DRN-3013707

The complaint

Mr L is unhappy that TM Advances Limited (TMA) didn't do enough to check that he could afford to repay a number of loans that it granted to him.

Mr L is represented, but for ease I will refer only to him throughout.

What happened

Mr L has applied for and been granted four personal loans with TMA since October 2017, as follows:

Loan number	Date	Amount borrowed	Term	APR	Monthly repayment
1	October 2017	£1,500.00	24 months	232.7%	£173.75
2	January 2018	£1,500.00	36 months	208.7%	£152.92
3	March 2018	£3,000.00	24 months	166.9%	£297.50
4	June 2018	£3,000.00	40 months	149.1%	£249.00

Loans one and two were settled before any monthly repayments had been made. Loan three was settled in full after two monthly repayments had been made. Loan four was settled in full in April 2019.

In December 2019, Mr L complained that TMA hadn't done enough to check that he could afford to repay the loans before granting them to him. And that had it carried out appropriate checks, it would've realised that he couldn't afford to make the repayments.

TMA didn't uphold the complaint. It said that it had conducted credit searches and verified Mr L's income before agreeing to lend. And that in each case, it found Mr L to have a very good disposable income and there was no suggestion of any financial difficulty.

Mr L remained dissatisfied and referred his complaint to this Service.

An investigator here looked into things and upheld the complaint. She said, in summary, that:

- Under the relevant regulations, TMA was obliged to lend responsibly. It had to reasonably assess whether Mr L could afford to meet the repayments in a sustainable way over the term. The assessment of Mr L's circumstances needed to be "borrower focused".

- At the point of each loan application, there were signs that Mr L had recently experienced problems managing his money. He was heavily reliant on short-term lending. The loans were being settled quickly, but most likely due to additional short-term borrowing being taken.

- Given what we know about the nature of short-term borrowing and the reasons why customers take such loans, there were clear signs from the checks TMA completed that repaying any new or additional borrowing might be unsustainable.

- By the time the fourth loan was taken out, Mr L was also in early arrears and in arrangements to pay on some of the existing debt he had.

- TMA ought to have realised from the checks it carried out, that by granting the loans to Mr L, it was increasing his indebtedness in a way which was detrimental to him.

- Because of this, TMA should refund all of the interest and charges applied and remove any adverse information recorded on Mr L's credit file as a result of the interest and charges.

TMA disagreed and asked for the case to be escalated to an ombudsman. It said that it didn't feel it had lent in an irresponsible manner. And that where a customer is stuck in a cycle of payday lending, the loans it provides gives customers like Mr L a chance to repay those loans and have a much more sustainable monthly payment.

I asked Mr L for some further information. I asked why he had cancelled loans one and two shortly after taking them out and before making any loan repayments. I also asked how he had been able to fully clear loans three and four early.

Mr L said that for loans one and two, he had been able to borrow money from his parents instead and that his parents helped him to repay the final loan. In respect of loan three, he said that this may also have been as a result of help from his parents, or possibly by using all of his monthly pay or from a gambling win. Or a combination of these things.

I also asked Mr L to clarify why he had been taking out the payday loans in the lead up to applying for loans with TMA and how he had been able to repay them as he went along.

Mr L said that whenever he borrowed money, this was to pay off existing debts. He also told me that he ended up with a gambling problem, which he is still receiving treatment for.

I also asked TMA to clarify how each loan had been taken out. It said all loans were taken out via telephone but that it didn't have any of the call recordings available.

Based on this and everything else I'd seen on the file, I sent both parties some provisional thoughts. I said, in summary, that:

- I agreed with the investigator's findings in relation to loans three and four. This was based on the extent of Mr L's borrowing at the points of application, evidenced by credit information that TMA had obtained as part of the checks it carried out and its own application records.

- The information showed that in the time between applying for loans two and three, Mr L had opened five new loans with other credit providers and at least one of those loans had an outstanding balance. Mr L had also accrued a £1,000 overdraft and had recently taken out two new credit cards, with balances close to the limits.

- I thought that TMA ought to have known that Mr L would likely struggle to repay loan three in a sustainable manner. And that by agreeing to lend, there was a real risk it would be increasing his indebtedness in an unhelpful way.

- Regarding loan four, Mr L's situation was similar but the information TMA had also showed that Mr L was by this point in arrears on at least one item of outstanding credit.

- However, in relation to loans one and two, I wasn't convinced that TMA shouldn't have lent based on what it knew at the time, including the checks it had carried out. Rather, I thought the extent of the payday lending that TMA was aware of, ought to have prompted it to carry out further checks to better understand Mr L's situation and satisfy itself that Mr L would be able to sustainably meet the loan repayments.

- For loan one, I noted that TMA had calculated Mr L's disposable income to be £1,050 per month, yet he was looking to borrow only slightly more - £1,500, over a two year period. This too ought to have prompted TMA to verify Mr L's income and expenditure, beyond that which it did. The situation was similar for loan two.

- I said that in terms of getting a better understanding of Mr L's financial situation, in particular in relation to his income and outgoings, TMA could've done this in a number of ways. In the investigation of complaints like these, this service usually asks to review relevant bank statements.

- I had seen a number of Mr L's bank statements in the lead up to both loans one and two. In the absence of anything else from TMA showing what this information would have shown, I thought it fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr L's financial circumstances were likely to have been.

- Having looked at the bank statements in the lead up to loan 1 (July to September 2017), I found evidence of significant expenditure on gambling. In the three-month period, Mr L's gambling transactions totalled in excess of £36,000. There were gambling receipts (presumably winnings) of a little over £33,500 in the same time period.

- I had also seen that in the same time period, Mr L borrowed a total of over £33,000 in Payday Loans or similar, repaying a total of just under £24,000. The statements also appeared to show Mr L borrowing significant amounts of money from family.

- I considered that if TMA had known about this at the time, it would not reasonably have lent to Mr L – in that it both would have been irresponsible and unaffordable/unsustainable.

- As such, I invited TMA to settle the case in line with the investigator's recommendations.

- Given that all of the loans appeared to be settled, this meant a refund of all interest and charges on each of the loans, plus 8% interest simple from the date of payment to the date of settlement. And that TMA should remove any adverse information recorded on Mr L's credit file, as a result of the interest and charges.

- And that if it wasn't prepared to settle the case, it should provide any further evidence and comments that it wished me to take into account.

Mr L said he was happy to accept what I'd said.

TMA said that with the levels of gambling visible on the bank statements, it wouldn't have lent to Mr L. However, it didn't confirm that it was prepared to settle the case in line with what I'd set out.

So, it's been necessary to go on to issue final 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.

Having done so, I uphold this case. I'll explain why.

For all four loans, the Consumer Credit sourcebook (CONC) regulations apply. The following CONC regulations are particularly relevant in this case:

5.2.1R

(1) Before making a *regulated credit agreement* the *firm* must undertake an assessment of the creditworthiness of the *customer*.

(2) A *firm* carrying out the assessment required in (1) must consider:

(b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*….

5.2.3G

The extent and scope of the *creditworthiness assessment….* in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

(1) The type of *credit;*
(2) The amount of the *credit*
(3) The cost of the *credit;*
(4) The financial position of the *customer* at the time of seeking the *credit;*
(5) The *customer's* credit history, including any indications that the *customer* is experiencing or has experienced financial difficulties
(6) The *customer's* existing financial commitments including any repayments due in respect of other *credit agreements, consumer hire agreements, regulated mortgage contracts,* payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the *firm;*
(7) Any future financial commitments of the *customer;*
(8) Any future changes in circumstances which could reasonably be expected to have a significant financial adverse impact on the *customer;….*

5.2.4G

(2) A *firm* should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of *credit* being sought and the potential risks to the *customer.* The risk of *credit* not being *sustainable* directly relates to the amount of *credit* granted and the *total charge for credit* relative to the *customer's* financial situation.

(3) A *firm* should consider the types and sources of information to use in its *creditworthiness assessment*…. *which may, depending on the circumstances, include some or all of the following:*

(a) Its record of previous dealings
(b) Evidence of income
(c) Evidence of expenditure
(d) A credit score
(e) A credit reference agency report
(f) Information provided by the customer

5.3.1G

(2) The *creditworthiness assessment*….should include the *firm* taking reasonable steps to assess the *customer's* ability to meet *repayments* under a *regulated credit agreement* in a *sustainable* manner without the *customer* incurring financial difficulties or experiencing significant adverse consequences.

(6) For the purposes of CONC "sustainable" means the *repayments* under the *regulated credit agreement can be made by the* customer:

a) Without undue difficulty, in particular
   (i) The *customer* should be able to make *repayments* on time, while meeting other reasonable commitments; and
   (ii) Without having to borrow to meet the *repayments;*

So, in essence, TMA needed to check Mr L's creditworthiness (focused on affordability) and the checks it carried out needed to be proportionate given the relevant factors. It also needed to take account of what it already knew about Mr L, when making its lending decisions.

I said in my provisional findings that I didn't think the checks TMA had carried out for loans one and two were proportionate. Given the nature of the borrowing, Mr L's credit history (in particular the extent of short term borrowing in the lead up to the loans) and the incongruous disposable income TMA accepted/calculated, a proportionate check would've involved some reasonably detailed verification of his income and expenditure – to be satisfied that Mr L could sustainably make the loan repayments. There is no evidence that TMA did this.

As I set out in my provisional findings, in terms of getting a better understanding of Mr L's financial situation, in particular in relation to his income and outgoings, TMA could've done this in a number of ways. As TMA didn't take these steps, I can't know what the checks would've revealed. However, I've seen a number of Mr L's bank statements in the lead up to the loan applications.

In the absence of anything else from TMA showing what proportionate checks would have shown, I still think it's fair, reasonable and proportionate to place considerable weight on this as an indication of what Mr L's financial circumstances were likely to have been. And what TMA would've likely uncovered if it had completed proportionate checks.

As set out in my provisional findings, Mr L's bank statements show considerable gambling transactions, with a significant deficit over time. The statements also indicate a much higher level of short term borrowing (again, with a substantial deficit in terms of money borrowed compared to repaid) than the credit information TMA was aware of and also that Mr L was relying heavily on money from family.

Had TMA been aware of this, I don't think it would reasonably have agreed to give Mr L either of loans one or two.

In respect of loans three and four, as set out in my provisional findings, I think TMA should've realised based on what it already knew, that Mr L would be unlikely to be able to sustainably repay either of the loans. The information it had indicated that between applying for loans two and three, Mr L had opened five new loans with other credit providers and at least one of those loans had an outstanding balance. And that Mr L had also accrued a £1,000 overdraft and recently taken out two new credit cards, with balances close to the limits.

I think knowing this, TMA ought to have realised that Mr L would be unlikely to be able to sustainably meet the repayments for loan three. And that by providing him with the loan, there was a real risk that it was increasing his indebtedness in an unhelpful way.

Regarding loan four, Mr L's situation was similar to loan three, except that by this point he was in arrears with at least one of his existing credit commitments. As such, I find that TMA ought to have realised that Mr L would be unlikely to be able to sustainably meet the repayments for this loan, too.

I've thought about what TMA has said about the merits of its lending to Mr L, compared to him being stuck in a cycle of short-term lending. But I'm not persuaded by what it's said. Ultimately, before agreeing to lend, it needed to ensure that Mr L could sustainably meet the loan repayments. And I don't think it did this.

So, I think that TMA has done something wrong and that it needs to put things right.

Putting things right

When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mr L in the position he would now be in if he hadn't been given the loans in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mr L *was* given the loans and he had use of the money. And, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr L back in the position he would be in if he hadn't been given the loans in the first place. However, I don't think it appropriate for TMA to benefit from unfair lending decisions.

Bearing this in mind, TMA needs to refund all of the interest and charges on each of the loans and add 8% simple interest from the date of payment to the date of settlement.

It also needs to remove any adverse information recorded on Mr L's credit file as a result of the interest and charges.

† HM Revenue & Customs requires the business to take off tax from this interest. The business must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

My final decision is that I uphold Mr L's complaint about TM Advances Limited. I direct TM

Advances Limited to do what I've said above under 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 March 2022.

Ben Brewer
Ombudsman