

The complaint

Mr B is complaining about Tymit Ltd because he says it lent irresponsibly by providing him with a credit card he couldn't afford.

What happened

In October 2021, Mr B opened a credit card account with Tymit. The initial credit limit was £1,500. This was never increased but I understand it was subsequently reduced to £1,400.

Our investigator concluded the complaint should be upheld. She didn't feel Tymit had provided sufficient evidence to demonstrate it carried out an appropriate affordability assessment. If it had done so, she thought it should have concluded Mr B couldn't afford further credit and declined to lend.

Tymit didn't accept the investigator's assessment. It says it carried out appropriate affordability checks and that, based on the information it saw, it's satisfied the credit was affordable and met its lending criteria. It says the credit limit offered was low compared to Mr B's declared income and that his credit score was also high. In the circumstances, it concluded no further checks were needed and there was no requirement to review Mr B's bank statements.

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 Mr B, Tymit 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 Tymit complete reasonable and proportionate checks to establish Mr B would be able to repay the credit 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 credit was approved required Tymit to carry out a proportionate and borrower-focused assessment of whether Mr B could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Tymit had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr B.

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.

Tymit has described the information it gathered to assess whether Mr B's credit was affordable before it was approved. This included information contained in his application about his income, along with information obtained from a credit reference agency (CRA). Tymit maintains its affordability assessment was proportionate to the credit being given and demonstrated it was affordable.

I've considered the submissions provided by Tymit carefully. It's told us Mr B declared his annual income to be £50,000 in his application. It hasn't provided a screenshot or any other evidence to demonstrate this but I've no reason to dispute it's accurate. As part of its checks, Tymit also says it contacted a CRA and this is something I'd have expected it to do. I think it should have at least obtained details of Mr B's existing credit commitments so it could take account of the debt he already had and how well he was managing this.

But beyond telling us Mr B's credit score was high and that the lending was consistent with its policy, Tymit hasn't provided any evidence to show what information from the CRA it actually saw. In the absence of information confirming what Tymit actually received from the CRA, I've referred to a credit report supplied by Mr B and bank statements for his accounts to obtain a picture of his existing commitments. I think this is a reasonable proxy for what I'd expect the checks Tymit says it completed would have shown.

This information shows Mr B already had multiple loans, with total repayments of more than £800 per month. The credit report also shows he already had four credit cards, although the outstanding balances aren't available. I think it would also have been relevant to note that two of the credit cards accounts were opened in July 2021 (only three months before the Tymit application) and one of the loans in June 2021 (only four months before). A credit check should also have shown that Mr B had three current accounts, all of which were overdrawn.

If Tymit's credit check had shown this information as I would expect it to have done, I think this should have prompted it to carry out further checks before agreeing to lend. In particular, I'm conscious Mr B appears to have been heavily indebted. And the fact he was using three overdraft facilities and had taken three lines of credit very recently should have been signs of potential financial difficulty that warranted further investigation. In the specific circumstances of case, and taking account of what the checks Tymit says it carried out are likely to have shown, I don't agree a proportionate affordability assessment was completed.

I can't know exactly what further checks Tymit might have carried out at the time, but I think a consideration of Mr B's actual income and expenditure would have been reasonable. So I've referred to his bank statements for the period prior to the lending to establish what

information could reasonably have been discovered. I'm not saying that's definitely how Tymit should have completed its affordability assessment but I think a review of the statements provides the kind of information about Mr B's income and expenditure that I would have expected it to consider.

A review of the statements appears to show Mr B's income was actually much lower than the £50,000 Tymit says he declared in his application. Instead his monthly net income from employment was £2,349, which I estimate means his gross earnings were closer to £35,000.

The statements also show that on all three of his current accounts Mr B was consistently overdrawn by a combined total of up to £5,000 at any one time and that he wasn't able to return his main account to a positive balance even after receiving his wages. In my view, this shows Mr B was living beyond his means and wasn't managing his money well.

In making his complaint, Mr B also said he was gambling heavily and that this is how he'd used much of the money he borrowed earlier in the year. The statements provided appear to support this and in the months of August and September 2021 alone – immediately before he applied to Tymit, I counted 14 separate payments to online gambling sites totalling £985.

If Tymit had discovered this information through completing a proportionate affordability assessment, it's my view that it should have concluded it wasn't appropriate to provide further credit for Mr B.

In summary, I don't think Tymit carried out a reasonable and proportionate affordability assessment before lending to Mr B. If it had done, I believe the information it would have obtained should have led it to conclude that it wasn't responsible to offer him further credit and to decline to lend.

Putting things right

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

Because I don't think Tymit should have lent to Mr B, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

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

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the account was opened.
- If the reworking results in a credit balance, this should be paid to Mr B with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

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

- Or, if after the reworking there's still an outstanding balance, Tymit should arrange an affordable payment plan with Mr B for the shortfall.

- Remove any adverse information recorded on Mr B's credit file relating to this credit, once any outstanding balance has been repaid.

If Tymit no longer owns the debt, it should liaise with whoever does to ensure any payments Mr B 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 Mr B in the circumstances of his 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 Mr B's complaint. Subject to his acceptance, Tymit Ltd should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 September 2024.

James Biles
Ombudsman