DRN-3338448

The complaint

Mr J has complained that DTW Associates Limited trading as Auto Advance lent to him irresponsibly.

What happened

I issued a provisional decision about this complaint in January 2022 that I summarise below.

Mr J was given five logbook loans by DTW between October 2016 and October 2018. The loans were secured against a vehicle that Mr J owned. I understand the loans were in outline as follows:

DATE	AMOUNT	TOTAL REPAYABLE	MONTHLY REPAYMENT	DURATION
Oct-16	1500	3390	188	18 MTHS
Jun-17	2050	4879	203	24 MTHS
Dec-17	2150	5117	213	24 MTHS
Jun-18	2300	5474	228	24 MTHS
Oct-18	2500	5959	247	24 MTHS

I explained the basis on which I would decide the complaint, in particular the checks that DTW needed to do such as the amount being lent, and the consumer's income and expenditure. With this in mind, I thought less thorough checks might be reasonable and proportionate in the early stages of the lending relationship.

I said that DTW needed to take reasonable steps to ensure that it didn't lend to Mr J irresponsibly. And that DTW should have carried out proportionate checks to satisfy itself that he could repay the loans in a sustainable way.

I carefully considered all the evidence, arguments and information I'd seen about this matter in order to decide what's fair and reasonable in the circumstances of this complaint.

DTW asked Mr J for information about his income and expenditure and it says it acquired a credit report and also requested bank statements. DTW says it used ONS and transactional data to assess the affordability of Mr J's loans each time.

Loans 1 and 2

I considered the information that DTW gathered before it lent the first and second loans to Mr J. DTW's credit checks before the first loan notes that Mr J had 2 active credit lines and that both were in arrears. But I hadn't seen enough information for me to fairly say that I thought DTW acted irresponsibly when it provided the first two loans to Mr J.

Loan 3 to 5

Mr J returned to borrow again for a third time around six months after taking his second loan. It seems that Mr J used loan 3 to settle his second loan early and took the remainder in cash. DTW carried out its checks and concluded that the third loan was affordable for Mr J. I thought DTW's own checks highlighted some issues that ought reasonably to have been of some concern to the lender. DTW's report suggests that Mr J had increased the number of credit accounts and that 3 of these accounts were in arrears. DTW's checks also highlighted 2 defaults – one of which DTW could reasonably have considered to be historic but one which appears was dated around three months prior to Mr J's application for a third loan. I thought it would have been reasonable in the circumstances for DTW to look further into Mr J's financial position - to satisfy itself he could sustainably repay the third loan.

So I considered, if DTW had carried out more in-depth checks before it provided loan 3, would it have fairly and reasonably concluded that it would be irresponsible to provide the third loan?

Mr J provided bank statements from a second bank account he held at the time and his own credit reports. Mr J's own credit reports show adverse information about his credit history. But given the type of lending, I thought a lender would expect to see some adverse information on the credit report. And generally, the information a consumer might see, when they request a copy of their credit file, might be very different to that seen by a lender. A lender might only see a portion of the credit file, or some data might be missing or anonymised, or the data might not be up to date. New credit commitments can take some time to appear on a credit report and so don't always appear in any reasonable and proportionate checks that are carried out at the time. So, this may explain any differences between the information provided by DTW's credit check and the information Mr J says it should have seen.

The third loan slightly increased Mr J's monthly payments (by around £10.00). I considered whether information Mr J provided about his second bank account should reasonably have led DTW to decline the third loan. I thought DTW would have seen that Mr J was spending more than he had estimated in his application. But he seems to have been transferring sums in and out of various accounts which could have suggested to a lender that he was managing his money quite carefully. I didn't think DTW would reasonably have thought that Mr J's first or second bank accounts showed signs of significant financial distress, such as regular gambling, a very large overdraft or high levels of bank charges or frequently returned requests for payment - all of which might have signalled severe financial difficulties to a lender.

On balance, I couldn't fairly say that even if DTW had looked further into Mr J's financial position, it ought reasonably to have concluded that he was suffering such severe financial difficulties that it would be irresponsible to lend to him again. And I didn't think that the third loan established a pattern of lending that reasonably ought to have led DTW to decline the loan.

But I didn't think that DTW ought to have provided loans 4 and 5 to Mr J.

DTW says that the loans were affordable for Mr J and that he managed to meet his monthly loan repayments. But as I explained, the lender was required to establish whether the borrower could *sustainably* meet 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 a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulty – in particular without incurring or increasing problem indebtedness. The customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

Mr J was returning to borrow for a fourth and then fifth consecutive time – each time only months after taking previous long-term loans. The amounts borrowed and the monthly repayments increased for a fourth and then a fifth time. I thought by the fourth loan DTW ought reasonably to have realised that Mr J was most likely continuing to borrow in order to maintain his financial commitments; that a pattern of reliance on high cost lending was being established, and that further lending would also prolong Mr J's indebtedness to it. I thought DTW ought reasonably to have realised that repeated refinancing by Mr J was an indication that his borrowing was becoming, or risked becoming, unsustainable.

Taking the circumstances as a whole, I thought DTW ought reasonably to have declined the fourth and the fifth loans.

Mr J thinks that DTW 'rolled over' interest on each loan and that the rate of interest increased. Having reviewed all the evidence available, I didn't think DTW treated Mr J unfairly in any other way. But I didn't think DTW should have agreed to provide loans 4 or 5 to Mr J. I said I was intending to uphold Mr J's complaint about loans 4 and 5 and directing DTW to put things right.

I asked both parties to comment on my provisional decision. I've not seen any new information from either Mr J or DTW and the deadline to provide new evidence has now passed.

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'd like to thank both parties for all the information that has been provided about this matter.

Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

I am not upholding Mr J's complaint about loans 1-3 but I am upholding his complaint about loans 4 and 5 and DTW needs to put things right.

Putting things right

I think it is fair and reasonable for Mr J to repay the principal amount that he borrowed for loans 4 and 5, because he had the benefit of that lending. But he has paid interest and charges on lending that shouldn't have been provided to him.

DTW should:

- Remove all interest, fees, and charges from loans 4 and 5, including any charges or fees and treat all the payments Mr J made as payments towards the capital.

- If reworking Mr J's loan account results in him having effectively made payments above the original capital borrowed for these two loans, then DTW should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled*.
- If it has not already done so, DTW should cancel the Bill of Sale in relation to loans 4 and 5 and return the V5 logbook to Mr J.
- Remove any adverse information recorded on Mr J's credit file in relation to loans 4 and 5.

*HM Revenue & Customs requires DTW to deduct tax from this interest. DTW should give Mr J a certificate showing how much tax it's deducted if he asks for one.

My final decision

For the reasons given above, I partly uphold this complaint and direct DTW Associates Limited trading as Auto Advance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 26 March 2022.

Sharon Parr
Ombudsman