

The complaint

Miss S complains that TM Advances Ltd lent to her irresponsibly and without carrying out proper affordability checks. She would like all the fees and charges associated with the loan refunded.

What happened

In October 2019 TM Advances approved a loan of £3,000 for Miss S, which was scheduled to be repaid at approximately £249 per month over a term of 40 months. The purpose of the loan is not entirely clear, although it seems that most of it was intended to be used to consolidate debt. When assessing the application, TM Advances asked Miss S about her financial circumstances; looked at a recent bank statement; and carried out a credit check before approving the lending.

It would appear that Miss S was unable to make repayments and the account is/has been subject to debt management processes, and a balance remains.

The adjudicator looked at the evidence and thought TM Advances shouldn't have approved the lending for Miss S. TM Advances disagreed and asked an ombudsman to look at the complaint.

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.

Having done so, I'm upholding it, and I'll explain why.

TM Advances is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Miss S would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that she could manage the repayments,

"...without...incurring financial difficulties or experiencing significant adverse consequences"

Essentially, she needed to be able to meet her financial commitments and not have to borrow elsewhere to repay TM Advances for the loan to be considered affordable and sustainable.

There are two questions I need to consider when deciding this case, which I will deal with separately below.

Did TM Advances carry out proportionate checks before granting this loan?

The adjudicator thought that TM Advances should have done more in-depth checks before

approving this lending, and gathered more information. I don't disagree with this, in the sense that TM Advances could have tried to gather information which would have supported its decision to lend. The information it did have very strongly suggested the borrowing was neither affordable nor sustainable for Miss S. So, it should have either declined the application based on what it had, or sought further evidence in the hopes of establishing an overall more positive financial situation for Miss S. It did neither.

As part of this investigation, Miss S has provided us with some longer term bank statements, showing patterns of borrowing from family and friends. In addition, she's sent us confirmation of additional borrowing around the time of this application, which therefore means her debt repayment was even higher than TM Advances' checks showed.

Was TM Advances right to conclude that the lending was affordable and sustainable for Miss S? And what would additional information have likely shown it?

Had TM Advances gathered more information about Miss S' financial situation, that information is very likely to have simply confirmed what the existing evidence already showed. Namely, that Miss S was in widespread financial difficulties and that this borrowing was neither affordable nor sustainable for her.

I'll summarise the key issues, most of which can be seen from the evidence TM Advances had.

- The front page of the credit report it received contained several large warnings, in capital letters, that Miss S was a "very high risk" potential borrower. It says, *"The majority of applicants for credit with this score will experience serious repayment problems if the application is accepted."*
- The bank statement showed recent borrowing from, and large repayments to, about seven other high cost short term lenders, and payments to at least two different debt recovery companies. In the month shown on the statement, Miss S paid out more than £2,150 *just* to high cost short term lenders, over and above other credit commitments.
- The bank statement also shows apparent borrowing from friends and family – a long standing pattern that was confirmed by additional bank statements going back further than the one month statement TM Advances saw. This borrowing was for significant amounts every month.
- TM Advances completed an income and expenditure (I&E) assessment using a monthly income of £3,085. However, the pay slips Miss S provided it showed *"headline annual pay"* of £32,166, which would equate to significantly less than £3,085 per month. It is clear that Miss S received extra amounts on whichever month the pay slip is from (there is no date, or indeed Miss S' details on it) via overtime etc. And there is a different (in fact higher) amount again showing on the bank statement. So Miss S' actual average monthly income is entirely unclear.
- Even if you accept £3,085 as an average monthly income (which I don't), the I&E clearly significantly underestimates Miss S' monthly debt burden at £1,285. The bank statement shows that in the month leading up to this application Miss S spent over double that – £2,564 – on credit repayments. That figure *does not* include repayments to family and friends. Her bills and every day expenses were estimated at £1,800. Therefore the evidence shows no disposable income at all, and indeed that her outgoings substantially exceeded her income, by well over £1,000.

TM Advances doesn't accept that this complaint should be upheld, and says that it asked whether Miss S had any debts to friends or family, although I can't see any note of that on the application data from the time. Whether it did or not, and whether Miss S told the truth or not, is of no relevance to the outcome of this case. The bank statement it had showed TM Advances that Miss S had no disposable income, quite the reverse. The later evidence to show the heavy borrowing from friends and family only serves to underline what ought to have been evident from the information at the time. I have additionally considered that the bulk of Miss S' credit repayments were to high cost short term lenders – meaning that potentially the bank statement represents an anomaly, and generally she wasn't so indebted. Whilst that's possible, it isn't what the evidence suggests. The credit check in fact shows repeated high cost short term borrowing as a pattern.

Finally, I have thought about the fact that it does appear that at least some of this borrowing was intended to consolidate other lending. It seems that TM Advances calculated that Miss S' monthly debt burden would be reduced by £768 through the settling of other accounts. However, given that the bank statement shows monthly expenditure of over £2,500 in credit repayments, even taking into account the potential for savings through consolidation, that would still have resulted in a likely credit burden of over £1,700 per month. Taken together with her estimated day to day bills and expenses at £1,800, even if she had consolidated other accounts as expected, her outgoings would have continued to exceed her income.

In summary, all the evidence shows that Miss S was experiencing sustained and substantial financial difficulties, and that this borrowing could in no way be described as affordable and sustainable for her. It therefore follows that I uphold this complaint.

Putting things right

As I understand it, the outstanding balance on this loan is still owned by TM Advances, and has not been sold to a third party. On that basis, I direct TM Advances to do the following:

- A) TM Advances must remove all interest, fees and charges from the balance on the outstanding loan, and treat any repayments made by Miss S as though they had been repayments of the principal on the outstanding loan.
- B) If this results in Miss S having made overpayments then it must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the payments were made, to the date the complaint is settled.
- C) If there is still an outstanding balance following the actions set out in "A", then TM Advances should agree a suitable repayment plan with Miss S. I remind it of its obligation to treat her fairly in so doing.
- D) It must remove any adverse information recorded on Miss S' credit file in relation to this loan, once it has been repaid.

*HM Revenue & Customs requires TM Advances to deduct tax from this interest. It should give Miss S a certificate showing how much tax it's deducted, if she asks for one.

My final decision

For the reasons I've explained, I uphold this complaint and direct TM Advances Ltd to put things right as set out above .

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

Siobhan McBride

Ombudsman