

The complaint

Mr P complains that TM Advances Limited was irresponsible to lend to him.

What happened

Mr P Borrowed £1,500 from TM Advances on 14 June 2021. His repayments were £159 monthly for 30 months.

Mr P's representative says that his credit file at the time of the lending shows clear indications that he was already dependent on borrowing and that further lending was irresponsible.

Our investigator recommended the complaint should be upheld. He found that Mr P would be heavily committed to credit repayments and had only recently taken out three high-cost loans. He recommended that TM Advance should refund all interest and charges on the loan and remove any adverse information from his credit file.

TM Advances responded to say, in summary, that the loan gave Mr P the opportunity to break the cycle of short-term lending and therefore put him in a better financial situation.

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.

I need to take into account the relevant rules, guidance and good industry practice.

The Financial Conduct Authority (FCA) was the regulator when TM Advances lent to Mr P. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that TM Advances needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.2A.4R states that:

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

- 1. entering into a regulated credit agreement; or*
- 2. significantly increasing the amount of credit provided under a regulated credit agreement.*
- 3. significantly increasing a credit limit for running-account credit under a regulated credit agreement.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income without the customer having to borrow to meet the repayments, without failing to make any other payment the customer has a contractual or statutory obligation to make and without the repayments having a significant adverse impact on the customer's financial situation (CONC 5.2A.12R).

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person'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 credit is likely to be greater and the borrower's required to make payments for an extended period).

In addition, as per CONC 5.2A.16G (3): *For the purpose of considering the customer's income, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).*

And CONC 5.2A.17R (2) says: *The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.*

Bearing all of this in mind, in coming to a decision on Mr P's case, I have considered the following questions:

- Did TM Advances complete reasonable and proportionate checks when assessing Mr P'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?

When Mr P applied for the loan, I've seen evidence to show TM Advances asked about his financial circumstances, checked his credit file and verified his income. I can also see that TM Advances had access to Mr P's bank account, so I'm satisfied it completed proportionate checks.

However, I don't consider TM Advances made a reasonable lending decision when it approved Mr P's loan application. I say that because:

- The loan was for a period of 30 months and TM Advances needed to ensure the repayments were sustainable over that period;

- Although Mr P's accounts were up to date, the credit check showed he had taken out two high cost loans and a credit card in the last five months with a combined balance of over £4,000;
- His bank account details showed 12 returned payments within the last three months;
- Mr P was making significant payments to Buy Now Pay Later agreements;

In summary, Mr P was showing clear signs that he was already struggling financially and that it was irresponsible to lend him a further £1,500.

I acknowledge TM Advances says the loan gave Mr P an opportunity to break the cycle of high cost borrowing, but I can't agree that is the case given what I can see on his credit file. Indeed, I note TM Advances said the purpose of the loan was to fund the purchase of a car.

So, based on all the evidence, I find TM Advances did not make a fair lending decision for the loan, although I can't see it acted unfairly in any other way.

My final decision

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

- Add up the total amount of money Mr P received as a result of having been given the loan. The repayments Mr P made should be deducted from this amount.
 - If this results in Mr P having paid more than he received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). *
 - If any capital balance remains outstanding, then TM Advances should attempt to arrange an affordable and suitable payment plan with Mr P;
- Remove any negative information recorded on Mr P's credit file regarding the loan.

* HM Revenue & Customs requires TM Advances to take off tax from this interest. TM Advances must give Mr P 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 P to accept or reject my decision before 18 May 2023.

Amanda Williams
Ombudsman