

## **The complaint**

Mr H complains that TM Advances Limited lent to him irresponsibly and without carrying out proper affordability checks in April 2015. TM Advances has accepted that and refunded the interest and charges associated with the loan. However, Mr H doesn't think that's enough, and would also like some of the principal amount he borrowed refunded to him.

## **What happened**

Soon after this loan was taken, Mr H's financial problems became such that he chose to enter an IVA, and encountered many years of significant distress and ill health. It seems that at least some, if not most, of the problems which led to this situation were caused by his gambling addiction. TM Advances was one of the businesses to whom Mr H owed money when he entered the IVA.

He complained to TM Advances in 2020 that it shouldn't have given him this loan. It agreed and offered to refund the interest and charges, which significantly reduced the amount that Mr H owed it. It then later wrote off that remaining balance from the capital.

Mr H doesn't believe he should have to pay back all the capital he borrowed, which was £3,000. Due to the interest refund and then the write off, he's effectively paid back about £2,500 of the £3,000. He doesn't think that's fair, due to the suffering he went through. He thinks he should only have to pay back half of what he borrowed, so TM Advances should pay him a further sum just under £1,000.

The investigator thought TM Advances had done enough and didn't need to pay Mr H any more. He doesn't accept that and has asked an ombudsman to look at the case.

## **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 not going to uphold this complaint and I'll explain why.

TM Advances accepts that it shouldn't have given Mr H this loan, and has refunded the interest, along with ultimately writing off the final balance of the principal loan itself.

The starting point for this service where something has gone wrong is to do whatever is practicable to put the consumer (Mr H) back in the position in which he would have been had things gone right. That is, if TM Advances hadn't given him the £3,000 loan.

But where a consumer has had and spent the money s/he borrowed, it generally wouldn't be fair to say that s/he should not have to pay that money back. Essentially, it is usually most fair and reasonable to direct a business to take steps so that the loan becomes interest free, and so doesn't cost the consumer any more than the money they were advanced.

Very occasionally, I might direct a business to write off the principal loan as well. But that would be in circumstances where that business should have clearly known that granting the loan would cause identifiable harm to that consumer.

I entirely accept the truly horrible time Mr H has had in the last few years, and that having to enter an IVA was a big trigger for that. But to conclude it is fair for TM Advances to pay back any more of the principal (bearing in mind it's already written off more than £500 of the actual loan) I'd need to be satisfied that this loan was the 'cause' of the IVA; that TM Advances should have known the extent of Mr H's gambling problem; and that he wouldn't have been able to get any money to gamble from anywhere else. Put simply, that this loan itself was at least the main cause of all his distress. So, therefore, that TM Advances' mistake was responsible for it.

There is no evidence to support that. It's clear that Mr H was borrowing widely, including from friends and family, and that no individual loan led him to enter the IVA. There appear to have been many creditors included from the evidence he's sent, and I can see that he had many outstanding loans at that time. So it's therefore not reasonable to say that TM Advances was to blame for him entering the IVA.

Overall, it wouldn't be fair for me to hold TM Advances responsible for the undoubtedly dreadful time Mr H has had. It's clear from all the evidence I've seen that there were many and varied causes of those serious problems. So I won't be asking it to do any more than it already has.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint and TM Advances doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 June 2022.

Siobhan McBride

**Ombudsman**