DRN-3141573

The complaint

Mr M complains about a personal loan provided to him by TM Advances Limited, ("TMA"), which he says was irresponsibly lent.

What happened

TMA provided a loan for £4,000 to Mr M on 26 July 2018. The loan was repayable by 45 monthly payments of £289. The interest rate was 60.1%, (121.7% APR). If all the payments were made on time, the total amount to be repaid over the 45 months' loan term was £13,005 including interest. The loan was to be partly used for debt consolidation. The loan was repaid in November 2020 by a relative of Mr M.

Mr M says that he had many payday loans at the time of the loan application due to an issue with gambling. His credit check showed many payday loans and that he had recently taken out a £6,000 loan with a different provider. TMA's loan had massively affected him. He has suffered from depression because of all his loans.

In its final response letter, TMA provided information about Mr M's declared income, expenses, and his credit commitments. It said it had increased Mr M's living costs to ensure the loan would be affordable. TMA also said that Mr M had a disposable income of £841, that the loan was affordable, and the loan released Mr M from the cycle of payday loans.

Our adjudicator assessed the complaint and recommended that it should be upheld. He thought the information TMA would have seen from its checks was concerning. And he thought this should have prompted it to have found out more before deciding to lend – including obtaining a thorough knowledge of Mr M's financial circumstances. This was because the amount of short term debt Mr M had was very likely a sign of wider financial problems. And although Mr M's monthly credit commitments should've decreased after the consolidation of his payday loans, he would still be paying a large amount of his income towards credit each month. The adjudicator had reviewed Mr M's bank statements from the time and saw a significant amount of gambling. He was satisfied that if TMA had carried out reasonable and proportionate checks, it would more likely than not have shown that the agreement wasn't affordable and sustainable for Mr M and/or it would be irresponsible to lend to him given the amount he was gambling.

TMA disagreed and asked for the complaint to be referred to an ombudsman.

As this complaint hasn't been resolved informally, it has come to me, as an ombudsman, to review and resolve.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I’m sorry to hear about Mr M’s health difficulties.

When TMA lent to Mr M the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

Its rules and guidance obliged TMA to lend responsibly. As set out in CONC, this meant that TMA needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an “affordability assessment” or “affordability check”. Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower’s financial situation, amongst other factors.

The checks had to be “borrower” focussed – so TMA had to think about whether Mr M could sustainably repay his loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn’t cause Mr M undue difficulty or adverse consequences. In other words, it wasn’t enough for TMA to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mr M.

In general, I’d expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I’d expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the lower a person’s income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period);

Bearing all of this in mind, in coming to a decision on Mr M’s case, I have considered the following questions:

- Did TMA complete reasonable and proportionate checks when assessing Mr M’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did TMA make a fair lending decision?

Did TMA complete reasonable and proportionate checks when assessing Mr M’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

As I’ve said above, TMA gathered some information from Mr M about his income and expenses before it agreed the loan. It also carried out a credit check. It said Mr M had a disposable income of £841 and the loan repayments were affordable.

I can see why TMA would think the loan repayments would be affordable based on what it had calculated. But I think it should have gathered more information than it did for the following reasons.

I'm concerned that TMA appears to have relied on Mr M's statement of his expenses without verifying them. CONC 5.3.1(4) said:

If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):

1. *(a)*
   the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;
2. *(b)*
   it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer;

So, I think it would have been proportionate here for TMA to have verified Mr M's actual expenditure. I note that it had a payslip on file, although this hasn't been received by this service.

I've reviewed TMA's credit checks and its affordability form which shows additional credit information. The affordability form showed that Mr M had 14 active accounts with a total credit balance of £24,582 outstanding and monthly credit payments of £3,265.50. The checks showed that Mr M had two credit cards, but one of these had a balance of £2,513 which was £63 over the credit limit. They also showed that Mr M's current account was £7 overdrawn. TMA could also see from its checks that Mr M had received eleven loans in the six months prior to his loan application which were still outstanding. These included nine payday loans, a home credit loan with a balance of £1,802 and a five year loan with a £14,729 balance taken out just three and a half months before his loan application. Taking into account the settled loans shown on the credit checks, I can see that Mr M had needed to borrow credit every month since November 2017 with his most recent loan taken out in the same month as his application to TMA.

I think TMA was also likely to be aware that its credit checks might not have revealed the full extent of Mr M's credit commitments. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. Its checks might not necessarily be up to date. Also, not all lenders reported to the same credit reference agencies.

Overall, I think the results of its credit checks ought to have caused TMA significant concerns as I think they suggested that Mr M was struggling to manage his money as shown especially by his frequent use of and apparent reliance on payday loans, his recent need for another large loan within the previous four months and one credit card being over its credit limit. And I think the results of the checks might also have reasonably caused doubt on the accuracy of the income and expenditure information Mr M provided. I think TMA might have also been concerned as to why someone with such a large proportion of available income (according to his declared income and expenses) would have needed to borrow so much expensive credit relatively recently

I can also see that Mr M was increasing his total indebtedness by taking TMA's loan. Whilst Mr M said that £2,500 from the £4,000 loan was being used to repay eight payday loans, he needed £13,005 to repay TMA's loan. So, it appears that his total indebtedness was being increased as well as the time he'd be indebted for.

Simply performing credit checks isn't enough. A lender needs to react appropriately to the information that any checks show. Mr M was entering into a relatively long and expensive loan agreement. He was entering into a commitment to make his monthly loan repayments for 45 months and was, after all, committing to repay £13,005 over that period.

So, I think it would have been reasonable and proportionate here for TMA to gather further information about Mr M's financial situation and to verify his actual monthly expenditure. It could have done this by, for example, requesting bank statements from Mr M, asking for copies of bills and/or receipts for his expenses and by asking him for more information about his existing credit commitments. As I can't see it did this, I don't think the checks TMA carried out before providing Mr M with his loan were reasonable and proportionate.

But that in itself doesn't mean that Mr M's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown TMA that Mr M couldn't sustainably afford the loan.

What would reasonable and proportionate checks have shown? And did TMA make a fair lending decision?

Mr M has provided bank statements from around the time he applied for the loan. I'm not suggesting here that these are the checks that TMA should have done. But I think looking at these gives me the best picture of what the lender was likely to have seen had it made better checks.

I note that Mr M's monthly income on the statements was around the amount shown on TMA's documents. But had TMA sought some verification of Mr M's spending, I think TMA would've been in a better position to understand Mr M's financial situation before it decided to lend to him.

I've reviewed Mr M's spending on his bank statements. Worryingly, the statements show that Mr M was spending a substantial amount on gambling. He'd spent over half his income on gambling in May 2018, and almost half his income in June 2018. Mr M's spending on gambling was frequent enough throughout those months that it was more likely than not that it would continue in the same pattern and posed a risk to Mr M being able to repay the loan sustainably. In these circumstances, I don't think that TMA would have lent if it knew this, as I think it ought to have if it had made better checks.

In addition, the statements suggest that Mr M was having problems managing his money and that he was reliant on short term loans. He'd borrowed numerous short term loans to supplement his income. He'd borrowed £3,265 via four short term loans in May 2018 (which was one more loan than TMA's checks showed) and he'd borrowed a further £1,250 via two short term loans in June 2018. In May 2018 he was already repaying ten different short term loan providers and in June 2018 he was repaying eleven such lenders. By the beginning of July 2018, Mr M's current account was overdrawn, and the account appeared to have no overdraft arrangement. He'd taken out another payday loan for £700 at the start of July 2018 so the account was in funds.

TMA said that the loan was affordable, and it released Mr M from the cycle of payday loans. But this assumed Mr M's need for credit wasn't an ongoing one and I think his reliance on expensive short term loans to meet his existing costs showed that this wasn't a reasonable assumption. It seems to me there was a risk here that Mr M would need to borrow to meet his repayments on this loan, as he was currently doing so for his existing costs.

So, I think if TMA had carried out what I consider to be proportionate checks, I think it's likely it would have discovered Mr M's relatively substantial expenditure on gambling and the full extent of Mr M's financial commitments. I think TMA should reasonably have realised that Mr M was over committed financially and that he was having difficulty managing his finances. So, it's likely that further checks wouldn't have provided the assurance TMA needed. And I think TMA ought reasonably to have realised that it was unlikely that Mr M would've been able to sustainably repay his loan. So, it should reasonably have concluded that it treated Mr M unfairly when it agreed to lend to him.

I can see that Mr M continued to borrow from short term lenders shortly after taking out TMA's loan. Within two weeks he'd taken out two loans totalling £1,100, and I think this was foreseeable.

It seems to me that TMA was focussing on its calculation of whether the loan was affordable for Mr M on a pounds and pence basis. But the lender was required to establish whether Mr M could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

So, I think Mr M's complaint should be upheld, and that TMA should put things right as follows:

Putting things right – what TMA needs to do

1. Deduct the total repayments Mr M made from the amount borrowed. If this results in Mr M having paid more than he received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).*

2. Remove any negative information recorded on Mr M's credit file relating to the loan.

* HM Revenue & Customs requires TMA to take off tax from this interest. TMA must give Mr M a certificate showing how much tax it has taken off if he asks for one.

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint I order TM Advances Limited to put things right as I've set out above under the heading "Putting things right – what TMA needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 January 2022.
Roslyn Rawson
Ombudsman