

The complaint

Ms H is complaining about TM Advances Limited because she says it lent irresponsibly by providing her with a loan she couldn't afford.

What happened

In November 2022, following her application, TM Advances provided Ms H with a loan of £1,500. This was repayable at £159 per month over 30 months. Based on an interest rate of 213%, the total amount repayable was £4,770.

Our investigator ultimately concluded the complaint should be upheld. She felt an appropriate affordability assessment should have led TM Advances to conclude loan repayments weren't affordable.

TM Advances didn't accept the investigator's assessment and made the following key points:

- Ms H's bank statements show she made a regular monthly payment to her mother. In making her application, she said this was a form of savings she could call upon when needed.
- The bank statements referred to by the investigator were considered before the loan was approved. These showed the money in Ms H's second account was mainly used for a holiday and that this was also the main reason Ms H's main account as overdrawn.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Ms H, TM Advances was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did TM Advances complete reasonable and proportionate checks to establish Ms H would be able to repay the loan in a sustainable way?
- If so, was the decision to lend fair and reasonable?

- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the loan was approved required TM Advances to carry out a proportionate and borrower-focused assessment of whether Ms H could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant TM Advances had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Ms H.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

TM Advances has described the information it gathered to assess whether Ms H's loan was affordable before it was approved. This included:

- information contained in her application, including housing costs, employment status and her income, which was separately verified;
- information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit, including missed payments and defaults; and
- an expenditure assessment using a combination of information obtained from the CRA, information provided by Ms H in her application, and a review of her recent bank statements.

TM Advances maintains its affordability assessment was proportionate to the loan being given and demonstrated it was affordable.

TM Advances' credit check highlighted Ms H had some past issues with credit, including three defaulted accounts with an outstanding balance of around £7,500. Two of these accounts were defaulted earlier in 2022 – one as recently as three months before the loan was agreed.

TM Advances appears to have asked Ms H about this and was told the defaults stemmed from a period when her partner was out of work, which was now resolved. But, nonetheless, I think such a recent history of issues meant TM Advances should have carried out a detailed assessment of her income and expenditure before agreeing further credit.

TM Advances has confirmed it reviewed Ms H's recent bank statements prior to approving the loan. In combination with the other information it obtained, I do believe it carried out a proportionate affordability assessment in this case that allowed it to make a decision on whether the loan was affordable. Where I disagree with TM Advances is on the issue of whether its affordability assessment actually showed the loan was affordable.

The statements for Ms H's main account show that in the months before the loan it was consistently overdrawn, mostly by an amount approaching £2,500. On the same date each month she received her wages and what appears to be a contribution from her partner towards the household bills. This returned the account to a positive balance of around £400

but shortly afterwards, once the mortgage and other main bills were paid, the account had an overdrawn balance of approaching £2,500 again. This was a consistent pattern throughout the period. The statements also show Ms H was paying interest of between £50 and £60 each month in relation to her use of the overdraft facility.

Ms H did have another account. While this had a significant balance of over £4,000 in August 2022, this was quickly spent on travel and from the middle of September, while the account didn't go overdrawn, only a minimal positive balance was maintained.

I think her bank statements show Ms H was living beyond her means and was unlikely to be able to afford an additional monthly payment of £159. In view of this and her recent credit issues, I don't think it was appropriate for TM Advances to provide the loan. I'm also conscious the stated purpose of the loan was home improvements rather than to pay off other credit, so the loan wouldn't be reducing any of her other outgoings.

I appreciate Ms H had spent a considerable sum on travel in the months before the loan, but that money was gone. Further, it doesn't appear her finances had recovered by the time of the loan as the overdraft on her main account hadn't reduced and she hadn't built a positive balance in her second account. I've also been mindful of TM Advances' comments about Ms H's 'savings' payments to her mother. But, possibly as a result of her travels, there's no evidence she had other money available beyond that shown in the statements provided. If she had done, I think it's unlikely she'd have been applying for a high-interest loan like this to cover the cost of her planned home improvements.

In summary, I think the evidence shows Ms H was living beyond her means and wasn't managing her finances particularly well. In the circumstances, I don't believe TM Advances' decision to lend was fair and reasonable. In my view, the information it obtained should instead have led it to decline Ms H's application. It's for this reason that that I'm upholding this complaint.

Putting things right

The principal aim of any award I make must be to return Ms H to the position she'd now be in but for the errors or inappropriate actions of TM Advances. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think TM Advances should have lent to Ms H, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, TM Advances now needs to take the following steps:

- Calculate the total of all Ms H's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).
- If this exceeds the £1,500 borrowed, any excess above £1,500 should be paid to her with simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires TM Advances to deduct tax from any interest. It must provide Ms H with a certificate showing how much tax has been deducted if she asks for one. If TM Advances intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Ms H's payments doesn't exceed the £1,500 borrowed, TM Advances should arrange an affordable payment plan with her for the shortfall.
- Remove any adverse information recorded on Ms H's credit file relating to this loan, once any outstanding balance has been repaid.

If TM Advances no longer owns the debt, it should liaise with whoever does to ensure any payments Ms H has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Ms H in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm upholding Ms H's complaint. Subject to her acceptance, TM Advances Limited should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 23 July 2024.

James Biles
Ombudsman