DRN-3337726

Complaint

Mr G has complained that DTW Associates Limited (trading as "Auto Advance") provided him with an unaffordable loan.

Background

Auto Advance provided Mr G with a loan for £5,000.00 in April 2016. The loan had an APR of 176.42% and a 36-month term. This meant that the total amount to repay, which included interest of £10,350.04 was due to be repaid in 36 monthly instalments of around £430.

One of our adjudicators looked at this complaint and thought that Auto Advance shouldn't have provided this loan as it ought to have realised it was unaffordable.

Auto Advance disagreed and asked for an ombudsman to review the complaint.

My findings

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

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We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr G's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr G's complaint. These two questions are:

1. Did Auto Advance complete reasonable and proportionate checks to satisfy itself that Mr G would be able to repay his loan without experiencing difficulty or suffering significant adverse consequences?

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Mr G would've been able to do so?

2. Did Auto Advance act unfairly or unreasonably in some other way?

Did Auto Advance complete reasonable and proportionate checks to satisfy itself that Mr G would be able to repay his loans without experiencing difficulty or suffering significant adverse consequences?

Auto Advance provided these loans while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required Auto Advance to carry out a reasonable and proportionate assessment of Mr G's ability to make the repayments under these agreements. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Auto Advance had to think about whether repaying the loan would cause significant adverse consequences *for Mr G*. In practice this meant that Auto Advance had to ensure that making the payments to the loans wouldn't cause Mr G undue difficulty or adverse consequences.

In other words, it wasn't enough for Auto Advance to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr G. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer'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 customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Auto Advance's checks reasonable and proportionate?

Auto Advance says carried out an income and expenditure assessment with Mr G prior to providing him with his loan. This information was validated against an electronic cross referencing of Mr G's income declaration and bank statements which Mr G provided.

So bearing in mind Auto Advance says and has evidenced that it obtained a significant amount of information on Mr G's circumstances, I'm prepared to accept that it did carry out proportionate checks – at least in terms of the information requested – before providing this loan to Mr G.

Did Auto Advance make fair lending decisions?

It isn't enough for a lender to simply request information from a consumer before deciding to lend to them. So even if a lender may have requested a proportionate amount of information, it may still be the case that it will not have acted fairly and reasonably towards that consumer if it didn't carry out a fair and reasonable evaluation of the information it obtained.

I say this because a lender is required to carry out an assessment of the borrower's ability to repay any credit advanced. And any assessment requires an evaluation, judgement, appraisal and scrutiny of any information obtained. Auto Advance says its assessment of the information obtained led it to conclude that Mr G's loan was affordable for him as he'd be able to sustainably make his repayments.

Auto Advance was required to establish whether Mr G could make his loan repayments without borrowing further or experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided in light of this. Having done so, it's worth noting that Auto Advance's manual underwriting notes suggested that the monthly loan repayments would be taking Mr G right to the limit of his disposable income. Auto Advance's underwriting also only included payments of £10 a month to Mr G's credit card too and it didn't factor in that Mr G was incurring returned item fees as a result of returned item fees (which in itself was an indication of a potential inability to meet his existing commitments out of his disposable income).

Finally, while the expenditure assessment does include payments for food (based on a monthly supermarket transaction) it doesn't include anything for clothing or other essential expenditure. Bearing in mind this was a three-year commitment, I do think that expenditure of this type ought to have been catered for when the amount of disposable income was as close as it was to the monthly payment for the loan. I think that all of these omissions are key here.

In my view, while Auto Advance believed that the monthly payments were pounds and pence affordable for Mr G, I think the information available as well as the omissions suggested Mr G was always unlikely to be able to make the payments he was being asked to commit to without borrowing further or suffering significant adverse consequences. Indeed the fact that Mr G did go on to miss, or make late, payments is no surprise to me.

Bearing this in mind, and what exactly it was Auto Advance was required to consider, I'm satisfied that Auto Advance's decision to provide this loan to Mr G wasn't fair and reasonable in the circumstances.

Did Auto Advance act unfairly or unreasonably towards Mr G in some other way?

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that Auto Advance acted unfairly or unreasonably towards Mr G in some other way. So I don't think Auto Advance acted unfairly or unreasonably towards Mr G in some other way.

Did Mr G lose out as a result of Auto Advance unfairly providing him with his loan?

As Mr G paid a high amount of interest and charges on a loan that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what Auto Advance did wrong.

So I think that Auto Advance needs to put things right.

Fair compensation – what Auto Advance needs to do to put things right for Mr G

Having thought about everything, Auto Advance should put things right for Mr G by:

- refunding all interest, fees and charges Mr G paid on his loan;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Mr G to the date of settlement†;
- removing any adverse information recorded on Mr G's credit file as a result of this loan;

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

My final decision

For the reasons I've explained, I'm upholding Mr G's complaint. DTW Associates Limited needs to put things right in the way set out above.

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

Jeshen Narayanan
Ombudsman