

Complaint

Mr K has complained about a loan DTW Associates Limited (trading as “Auto Advance”) provided to him. He says that the loan was unaffordable and he’s also unhappy at the amount that he’s been asked to repay.

Background

Auto Advance provided Mr K with a loan for £1,400.00 in July 2017. This loan was due to be repaid in 102 weekly instalments of £36.08. Mr K ran into difficulties repaying his loan and eventually complained that he shouldn’t have been given the loan in the first place.

One of our investigators reviewed what Mr K and Auto Advance had told us. And he thought that Auto Advance hadn’t done anything wrong or treated Mr K unfairly. So he didn’t recommend that Mr K’s complaint be upheld.

Mr K disagreed with our investigator and asked for an ombudsman to look at his complaint and make a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Mr K’s complaint.

Auto Advance needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Auto Advance needed to carry out proportionate checks to be able to understand whether Mr K could afford to make his repayments before providing him with this loan.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

Auto Advance provided Mr K with a loan for £2,000.00 in March 2019. This loan was due to be repaid in 102 weekly instalments of £36.08. Auto Advance says it agreed to Mr K’s application after he provided details of his monthly income and some information on his expenditure. It says it cross-checked this against information on a credit search it carried out and copies of bank statements Mr K provided and all of this information showed Mr K could afford to make the repayments he was committing to.

On the other hand, Mr K has said he wasn't in a good financial position at the time and should never have been lent to.

I've carefully thought about what Mr K and Auto Advance have said.

The first thing for me to say is that Auto Advance has provided a record of the results of its credit searches and the copies of bank statements it obtained at the time. Auto Advance searches appear to show that Mr K had had previous difficulties repaying credit. But these difficulties were historic as the defaults happened in 2014. And in July 2017, Mr K didn't owe much on his active lines of credit. Furthermore, the copies of the bank statements provided show that Mr K had sufficient disposable income to be able to comfortably make the weekly payments on this loan.

I accept that Mr K's actual circumstances may not have been fully reflected either in the information he provided, or the other information Auto Advance obtained. I know Mr K says he didn't disclose the full amount of the outgoings that he paid to his wife and that he had a gambling problem. But as Mr K says he didn't disclose this and none of this showed up in the bank statements Mr K provided for consideration, I can't see how Auto Advance could reasonably be expected to have known about it when it decided to lend.

It also worth noting that Auto Advance was providing a loan for a relatively small sum – albeit at a high rate of interest. And it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. Given the circumstances here, the lack of obvious inconsistencies and Auto Advance was reasonably entitled to rely on what Mr K had said and provided, I don't think that Auto Advance did anything wrong when deciding to lend to Mr K. It carried out proportionate checks and reasonably relied on what it found out which suggested the repayments were affordable. So I'm not upholding this part of Mr K's complaint.

I now turn to what Mr K has said about the amount he's been asked to repay and how it differs from his initial agreement. The amount Mr K has been asked to repay differs from the amount on his loan agreement because of the court orders Auto Advance obtained and the associated costs of these. These amounts have been determined by the court. So it seems to me that Mr K ought to have disputed the amount he's been asked to repay as part of a defence to the legal proceedings Auto Advance brought against him. And I don't think it would now be fair for our service to now consider matters which should have been raised in court, because Mr K has now decided to make this complaint to us some time afterwards.

I'd also point out that as an informal and impartial service which exists to look at disputes between financial services providers and their customers there is a limit on what we can and should look at. Mr K is disputing an amount that the court has determined he needs to pay. As it is the court which determined this matter, I'm satisfied the court is the more appropriate forum to decide on this part of Mr K's complaint and I'm therefore not upholding it.

So overall and having considered everything, I don't think that Auto Advance treated Mr K unfairly or unreasonably when providing him with his loan or collecting payments in accordance with court orders. And I'm not upholding Mr K's complaint. I appreciate this will be very disappointing for Mr K. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 6 February 2023.

Jeshen Narayanan
Ombudsman