complaint

In summary, Miss F has complained that DTW Associates Limited (DTW), trading as Auto Advance Logbook loan, provided her with three loans when she wasn't able to afford them.

background

In January 2017 DTW provided Miss F with a loan for £1,880 repayable over 24 months. It was a high interest loan with an interest rate of 166.90% APR. The total charge for the credit was £2,594.56, which meant the total amount repayable by Miss F for the £1,880 she was borrowing, was £4,474.56. The monthly repayments were £186.44.

In September 2017 DTW provided Miss F with a second loan for £1,000 repayable over 18 months. It was also a high interest loan with an interest rate of 230.03% APR. The total charge for the credit was £1,260.08, which meant the total amount repayable by Miss F for the £1,000 she was borrowing, was £2,260.08 The monthly repayments were £125.56.

In October 2017 DTW provided Miss F with a third loan for £1,800 repayable over 18 months. It was a high interest loan with an interest rate of 176.59% APR. The total charge for the credit was £1,863 which meant the total amount repayable by Miss F for the £1,800 she was borrowing, was £3,663. The monthly repayments were £203.50.

In its response to Miss F's complaint, DTW explained that it carried out suitability and affordability checks on the loan applications. It went on to say that it verified her income and expenditure. And it had included the recorded all her monthly outgoings. It said her credit report score had improved over the time period of the applications. It couldn't uphold her claims.

Miss F's concerns were investigated by one of our adjudicators. He didn't think DTW had carried out proportionate checks for loan 2. He thought it should have realised given the proportion of Miss F's income expended on gambling, that she was unlikely to have been able to sustainably repay the loans.

In response, DTW said in respect of loan one, it had considered her gambling. In summary from the information it had, it didn't think it was predictable that the loan would be unaffordable. And it went on to say there were no guidelines as to how a regulated company should view gambling.

In respect of loan 2 her credit score had increased it there was nothing to suggest it was predictable that the loan would be unaffordable.

With regard to the third loan, it could see from Miss F's bank statements that she had borrowed money and gambled those funds immediately. This should have indicated there were problems ahead. It concluded the loan shouldn't have been approved.

In response the adjudicator said his response remained the same. He said that Miss F's gambling indicated a pattern of spending that wasn't sustainable. And there were no set rules regarding acceptable levels of gambling. He asked for a breakdown in relation to the offer for loan 3.

As no response was received from DTW, the case has been passed to me for review.

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 approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Miss F's complaint.

In its response to the adjudicator's assessment, DTW accepted that it shouldn't have lent Miss F the monies in respect of loan 3. I don't therefore need to decide if the loan was affordable for Miss F, as DTW accepts that it shouldn't have provided her with that loan. The focus of my decision therefore, will be on the affordability of loans 1 and 2, and any redress that needs to be paid to Miss F.

Having reviewed everything I've been provided, I've decided to uphold Miss F's complaint. I'll explain why.

There are several questions that I've thought about when deciding if DTW treated Miss F fairly and reasonably when it provided her with the three loans.

1) Did DTW complete reasonable and proportionate checks to satisfy itself that Miss F would be able to repay her loans in a sustainable way?
2) If not, what would reasonable and proportionate checks have shown at the time?
3) Ultimately, did DTW make fair lending decisions?
4) Did DTW act unfairly or unreasonably in some other way?

Did DTW complete reasonable and proportionate checks to satisfy itself that Miss F would be able to repay her loans in a sustainable way?

The rules that DTW had to follow, required it to carry out checks that would enable it to reasonably assess, whether Miss F could afford to repay the loans she was wanting to take out. This is often referred to as an "*affordability assessment*".

The rules don't set out what specific checks it needed to carry out, but it did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of DTW's checks needed to reflect the nature of the loans, bearing in mind things such as the amount of credit, the interest rates, the duration of the loans, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks DTW to be carried as part of its affordability assessments, needed to be "borrower focussed". What I mean by this is that the checks needed to consider whether paying the loans back would cause Miss F any difficulties or have any adverse consequences for her. It would also need to take into account factors such as the amount of money being lent, the term of the loan and the monthly repayments, total charge for the credit and the interest rate being charged. This isn't an exhaustive list.

And as a result of the above I think a reasonable and proportionate check needed to be more thorough if Miss F had a low income. This would reflect that it could be more difficult for her to make the loan repayments with a low income.

It would also need to be more thorough the higher the amounts she had to repay, as it would be more difficult to make higher loan repayments on a given income.

The length of the loan term would also be relevant, partly because where the loan duration is longer, the total cost of credit was likely to be higher. It would also be relevant because there is greater risk of a negative change in circumstances affecting Miss F's ability to repay, where repayments need to be sustained over a longer period.

With these principles in mind I've thought about whether DTW completed reasonable and proportionate checks to satisfy itself that Miss F would be able to repay her loans in a sustainable way.

In summary, then, the circumstances in respect of the applications for loans one and two are as follows:

- Miss F was applying for high-cost credit products which had an APR of 166.90% for loan 1 and an APR of 230.03% for loan 2.
- The total cost of the loan was very high, particularly when viewed as a percentage of what Miss F borrowed.

Individually and taken together, there are several risk indicators here. So, I think that it was important for DTW to have conducted checks which gave it a thorough understanding of Miss F's financial position and to scrutinise the information it gathered carefully, asking follow-up questions where necessary, before agreeing to lend.

DTW has said it did carry out some checks before it agreed to provide Miss F with the loans. In respect of loan one, this seems to have been on the basis of her completed application form, credit file and 60 days of bank statements.

It calculated her average income as £3,076.95 and her average expenditure as £2,813.19 giving her a disposable income of £263.77. Considering the information DTW obtained in respect of this loan that I've summarised above, I think the checks it carried out were reasonable and proportionate in the context of Miss F's circumstances and the principles I've also outlined above.

So, I've gone on to consider if based on the checks it carried out, it made a fair lending decision in respect of this loan.

As I've outlined, DTW says it carried out an affordability assessment based on the financial information it obtained about Miss F. Its analysis concluded the monthly repayments were affordable for her. The loan was approved.
DTW set out a summary of the information it obtained about Miss F's finances in an income and expenditure statement. Having examined this, I can see that DTW has included in its average income calculation, the proceeds from her gambling. This amounted to an average over 2 months of £459 which together with her average income of £2,617.85, resulted in its calculation of a disposable monthly income figure of £3,076.

I have several concerns about the affordability assessment carried out by DTW. In the first instance I don't think it was realistic in this case to treat proceeds from gambling as a source of income. Any proceeds from gambling were unlikely to be sustainable or secure as a regular source of income. As a result, I don't think it was reasonable or fair to Miss F to include this as an income source.

If DTW had excluded this unsustainable and insecure source of income from its affordability calculation, it should have realised that Miss F's expenditure was in excess of her income. And an objective analysis should in my opinion, have led it to conclude that the loan was not affordable for her on a sustainable basis.

Secondly, I don't think DTW sufficient regard to the evidence of gambling that it saw from the checks it carried out. I think the level of gambling the records showed which amounted to approximately 40% of Miss F's income, was suggestive of a degree of vulnerability on her part. It was evidence in my view of significant gambling far in excess of any recreational activity that DTW has suggested. It also should have made DTW realise that it was unlikely Miss F would be able to sustainably repay the loan. So, for the reasons I've set out above, I don't think DTW made a fair lending decision when it agreed to provide Miss F with loan 1. And I don't think it should have provided her with this loan.

Loan 2

In September 2017 Miss F applied to DTW for another loan which it also approved. This was approximately eight months after loan 1 was approved. DTW has said that Miss F borrowed considerably less for this loan. It said her declared expenditure matched ONS data, she had a good history of repayments on the first loan and her credit score had improved dramatically. It also said it had carried out affordability checks including proof of income through a recent wage slip.

Miss F's payslip shows her net income to be £2,731. But it doesn't appear that DTW made any checks in relation to her expenditure as it did for the first loan. And given the history of gambling that it would have been aware of from the checks carried out for the first loan it provided to her, I think it should have taken steps to verify her expenditure as well as her income. So, I don't think the checks it carried out for this loan were reasonable or proportionate.

What would reasonable and proportionate checks have shown at the time?

I think DTW should have ensured that the scope and extent of its checks were adapted to the circumstances of Miss F's application. Loan 2 was also a high cost loan being taken out by Miss F only a few months after she had taken out a first loan with DTW. And given the information and bank statements (which showed evidence of gambling); DTW had from Miss F in relation to the first loan, I think all of this should have alerted it to carry out further checks to establish what Miss F's financial position was at that the time of this second application.

Miss F has provided us with copies of her bank statements from July to December 2017 to help us better understand her circumstances and the potential impact on her of taking out this loan. The August 2017 statement shows that Miss F had spent over £2,400 that month on gambling. The statement shows £1,000 spent on gambling on one individual day. Miss F had used approximately 90% her income on gambling that month.

So, if DTW had carried out additional checks on Miss F's finances in this way, it would have confirmed that the picture of significant gambling emerging from her November 2016 – January 2017 bank statements which it had when the first loan was taken out, appears to have been part of a broader pattern of gambling that in my opinion, was out of control. And I think this level of expenditure on gambling was indicative of a vulnerability on Miss F's part, which should have alerted DTW not to provide her with this further loan.

It seems to me that Miss F's gambling was placing a significant pressure on her wider financial position which was relevant to DTW's affordability assessment. And there was also evidence on the statement of her having taken out pay day loans, which should also have alerted DTW to question whether the loan was affordable for her. So, taking into account all of the above, I've concluded that DTW shouldn't have provided Miss F with this second loan as well.

Putting things right

Miss F shouldn't have been provided with any of the three loans. I think it is fair and reasonable for Miss F to repay the principal amount that she borrowed for all three loans, because she had the benefit of that lending. But she has paid interest and charges on loans that shouldn't have been provided to her. So, I think Miss F has lost out and DTW should put things right for her. DTW should:

a) Remove all interest, fees and charges applied to the three loans from the outset. Any payments made by Miss F should then be deducted from the new starting balances. If the payments Miss F has made total more than the amounts she was originally lent, then any surplus should be treated as overpayments and refunded to her with 8% simple interest* calculated on any overpayments made, from the date they were paid by Miss F to the date the complaint is settled.

b) If there are still outstanding balances, then DTW should agree an affordable repayment plan with Miss F, bearing in mind the need to treat her positively and sympathetically in those discussions; and taking into account her current ability to repay the loans from her present disposable income.

c) Remove any adverse information recorded on Miss F's credit file as a result of this loan.

*HM Revenue & Customs requires DTW to deduct tax from this interest. DTW should give Miss F a certificate showing how much tax it's deducted, if he asks for one.

my final decision

For the reasons I've set out above, my decision is to uphold Miss F's complaint about DTW Associates Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 1 April 2021.

Simon Dibble
ombudsman