

The complaint

Miss N complained that TM Advances Limited lent to her irresponsibly and provided a loan that was unaffordable.

What happened

Miss N took out a loan with TM Advances as follows:

Date taken	Amount	Term months	Monthly payment	Amount repayable	Loan status
30/07/2020	£1,500	30	£159	£4,770	outstanding

Miss N said the loan purpose was to pay off small balances and she needed the loan because she'd had to pay some other expenses and owed money to a friend so she had been left short of money.

When Miss N complained to TM Advances it didn't uphold her complaint so she brought her complaint to us.

One of our adjudicators looked at the complaint and thought that TM Advances shouldn't have provided the loan. Our adjudicator recommended that the complaint should be upheld and she set out directions indicating what TM Advances should do to put things right.

TM Advances disagreed with our adjudicator's view. It mainly said its affordability assessment probably over-stated Miss N's actual expenditure as it allowed for her spending more than she had said and her living arrangements suggested her outgoings were likely more limited. It also worked on a lower pay figure than she had actually received that month.

TM Advances pointed to the fact that Miss N had never missed a payment as further proof that the loan was affordable. It also mentioned that its loan was for debt consolidation – in other words, Miss N had said she would use the loan to repay two of her payday loans, so this loan wasn't adding to her overall indebtedness.

As the complaint hasn't been resolved, it comes to me for a 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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. Having looked afresh at everything, I've independently reached the same conclusions as our adjudicator and I'm upholding this complaint. I'll explain my reasons.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

TM Advances asked Miss N about her income and expenses and did its own credit check to understand Miss N's credit history. TM Advances verified that Miss N's typical monthly pay was around £2,162. TM Advances boosted the monthly expenditure figure that Miss N had declared and calculated that she could need to spend approximately £1,100 in total each month on living costs, on top of paying £355 towards her board and £208 per month on the credit commitments she would still be paying after taking out its loan and paying off the debt she had mentioned.

Based on this, TM Advances said Miss N should've been comfortably able to afford the monthly repayment on this loan.

Like our adjudicator I think those checks were broadly proportionate. But despite recording information that appeared to show that Miss N had enough spare cash each month to cover the loan monthly repayments, I think TM Advances should've realised that it couldn't rely on this information. That's because what Miss N had declared was significantly at odds with what TM Advances saw on its credit checks showing Miss N's credit history.

Whilst having other borrowing wouldn't be unusual for a borrower applying for this type of expensive borrowing, and it wouldn't necessarily be a bar to lending, I don't think TM Advances thought carefully enough about what the information it had gathered showed about Miss N's overall financial situation and the likelihood of her being able to pay its loan in a sustainable manner.

I say this because the lender saw that Miss N had four credit cards and they had all been persistently at or over limit throughout the 12 months reported on the credit report. It was also apparent that she'd been making mostly minimum monthly repayments only to her cards throughout that period. Repayments at that level are insufficient to make any meaningful inroads into the balance owing and effectively extend the debt and can add significantly to the long term cost of that credit.

As well as this, TM Advances was aware that Miss N had some payday loans and two mail order accounts both approaching their limits. I think this was worrying information, especially bearing in mind that Miss N had a well-paid job and she was living in another household and paying only a relatively small contribution towards household costs.

Looked at overall, I think there were clear signs that Miss N was already under financial stress – borne out by the fact that she was seeking a loan in order to repay other debt, which can be an expensive option, so it isn't something I'd expect someone on top of their finances would be likely to want to do.

I've taken carefully into account everything TM Advances has said in response to our adjudicator's assessment about the way it assessed affordability. And I've thought carefully about what I think a responsible lender should have made of all this information and in particular whether it was enough for TM Advances to make a fair decision to lend.

I think our adjudicator was right to say that all the indications were that Miss N wasn't managing her money well and she was already struggling financially. To my mind, it should've been apparent that Miss N probably didn't have the amount of disposable income that TM Advances calculated - or indeed any spare cash, given her apparent reliance on using expensive credit and her evident inability to manage this effectively without needing to take out further borrowing. All the signs were that her finances were, in reality, under significant stress and her debt was already unmanageable.

I don't think TM Advances was reasonably able to be satisfied in these circumstances that Miss N would be able to make its loan repayments in a sustainable way.

I think TM Advances saw enough on the information it had in front of it to have realised it shouldn't have provided this loan. But even if I'm wrong about this, I think it's fair to say that TM Advances didn't have enough information to support a decision to lend as things stood.

And, if it had probed more deeply into Miss N's financial situation, I think it would've found out the same information that I've seen on bank statements she has provided to me from around this time.

These show that in the 3 months or so running up to her applying for this loan she had taken out at least 5 other high cost loans (around £1,650 in total) plus she had arranged for other credit to be paid into her current account - despite this, she was still going into unauthorised overdraft and having direct debit payments returned.

I think this bears out the worrying signs that were apparent from the checks TM Advances carried out and confirms that Miss N simply wasn't in a position to take on more lending.

I've taken into account that TM Advances understood that the loan was intended for debt consolidation. But the lender didn't have control over how Miss N used the loan as it paid the loan balance to her.

Also, I think the scale of her debt overall compared to the smaller value of the loan, and the extent of her evident reliance on taking out expensive credit, would suggest that she would remain in serious financial trouble regardless. I don't think it's likely that the loan monthly repayments typically meant that Miss N would make any monthly saving on the amount she already needed to pay towards her credit commitments even if she had used this loan to repay her payday loans - more likely, she would be spending more month to month and repaying this expensive loan at greater cost over a longer period of time.

All in all, I don't think TM Advances had sufficient reason to think using its loan for debt consolidation would've improved Miss N's overall position sufficiently to achieve a significant and sustainable improvement in her financial situation, given her outstanding indebtedness overall and reliance on using credit cards.

So it's hard to understand how, even with debt consolidation, this loan wasn't going to be detrimental to Miss N overall.

In coming to my decision I've thought carefully about everything TM Advances has said, including its comments made in response to our adjudicator's view, but it makes no difference to the outcome. I think that it was fair and reasonable for TM Advances to have increased Miss N's declared living costs to try to ensure she hadn't underestimated these. I don't think it's reasonable to say now that she probably had more disposable income than this would suggest because that isn't borne out by what I've seen on her bank statements.

Thinking about all the information TM Advances had gathered, I can't reasonably say that it made a fair lending decision based on the information in front of it. I don't think TM Advances was able to safely conclude that its loan would be sustainably affordable for Miss N, and that's borne out by other evidence I've seen showing that she wasn't in a position to afford the loan. So it shouldn't have provided it and TM Advances needs to put things right.

Putting things right

I think it is fair and reasonable for Miss N to repay the capital amount that she borrowed because she had the benefit of that lending - but she shouldn't repay more than this.

TM Advances should do the following:

- add up the total amount of money Miss N received as a result of having been given this loan. The repayments Miss N made should be deducted from this amount.
- If this results in Miss N having paid more than she received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement).
- If any capital balance remains outstanding, then TM Advances should attempt to arrange an affordable/suitable payment plan with Miss N bearing in mind the need to treat her positively and sympathetically if she requires further time to pay what she owes.
- Whilst it's fair that Miss N's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by the decision to lend this loan. So TM Advances should remove any negative information recorded on Miss N's credit file regarding this loan

*HM Revenue & Customs requires TM Advances to deduct tax from this interest. TM Advances should give Miss N a certificate showing how much tax has been deducted if she asks for one.

My final decision

I uphold this complaint and direct TM Advances Limited to take the steps I've set out above to put things right for Miss N.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 31 March 2022.

Susan Webb
Ombudsman