

## The complaint

Mr S complains about a loan provided to him by TM Advances Limited “TM Advances”, which he says was unaffordable.

## What happened

TM Advances provided Mr S with a personal loan for £2000 on 22 December 2015. The term of the loan was 2 years and the monthly repayment was £215. Mr S has repaid the loan.

I issued a provisional decision on this complaint in February 2022. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

*“Did TM Advances carry out proportionate checks?”*

*I can see that TM Advances asked Mr S about his income and expenditure. I can see that it says it verified the income that Mr S received each month and then made a note of his expenditure.*

*I can see from an income and expenditure form that it completed at the time, that total amount of income received came to around £2434 a month. TM Advances then says it assessed Mr S’s expenditure to be around £2095. After the instalment amount of £215 for this loan was deducted, it left him with about £124 disposable income for the month.*

*I have looked at the checks made by TM Advances and am currently minded to consider, that at the very least it should have carried out further checks to satisfy itself that Mr S could sustainably make the repayments when each one fell due. I make this conclusion after considering the length of the loan, the amount due to be repaid and the small amount of disposable income that Mr S had left after the loan repayment is deducted. It wouldn’t have taken too much unexpected spend for Mr S to struggle to meet his commitments. In addition, the credit search results that TM Advances carried out showed that Mr S had £29,828 in unsecured debt to repay. This represents almost a year’s income for Mr S. So, I think TM Advances should have carried out further checks to ensure the loan repayments were sustainable.*

*So, as I have concluded that TM Advances needed to carry out further checks for the loan, I need to consider what it would have seen if it had done so.*

*What would reasonable and proportionate checks have shown?*

*As reasonable and proportionate checks weren’t carried out before this loan was provided, I can’t say for sure what they would’ve shown. So, I need to decide whether it is more likely than not that a proportionate check would have told TM Advances that Mr S would have been unable to sustainably repay this loan.*

*TM Advances was required to establish whether Mr S could make his loan repayments without 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 including reviewing bank statements that Mr S have provided for the weeks leading up to his application for the loan. Having done so, it's clear Mr S wouldn't have been able to afford to repay the loan in a sustainable way. Mr B was gambling regularly and, in his circumstances, heavily at the time he applied for the loan. Mrs S's bank statements also showed that he had a reliance on short term lending too.*

*I have looked through the statements and can see that from 22 October up to the day he asked for this loan, Mr S had 9 payday loans deposited into his account. These were deposited regularly with his last being the day before he requested this loan. I can see more likely than not that he was using payday loans to cover a shortfall in his income, due to him gambling. During the same period, he spent £5100 in 26 gambling transactions. Mr S was having significant problems with his finances at the time he contacted TM Advances. In these circumstances, it is apparent to me that Mr S was unlikely to have been able to repay the loan without borrowing further or experiencing financial difficulty.*

*Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have shown TM Advances that Mr S would not have been able to sustainably repay this loan. So, I'm satisfied that TM Advances' failure to carry out proportionate checks resulted in it unfairly providing this loan to Mr S.*

*So, I am currently minded to conclude that TM Advances needs to put things right for the reasons given above."*

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision. TM Advances responded and asked for an ombudsman to review Mr S's complaint again but it had no further comments. Mr S also responded to say he was happy with the findings and also had no further comments.

### **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.

Both parties have not made any further points. So, as neither party has anything further to add, I don't see any reason to depart from my findings within my provisional decision. With that being the case, TM Advances now needs to put things right.

### **Putting things right**

In line with this Service's approach, Mr S shouldn't repay more than the capital amount he borrowed for the loan. TM Advances should:

- add up the total amount of money Mr S received as a result of being given the loan. The payments Mr S made should be deducted from this amount. Any payments made after the total repaid exceeds the amount Mr S was given should be treated as overpayments and refunded to him;
- add interest at 8% per year simple on any overpayments from the date they were paid by Mr S to the date of settlement†;

- remove any adverse information placed on Mr S's credit file because of the loan.

\*HM Revenue & Customs requires TM Advances to take off tax from this interest. TM Advances must give Mr S a certificate showing how much tax it's taken off if he asks for one

### **My final decision**

My final decision is that I uphold Mr S's complaint and direct TM Advances Limited to put things right as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 April 2022.

Mark Richardson  
**Ombudsman**