DRN-4353990

Complaint

Miss B has complained that TM Advances Limited ("TM Advances") irresponsibly provided her with an unaffordable loan when she was already struggling as result of excessive gambling.

Background

TM Advances provided Miss B with a loan of £3,000.00 in March 2018. This loan had an interest of £6,209.88 and a 36-month term. This all meant the total amount repayable of £9,209.88 was due to be repaid in 36 monthly instalments of £255.83.

One of our adjudicators looked at this complaint and thought that TM Advances unfairly provided this loan to Miss B as proportionate checks would have shown it was unaffordable. TM Advances didn't respond to the assessment. So the case was passed to an ombudsman for review as per the next stage of our dispute resolution process.

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 Miss B'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 Miss B's complaint. These two questions are:

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

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Miss B 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 Miss B would be able to repay her 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 Miss B'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 Miss B*. In practice this meant that TM Advances had to ensure that making the payments to the loan wouldn't cause Miss B 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 Miss B. 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 Miss B prior to providing her with this loan. It also carried out a credit check. Miss B's income was recorded as being £3,700.00 a month and she had expenditure of just under £2,200.00 a month. In its view, all of this left Miss B 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 Miss B was carrying quite a bit of debt and had had previous difficulties repaying credit. So 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 Miss B would need to borrow on such disadvantageous terms if she had as much as TM Advances says she had available in disposable income in the first place.

I appreciate that TM Advances says that it asked Miss B about her indebtedness and her previous difficulties with credit. And Miss B explained that her defaults, which although they occurred in 2014 were still active, were as a result of being out of work and the high usage of high-cost short term credit was down to helping a family member and vet bills. But given just how long Miss B appeared to be struggling despite, on TM Advances' calculations having over £1,500.00 in disposable income, I don't think that this explanation could reasonably be taken to be credible. And I think that TM Advances needed to take further steps to verify Miss B's actual monthly expenditure.

I say this while particularly mindful that TM Advances says Miss B would be consolidating debt that was subject to cost-caps, on a much more expensive basis and over a longer term. As I can't see that TM Advances did do this and instead chose to rely on what looked to have been an overoptimistic assessment of Miss B's disposable income, I don't think that the checks it carried out before providing Miss B with her loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to TM Advances that Miss B 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 Miss B would have been unable to sustainably repay this loan.

TM Advances was required to establish whether Miss B could make her 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 Miss B had a high level of expenditure. Her use of credit from short-term lenders was even more extensive than what had appeared on the credit searches. And it's pretty clear and apparent just why this is the case. So I think that proportionate checks would have shown TM Advances that Miss B was unlikely to be able to make her 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 Miss B 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 Miss B 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 Miss B 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 Miss B in some other way. So I don't think TM Advances acted unfairly or unreasonably towards Miss B in some other way.

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

As Miss B paid and is still being expected to pay a high amount of interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she 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 Miss B

Having thought about everything, TM Advances should put things right for Miss B by:

- refunding all interest, fees and charges Miss B pad on this loan.
- adding interest at 8% per year simple on any refunded payments from the date they were made by Miss B to the date of settlement†
- removing all adverse information recorded about this loan from Miss B's credit file.

† HM Revenue & Customs requires TM Advances to take off tax from this interest. TM Advances must give Miss B a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss B'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 Miss B to accept or reject my decision before 30 October 2023.

Jeshen Narayanan
Ombudsman