've considered Miss V's statements from the time as one possible way of verifying Miss V's expenditure. Her statements showed additional indicators that she was struggling financially including:

- Payments to payday loan companies
- Evidence of money borrowed from family (including a monthly standing order for £100 with the reference "Dad money owed")
- Payments to Stepchange (a debt charity)
- Miss V paying the full £500 rent plus bills by herself with no corresponding incoming payments (suggesting she wasn't splitting her bills with a partner as indicated on her income and expenditure assessment)
- Unarranged overdraft fees

I appreciate TM Advances say that these don't prove that Miss V's partner (at the time) wasn't contributing to her bills, but I think the important point here is that her statements are inconsistent with the information the loan application was based on. And I'm not aware of any evidence that TM Advances might have been able to consider at the time to show Miss V was splitting her bills given she's now told us that the relationship ended without her ex-partner ever repaying her.

I think Miss V's statements show that at the time of the lending she was struggling to meet her existing financial commitments and that she was relying on borrowing for her day to day expenditure.

It follows that if TM Advances had completed proportionate checks, it would have identified that the loan repayments would not be sustainable for Miss V and she was unlikely to be able to repay it without borrowing further or suffering other adverse financial consequences. So I'm satisfied that TM Advances ought to have identified at the time that this lending would be unaffordable for Miss V.

Putting things right

It's reasonable for Miss V to repay the capital amount that she borrowed as she has had the benefit of that money. But I don't think it's fair and reasonable for Miss V to have to pay interest and charges on this loan, or for her credit file to be adversely affected as a result of this loan having been provided.

My final decision

I am upholding Miss V's complaint and require TM Advances Limited do the following:

- Remove all interest, fees and charges on the loan and treat all the payments Miss V made as payments towards the capital.
- If reworking Miss V's loan account results in her having effectively made payments above the original capital borrowed, then TM Advances Limited should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen to the date of settlement*.
- If reworking Miss V's loan account results in there being an outstanding capital balance TM Advances Limited should work to agree an affordable repayment plan with her.
- Remove any adverse information recorded on Miss V's credit file in relation to the loan.

*If HM Revenue & Customs requires TM Advances to deduct tax from this interest, it should give Miss V a certificate showing how much tax it's deducted, if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss V to accept or reject my decision before 28 March 2022.

Stephanie Mitchell
Ombudsman