

## The complaint

Mr B complains that three loans he took out with TM Advances Ltd were unaffordable and should not have been provided.

## What happened

Mr B has a professional representative in bringing this complaint, but for clarity I'll refer to their representations as his own.

Mr B took out three loans as follows:

- 21 June 2016 (Loan 1) was for £1,500 to be repaid at £173.75 a month over 24 months. The APR was 232.7% and total amount repayable was £4,170.
- 29 November 2017 (Loan 2) was for £3,000 to be repaid at £255.83 a month for 36 months. The APR was 151.6% and total amount repayable was £9,209.88.
- 8 August 2018 (Loan 3) was for £1,500 to be repaid at £159 per month for 30 months. The APR was 213.5% and total amount repayable was £4,770.

Mr B says he was in a cycle of debt and that TM Advances didn't undertake sufficient affordability checks when he took out these loans. He says given his circumstances he should have been directed to free debt advice rather than lent to further as a solution to his increasing debt. Mr B has since proposed a debt management plan.

TM Advances says it verified Mr B's income for each application and undertook credit searches. It found Mr B's explanation for the defaults on his credit file reasonable – that he had needed frequent trips abroad to visit his mother when she was unwell. TM Advances also said Mr B's credit balances had decreased between each loan and there was no reasonable indication that the loan repayments were not affordable.

When Mr B complained to our service, the investigator upheld the complaint. They didn't think TM Advances had lent responsibly in the circumstances.

As TM Advances didn't respond, the case was passed to me for a decision.

I asked Mr B for some more information about his financial activity in the months leading up to Loan 3 and how gambling had affected his finances at the time. Mr B said he was under great pressure and stressed when he took out Loan 3. He said he was in a 'bad state' and gambled to have enough money to pay his debts but he ended up in more debt. Mr B said he used the Loan 3 funds to gamble and was left in a worse position.

I issued my provisional decision on 20 May 2022 explaining why I was intending to uphold the complaint.

Mr B didn't respond by the deadline, and TM Advances didn't provide any further information. So, I'm now in a position to issue my final 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.

The relevant regulations and guidance are included in the Financial Conduct Authority's Consumer Credit Sourcebook (CONC). TM Advances was entering a regulated credit agreement and it was required to take reasonable steps to be satisfied Mr B would be able to make repayments sustainably without having to resort to further finance.

Checks had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer. For example, their financial history, any foreseeable changes in future circumstances, and any indications of vulnerability or financial difficulty. The amount, type, length of borrowing and cost of credit they have applied for would also be considered.

In light of this, I think the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way, the more thorough a reasonable and proportionate check ought to have been.

I will set out my findings for each loan.

### Loan 1 – June 2016

When assessing this application, TM Advances undertook a review of Mr B's credit report. This showed 7 defaulted accounts with a total balance of £3,686. Whilst Mr B did provide some context for why he had accumulated this debt, TM Advances would still need to have considered what this meant for his financial stability and ability to repay any further loans.

Mr B included £184.30 expenditure towards his defaulted accounts on his income and expenditure assessment as part of his application. However, Mr B's credit report showed that little or no payments had been made towards reducing the balance of his defaulted accounts since defaulting. TM Advances assessment of Mr B's financial circumstances found he had £297 disposable income.

Looking at this information as a whole, I think the information TM Advances had at the time of lending showed Mr B was having trouble managing his money. He had not been reducing his defaulted balances by the amount on his application and his level of debt / lack of reduction in debt levels over the previous months was inconsistent with having £297 disposable income. So, by lending to Mr B in the circumstances I think TM Advances increased his overall indebtedness and worsened his financial situation. I think it had enough information to conclude Mr B would be unlikely to be able to sustainably repay this lending.

### Loan 2 – November 2017

At the time of this application, Mr B had reduced his total defaulted balance and broadly maintained repayments for loan 1. However, I think TM Advances should still have identified that Mr B was continuing to have problems managing his money for the following reasons:

- A further default had been registered in March 2017 for £134.
- Mr B had opened a new credit card account in January 2017 with a limit of £200 which had been exceeded at the time of this application.

- Four default balances remained.

The above information was inconsistent with TM Advances assessment that Mr B had £699 monthly disposable income. And I think a further default without explanation ought to have caused concern.

It isn't enough for TM Advances to consider the risk to itself as a lender based on previous repayments. Whilst this is of course relevant, the other information speaks to Mr B's ability to sustainably repay this loan without it having a detrimental impact on servicing his existing debts, meeting his day to day expenditure, and not relying on further lending to do so.

There were clear signs of unsustainability at the time and so I don't think it was responsible to provide this lending.

### Loan 3 – August 2018

At the time of this application, Mr B had reduced his outstanding debt and met his repayments for Loan 2. However, he still had three defaulted accounts and had further exceeded his credit card balance. This was inconsistent with assessing Mr B's disposable income as £394 – particularly given the amount he was exceeding his credit card limit by was approximately £50. So, I think there were indicators that Mr B continued to have some financial instability, but on balance, not enough to say TM Advances should not have lent to Mr B. Rather, I think it would have been appropriate to undertake further checks to establish what Mr B could have afforded to sustainably repay.

We can't now know for certain exactly what those further checks would have been, but I think TM Advances needed to do more to verify Mr B's expenditure – and so it's likely this would involve reviewing some recent bank statements. I've considered Mr B's statements from the time as a way of understanding more about his financial situation. And therefore, what proportionate checks by TM Advances would likely have shown.

In the three months leading up to this application Mr B's statements show significant levels of gambling – on average gambling much more than his income. Sometimes working out well and in other months such as in July 2018 he received no winnings into his account. The level of activity indicates Mr B had a problem with gambling that was impacting his financial stability. For example, in May 2018 he spent over £10,000.

On balance, I think it's likely that proportionate checks would have shown that Mr B could not sustainably repay this further lending and so I don't think it was responsible for TM Advances to have provided this loan.

### **Putting things right**

It isn't possible to put Mr B back in the position he would be in had TM Advances not provided the lending, so I think a fair way to put matters right is for it to remove any interest or charges applied to the loans and pay this to Mr B. TM Advances should also amend Mr B's credit file to remove any adverse information.

I've also taken into account the fact that while Mr B has received the loan funds, Loan 3 was all lost to gambling. His statements show that on 8 August 2018 Mr B receives the £1,500 loan and that on the same day he pays £1,504 to a gambling website. Given the level of gambling on Mr B's account, I think that had TM Advances undertaken proportionate checks, it would have been foreseeable that Mr B would likely use the funds to gamble and therefore that they may be lost. For this reason, I also think it would be fair for any outstanding amount on Loan 3 to be written off.

## **My final decision**

My final decision is that I uphold this complaint and that TM Advances Limited should:

1. If the borrowing on loan 3 is still in place, write off the outstanding balance.
2. Refund all the interest and charges Mr B has paid to date
3. Pay simple interest at 8% on the amount in point 2, from the date there would have been a positive balance on each loan as a result of this until the date of settlement\*.
4. Remove any adverse information recorded on Mr B's credit file

\* HM Revenue & Customs may require the business to take off tax from this interest. If it does, TM Advances Limited must give Mr B a certificate showing how much tax it's taken off if he asks for one.

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

Stephanie Mitchell  
**Ombudsman**