complaint

Mr H has complained that DTW Associates Limited trading as Auto Advance Logbook Loans ("DTW") was irresponsible to have agreed credit for him.

background

DTW provided Mr H with a loan of £1,500 on 13 August 2018. The total repayable including interest and charges came to £4,020, to be repaid over 24 months at £168 a month (all figures rounded).

This was a 'log book' loan, in other words it was granted on the basis that Mr H provided DTW with a bill of sale for his car. This meant that if Mr H didn't make his loan repayments DTW could potentially recoup its losses through the sale of the vehicle.

Mr H says that DTW should not have agreed to lend to him because the loan was unaffordable for him and it should have known this from the information it had. Mr H says that he was having problems managing his finances at that time and was making repayments to several debt management agencies. He also says that he was struggling with a severe gambling addiction and stressful personal circumstances.

DTW says that it conducted a thorough check of Mr H's bank statements and checked his credit file to assess his ability to afford the loan. It found the loan to be affordable and doesn't agree that it was irresponsible to have lent.

Our adjudicator upheld Mr H's complaint in her last communication. She found that DTW had been irresponsible to lend to Mr H and recommended that it compensate him for this. DTW didn't agree with this recommendation and so the complaint came to me, as an ombudsman, to review and resolve.

I issued a provisional decision on 8 February 2021 upholding Mr H's complaint. I gave both parties a month to comment on my provisional findings or provide new information. I've had no response from DTW.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. Neither party has commented on my provisional conclusions or the information I've relied on or provided any new information for me to consider. Altogether, I've found no reason to depart from my provisional findings and I'm upholding Mr H's complaint. I appreciate that this will be disappointing for DTW. I set out my reasoning in my provisional decision and have included this again below.

The Financial Conduct Authority (FCA) was the regulator when Mr H took out his loan. The relevant rules and guidance at the time as set out in its Consumer Credit Sourcebook (CONC) said that DTW needed to take reasonable and proportionate steps to assess whether or Mr H could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement. Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

Neither the law nor the FCA specified what level of detail was needed or how such a check was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors. In other words the checks needed to be proportionate and borrower-focused. This suggests that the same checks might not be the appropriate thing to do for all consumers, or for the same consumer in all circumstances. The checks were to assess the risk to the consumer of not meeting the repayments in a sustainable manner, not the risk to the lender of recouping its money.

In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying carry out more detailed checks

- 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).

Bearing all of this in mind, in coming to a decision on Mr H's case, I have considered the following questions:

- did DTW complete reasonable and proportionate checks when assessing Mr H's loan application to satisfy itself that he would be able to repay the loan in a sustainable way? if not, what would reasonable and proportionate checks have shown?
- overall, did DTW make a fair lending decision?

As mentioned above, when Mr H applied for a loan, DTW says it asked him about his income and expenses and checked his credit file. DTW says that Mr H supplied it with access to 90 days of his bank transactions via open banking.

Mr H was entering into a significant commitment with DTW in that he would need to make monthly repayments for two years while ownership of his car was held as security. So I think it was reasonable that DTW wanted to gather, and independently check, some detailed information about his financial circumstances before it agreed to lend to him. I think that, on the face of it, the checks DTW did seemed proportionate. But a lender also needs to react appropriately to the information shown by those checks by, for example, ensuring that the information it has is complete and correct (CONC 5.3.3). So I've looked carefully at the information DTW says it checked to consider whether the lender's assessment of it was reasonable.

Mr H had given his monthly net income as £1,450 and expenses as a total of £625. DTW provided a credit reference agency (CRA) analysis of two months of Mr H's bank transactions. This report is dated the 13 August and I assume DTW had access to 90 days of Mr H's transaction history via open banking up to that date. I note that the analysis date range is May to July 2018 and the report lists transactions from and including 31 May to 31 July. DTW says it uses whole months in its analysis and, as the loan was agreed mid-

August, it seems it used June and July's transactions. So I've focussed on what this information showed.

DTW estimated that Mr H had an average monthly net income of £1,833 and total expenses of £957. The estimate of average income and expenditure appears to include transfers in and out of the account. Excluding these, the transactional information shows Mr H's net monthly income was £1,435. It also shows that he spent his wages each month and borrowed from family members. His monthly spend includes an average of about £400 in transferring money to his family.

DTW says that the reason Mr H gave for the loan was consolidation and it says that *'the loan of £1,500 was the customer's decision to clear an overdraft of up to £1,100. Despite concerns over the recent management of his account, this decision seemed a reasonable solution and action.'* With respect to DTW I suspect this is a mis-reading of the CRA analysis which I think shows the sums of deposits and withdrawals and not a running account balance.

Mr H has provided his bank statements from the time and I can see from these that his account[1] wasn't overdrawn to any great extent. A supermarket bill took his account overdrawn by £49 on 20 June and it seems he borrowed from family and made no further withdrawals until he was paid at the end of that month. Mr H went overdrawn again (by £20 or so) in July, about a week after his June pay. He borrowed from family to cover this, though an unauthorised overdraft charge and a payment to a debt management company took him into deficit again. Mr H didn't use the account again until he was paid at the end of July. It seems he was out of money again mid-August when he applied to DTW.

The CRA analysis shows two payments to debt collection agencies in July - one for £53, the other for £30 which is referred to as an initial payment. DTW noted in its final response to Mr H that he had two defaulted accounts on his credit file from 2009 and 2016. It later said to this Service that *" It is our understanding that these were 2 payments relating to each of the 2 historic defaults from 2016 and 2017. These commitments were being met, along with 2 other current credit accounts."*

I can see from the credit file report (provided by DTW) that the defaults comprised a current account (about £2,400) and a communications account (about £1,600). Mr H recalls that the former was defaulted in early 2017 and the latter in late 2017 or early 2018. The actual report dates show the current account as running from 06/05/2009 to 22/06/2016 and the communications account running from 02/10/2016 to 01/10/2017. Even without establishing exactly when these two accounts went into default, I don't think DTW's view of them as historic debt is completely reasonable, given at least one of them is likely to have been within a year of the loan.

Altogether, on balance, I think DTW should have reasonably suspected that Mr H was having problems managing his money: he was overspending and relying on family donations/loans; he was repaying significant default sums and appeared to have started new payments to a debt collection agency. And I don't think it was fair to have agreed to lend to him under these circumstances.

[1] By which I mean Mr H's main account where his salary was deposited. It seems Mr H also had another account and moved money back and forth between these.

I don't think further investigation or a wider analysis would have given DTW any reassurance that Mr H would be able to meet his repayments sustainably over the two years of the agreement. Had it enquired into Mr H's debt management payments, for example, or looked at his bank transactions from August, I think it would have learnt that in addition to the two payments mentioned, Mr H had made payments to another two debt collection agencies in the first few days of August – a total of £146 to one and a token payment of £1 to another.

Mr H has mentioned spending money on gambling. There were some betting transactions shown on the CRA analysis in June and July but not to the extent that I think would have raised concerns for DTW. However, I think that in August the frequency and amount of these transactions (as seen on Mr H's bank statements) especially combined with the timing and pattern of his cash withdrawals would have caused concern to the lender had it taken these into account when making its lending decision.

I can see from the statement of account for the loan that Mr H appears to have missed payments from the onset and made overpayments to keep his account up to date. It seems he stopped making payments after about ten months and I understand an outstanding balance remains.

In summary, I think it was irresponsible of DTW to have agreed to lend to Mr H and so I am upholding his complaint.

what DTW needs to do to put things right

I've found that DTW was irresponsible to have agreed credit for Mr H in August 2018. In order to put things right for him DTW should:

- remove any interest and charges included in the outstanding loan balance;
- treat all payments that Mr H has made as payments towards the capital borrowed (£1,500);
- if Mr H's repayments come to more than the capital borrowed, these should be refunded to him along with 8% simple interest* per annum to these amounts from the date they were paid to the date of refund;
- if however, a capital balance remains then DTW should treat Mr H sympathetically which may mean agreeing a repayment plan with him;
- remove any adverse information about this loan from Mr H's credit file once it's been settled; and
- revoke the Bill of Sale for Mr H's car if this is still in place and return any relevant documents to him.

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

my final decision

For the reasons given, I am upholding Mr H's complaint about DTW Associates Limited (trading as Auto Advance Logbook Loans) and direct it to put things right for him as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 April 2021.

Michelle Boundy
Ombudsman