

## The complaint

Mr D says TM Advances Limited irresponsibly lent to him.

## What happened

Mr D took out a 40-month instalment loan from TM Advances on 27 September 2021. It was for £3000 and the monthly repayments were £249. The total repayable was £9,960.

Mr D says TM Advances didn't look at his current circumstances before lending to him. He was experiencing financial difficulties and even a cursory glance at his credit file would have shown that he could not take on this loan. This has affected him financially and emotionally.

Our adjudicator found that the loan should not have been given. She said the checks TM Advances carried out showed that the loan would not be sustainably affordable for Mr D.

TM Advances disagreed saying the loan was given to allow Mr D to settle his existing loans and break the cycle of debt he was trapped in. The monthly repayment was more sustainable than the payday loans Mr D was using, allowing him to repay this type of more expensive debt. It asked for an ombudsman to review 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when TM Advances lent to Mr D required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So TM Advances had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr D. 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 D.

Checks also 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 (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.

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 repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether TM Advances did what it needed to before agreeing to lend to Mr D. So to reach my conclusion I have considered the following questions:

- did TM Advances complete reasonable and proportionate checks when assessing Mr D's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did TM Advances make a fair lending decision?
- did TM Advances act unfairly or unreasonably in some other way?

I can see TM Advances asked for certain information from Mr D before it approved the loan. It asked for details of his income and living expenses. It carried out an opening banking check and so had sight of the income and outgoings from his primary current account. It checked his credit file to understand his existing monthly credit commitments and credit history. It asked about the purpose of the loan which was debt consolidation. From these checks combined TM Advances concluded the loan was affordable for Mr D.

I'm satisfied the checks were proportionate. But, on balance, I don't think that TM Advances made a fair lending decision. I'll explain why.

TM Advances understood Mr D's income to be £3,670 and his contribution to housing, living and childcare costs to be £2,200. It calculated his monthly credit commitments would fall to £179.25 after taking out this loan and repaying some of his other debt. So it found Mr D had the disposable income to afford this loan.

But TM Advances was obliged to carry out borrower-focused checks to make sure the loan could be repaid sustainably, not just to demonstrate the loan was affordable on a pounds and pence basis. I can't agree TM Advances did this. It argues Mr D was repaying more expensive debt but I can't see it knew this. The handwritten notes on its credit check show it understood Mr D was repaying two credit cards that were overlimit and one loan that had an 11-month term, rather than multiple payday loans. This debt totalled around £2,260 so I accept he may also have repaid some payday loans that don't show on his credit report.

But in the round I am not persuaded by TM Advances argument that its loan was not financially detrimental Mr D. It could see from its open banking check that he was heavily reliant on payday loans having used 32 such loans in the six months prior to application. In addition it knew from his credit file he was more than £2,000 overdrawn. This loan was not being used to repay that debt, even in part, and so he would by default be borrowing to repay as he would most likely need to continue to rely on his overdraft facility to make the repayments of this loan.

In the circumstances I don't think TM Advances has evidenced that it got the reassurances it

needed that this lending would not be unsustainable for Mr D.

It follows I think TM Advances was wrong to lend to Mr D.

### **Putting things right**

I think it's fair and reasonable for Mr D to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr D made as payments towards the capital.
- If reworking Mr D's loan account results in him having effectively made payments above the original capital borrowed, then TM Advances should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement\*.
- If reworking Mr D's loan account results in there being an outstanding capital balance TM Advances should agree an affordable repayment plan with Mr D.
- Remove any adverse information recorded on Mr D's credit file in relation to the loan once any capital balance outstanding is repaid.

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

### **My final decision**

I am upholding Mr D's complaint. TM Advances Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 May 2023.

Rebecca Connelley  
**Ombudsman**