DRN-4774191

The complaint

Mr M complains through a representative that Savvy Loan Products Limited trading as Tick Tock Loans ("Tick Tock") gave him loans without carrying out sufficient affordability checks.

What happened

A summary of Mr M's borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£300.00	14/10/2022	20/01/2023	6	£82.07
2	£400.00	22/02/2023	21/07/2023	3	£124.84

Following Mr M's complaint, Tick Tock considered explained it had made a reasonable decision to lend and so it didn't uphold it. Unhappy with this response, Mr M's representative referred his complaint to the Financial Ombudsman.

The complaint was considered by an investigator, who upheld the complaint about loan 2 only. The investigator concluded the credit check results received by Tick Tock for loan 2 showed he was likely having financial difficulties due the volume of recently opened loan accounts. Taking account of the cost to service Mr M's existing credit facilities along with what Tick Tock calculated as his rent and living costs he didn't have enough money to repay the loan.

Tick Tock didn't agree with the assessment to uphold loan 2 saying and said, in summary;

- Mr M's credit report did indicate that he may have been utilising credit to manage his monthly expenses, - but this was a strategy often used by customers.
- There were no defaults or delinquent accounts, and he had ample disposable income.
- Declining credit wouldn't have been the responsible course of action as it could've left him in a vulnerable position.
- Tick Tock has a month cooling off period between loans and this is a safeguarding measure.
- Based on its experience that an instalment loan typically has repayments of between 15% and 30% of the balance – and it provided its workings as to how it calculated Mr M's existing credit commitments.
- Taking account of the calculations that were used by Tick Tock, Mr M had more than enough disposable income to afford the loan.
- Mr M declared as part of his application that his housing costs were shared between two people – and Tick Tock could rely on what it was told.
- There was no indication Mr M was mishandling his finances – instead he was simply applying for loans. Which doesn't mean he was experiencing financial difficulties.

As no agreement could be reached, the case has been passed to me for a decision.

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.

We've set out our general approach to complaints about this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Tick Tock had to assess the lending to check if Mr M could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Tick Tock's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr M's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Tick Tock should have done more to establish that any lending was sustainable for Mr M. These factors include:

- Mr M having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- Mr M having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mr M coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr M. The investigator didn't consider it reached the point in the lending relationship where this applied and I agree, as there were only 2 loans.

Tick Tock was required to establish whether Mr M could *sustainably* repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr M was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr M's complaint.

I won't be reviewing loan 1 in this decision because the investigator didn't uphold it and neither Mr M (or his representative) or Tick Tock have disagreed with her findings. To me, it seems there is no longer any dispute about this loan and so I say no more about it.

Loan 2

Before this loan was approved, Tick Tock asked Mr M for details of his income, which he declared as being £2,200 per month. Tick Tock verified Mr M's income by obtaining copy payslips. Having reviewed these payslips Tick Tock could see Mr M's monthly income was

£2,088 and to err on the side of caution it was this smaller amount that was used as part of its affordability assessment.

Mr M also declared monthly outgoings of £650 – a significant decrease from loan 1 where he declared £925. It seems the majority of the decrease occurred because Mr M's living costs (excluding his credit commitments and housing cost) had decreased to only £50 per month from £325 at loan 1.

As part of the application, Tick Tock used data from the credit search it conducted – I go into more detail about this below - as well as using averages provided by a number of different organisations including the Office of National Statistics. Tick Tock calculated Mr M's monthly expenditure to be around £1,678 – and to this it added a further "*safety buffer*" of £132.96. After carrying out these checks, Mr M appeared to have sufficient disposable income to be able to afford the loan repayments – with or without the additional buffer.

Before the loan was approved Tick Tock carried out a credit search and it has provided a copy of the results it received from the credit reference agency. It is worth saying here that there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Tick Tock couldn't do is carry out a credit search and then not react to the information it received – if necessary.

Between loan 1 being repaid and loan 2 being advanced, Mr M made a number of loan applications – 8 in total to Tick Tock. Tick Tock says that these were automatically declined as they have a policy of not allowing relending within a month of a loan being repaid.

I have thought about that – but the number of applications made by Mr M along with what Tick Tock had seen in the credit file ought to have made it realise that, on balance, Mr M was using lending to fill a gap in his income and this is often a sign of financial distress. So, I don't agree with Tick Tock that he showed no indicators of being in difficulties.

Superficially the credit file didn't show any defaulted accounts, delinquent accounts and neither did he have any County Court Judgements recorded against him. And so, this may have indicated that Mr M was able to afford this loan.

However, Tick Tock was on notice that perhaps Mr M may have had difficulties managing his money given he had opened 12 new credit facilities within the previous 6 months – on average two per month. Tick Tock also ought to have been aware that the amount it used as part of its affordability assessment (for the credit commitments £567) wasn't precise.

Based on the credit search results, Mr M had 6 active loans, a credit card and an overdraft. Tick Tock has correctly calculated and taken on board four of the loan monthly repayments of £197, £94, £82 and £79 per month. These loans are visible in the credit file and so it's right that Tick Tock considered these.

However, there is one loan that was taken in December 2022 that according to the credit report had a monthly repayment of £202 – Tick Tock suggest that this loan had been repaid by the time it had advanced this loan. But that information wasn't reflected in the credit report and it doesn't appear from the information I've seen that further enquires were made with Mr M to establish if this was the case.

Mr M was granted another loan in January 2023., In response to the investigator, Tick Tock says it apportioned monthly repayments to this loan of £48. However, according to the credit report – the "*regular repayment*" was £200. And unless Tick Tock had any other information to hand, it ought to have gone with the information provided by the credit reference agency.

Therefore, taking account of the information Tick Tock used for his income of £2,088, living costs of £608, rent of £500 and the loan repayment of £124 this left Mr M with £856 to cover his existing credit commitments. Just his loan repayments came to £652 (and this excludes the December 2022 loan) but given the credit file says it was open and hadn't yet been repaid Mr M's commitments were likely to be around £852 plus the payments for his credit card.

I therefore do think, like the investigator that the information Tick Tock had to hand showed the second loan was unaffordable. But even, if the loan was just about pounds and pence affordable, that wasn't the only consideration Tick Tock had to make. It also had to consider whether the loan could be repaid sustainability, and the information Tick Tock had suggested this wouldn't be the case.

In addition to the reason, I've outlined above, Tick Tock was given information to suggest that in the six months preceding the second loan application he had actually settled at least 10 loan accounts – three were marked as payday loans but given the terms of the other loans these were also likely to be payday or high cost instatement loans. I've taken on board what Tick Tock says about Mr M's use of such accounts and how Mr M was managing his finances – that being he was just applying for loans. But I disagree with that interpretation of the evidence.

The sheer number of settled accounts followed by Mr M opening at least 12 accounts within six months and Mr M having 6 active loans accounts ought to have alerted Tick Tock that Mr M was likely experiencing financial difficulties and was having to borrow from other lenders in order to fill a hole in his living costs and / or to pay other loans – neither of which is sustainable. In these circumstances, I think Tick Tock ought to have realised it was unlikely Mr M would've been able to sustainably repay this loan.

I am therefore upholding Mr M's complaint about loan 2 because the checks Tick Tock carried out showed that Mr M would be unlikely to be able to afford his repayments in a sustainable manner.

Putting things right

In deciding what redress Tick Tock should fairly pay in this case I've thought about what might have happened had it not lent loan 2 to Mr M, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr M in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Tick Tock's liability in this case for what I'm satisfied it has done wrong and should put right.

Tick Tock shouldn't have given Mr M loan 2.

A. Tick Tock should add together the total of the repayments made by Mr M towards interest, fees and charges on loan 2, not including anything Tick Tock have already refunded.
B. Tick Tock should calculate 8% simple interest* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
C. Tick Tock should pay Mr M the value of "A" plus "B".
D. Tick Tock should remove any adverse information recorded on Mr M's credit file in relation to loan 2.

*HM Revenue & Customs requires Tick Tock to deduct tax from this interest. Tick Tock should give Mr M a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've outlined above, I am upholding Mr M's complaint in part.

Savvy Loan Products Limited trading as Tick Tock Loans should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 June 2024.

Robert Walker
Ombudsman