DRN-3652529

Complaint

Mr S has complained that TM Advances Limited ("TM Advances") provided him with an unaffordable loan.

Background

TM Advances provided Mr S with a loan of £4,000.00 in May 2018. This loan had an APR of 121.7% and a 45-month term. This all meant the total amount repayable of £13,005.00 was due to be repaid in 45 monthly instalments of £289.

One of our adjudicators looked at this complaint and thought that TM Advances unfairly provided this loan to Mr S as proportionate checks would have shown it was unaffordable.

TM Advances disagreed with our adjudicator 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.

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 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 S' complaint. These two questions are:

1. Did TM Advances complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay his loan in a sustainable way?

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

2. Did TM Advances act unfairly or unreasonably in some other way?

Did TM Advances complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay his loan in a sustainable way?

TM Advances provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required TM Advances to carry out a reasonable and proportionate assessment of Mr S' ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

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

In other words, it wasn't enough for TM Advances to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr S. 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 TM Advances' checks reasonable and proportionate?

TM Advances says that it carried out an income and expenditure assessment with Mr S prior to providing him with this loan. It also carried out a credit check. Mr S' income was recorded as being £6,000.00 a month and he had expenditure of just under £4,000 a month. TM Advances' verified Mr S' income with payslips. In its view, all of this left Mr S with sufficient disposable income to make the repayments to this loan.

I've carefully considered what TM Advances has said. But the credit check it carried out showed Mr S was carrying quite a bit of debt and had taken out a lot of recent credit. Mr S may have had a relatively high monthly salary, but I think that the information on the credit check was enough to call into question the expenditure information provided. Indeed, I have to question why Mr S would need to borrow on such disadvantageous terms if he had close to this amount available in disposable income in the first place. In these circumstances, I think that TM Advances needed to take steps to verify Mr S' actual monthly expenditure.

As I can't see that this TM Advances did do this and instead chose to rely on what looked to have been an overoptimistic assessment of Mr S' disposable income, I don't think that the checks it carried out before providing Mr S with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to TM Advances that Mr S would have been unable to repay this loan?

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. Having done so, it's clear that while Mr S' had a relatively high income, he had a high level of expenditure too. Indeed he was regularly overdrawn and was borrowing from a number of different short-term lenders in order to try and meet his commitments. And I think the proportionate checks would have shown TM Advances that he was likely to use this loan for similar purposes, or to at least cover the hole this left in his finances, which meant he was unlikely to be able to make his payments without borrowing further or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr S would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted TM Advances to the fact that Mr S was in no sort of position to make the payments on this loan without suffering significant adverse consequences.

Did TM Advances act unfairly or unreasonably towards Mr S in some other way?

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

Did Mr S lose out as a result of TM Advances unfairly providing him with this loan?

As Mr S 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 TM Advances did wrong.

So I think that TM Advances needs to put things right.

Fair compensation – what TM Advances needs to do to put things right for Mr S

Having thought about everything, TM Advances should put things right for Mr S by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr S made, whether to TM Advances or any third-party debt purchaser, should be deducted from the new starting balance – the £4,000.00 originally lent. If

Mr S has already repaid more than £4,000.00 then TM Advances should treat any extra as overpayments. And any overpayments should be refunded to Mr S;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr S to the date of settlement†

- if no outstanding balance remains after all adjustments have been made, all adverse information TM Advances recorded about this loan should be removed from Mr S' credit file.

† 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 has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr S' complaint. TM Advances 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 S to accept or reject my decision before 16 September 2022.

Jeshen Narayanan
Ombudsman