DRN-3359432

The complaint

Mr L complains that TM Advances Limited (TM) lent him money on a high interest loan which he was unable to afford to repay.

What happened

Mr L was provided by TM with a loan on 11 October 2019, for £3,000 repayable at the rate of £249 a month over 40 months. He requested a figure for repaying the loan, although as far as I'm aware there is still a balance outstanding. He also said the interest rate was higher than he'd been led to believe and that the formula for calculating any refund of interest on early repayment is too complex for the ordinary person to understand. He also said the loan was unaffordable to him.

TM responded to the points about the interest rate, pointing out that the details are set out in his loan agreement. With regard to the formula it said that in line with the regulations under the Consumer Credit Act 1974 it can charge 30 days interest once notice has been given, which it was prepared to do. It didn't answer the complaint about irresponsible lending directly to Mr L.

TM considered Mr L's application, and carried out a credit check, which it went through with Mr L. It was satisfied that he had a sufficient disposable income to afford the repayment instalments.

Mr L has sent us an up to date credit report and bank statements.

Our adjudicator proposed that TM pay compensation of £150 for its poor handing of his complaint. TM agreed to this, though for reasons I'll set out below, and have already advised Mr L, I can't make an award in respect of this.

In respect of Mr L's complaint, our adjudicator said that TM should've realised that this loan wasn't likely to be affordable for Mr L – and, based on the information it could see, it shouldn't have lent to him.

TM disagreed. It said that any defaults on his credit reports were more than two years old, and at Mr L had given an adequate explanation for his adverse credit.

The matter has been passed to me for further consideration.

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 unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did TM complete reasonable and proportionate checks to satisfy itself that Mr L would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr L would have been able to do so?

The rules and regulations in place required TM to carry out a reasonable and proportionate assessment of Mr L's ability to make the repayments under the agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so TM had to think about whether repaying the loan would be sustainable. In practice this meant that TM had to ensure that making the repayments on the loan wouldn't cause Mr L undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for TM to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr L**.** Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications. I think that such a check ought generally to have been *more* thorough:

- The *lower* a consumer'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 *greater* the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

The loan was for a significant amount, over a long period. So, TM should have carried out a thorough assessment of Mr L's financial circumstances at the time of the application.

From Mr L's credit report, it appears that up until about two years prior to the application, Mr L had been in serious financial trouble. The report lists twelve defaults, of loans and credit cards. Most of these were listed as satisfied. However, a home credit debt that was defaulted in 2017 still had a balance of £1,078 and a credit card that was defaulted in 2014 still had a balance of £782. Additionally a "communications" debt default of £4,300 was still current. Allowing for payments towards these accounts of a minimum of £1,160 out of a monthly income of £3,030 Mr L had a high proportion of his income committed to debt repayments. The purpose of the loan was for increased holiday spending and repairs on his car, not for any debt consolidation.

Additionally Mr L had nine current accounts listed. Although none were seriously overdrawn, this might have raised doubts as to Mr L's sources of income.

I've considered Mr L's bank statements (from one account) for October to November 2019. From those accounts there were at least nine different payday or high cost loan companies to whom payments were made, or credits received, none of whom appear on the credit report. I've also noted a high spend, of about £100 a month, on the lottery. It's clear from the statements that Mr L was just about coping, though I would observe that only about half his income for both months was his salary. The other income for November was the TM loan, but it does raise the possibility that he was getting loans from elsewhere.

TM accepted Mr L's explanation for the adverse credit on his credit report, that he had been in difficulty but had resolved that. But in light of the entries on the report I think at the very least TM's checks should have alerted it to carry out a more thorough assessment of Mr L's finances. And if it had carried out that assessment I don't think the loan would have been assessed as affordable. So I don't think TM made a fair lending decision.

In respect of Mr L's points about the interest rate and the formula for calculating any rebate, I think TM was right to say that the information about the loan and the interest rate and what happens if he wanted to settle the loan early are all contained in the loan agreement and documents given to him at the start of the loan. The formula is set out in the regulations and though it's complicated, loan companies are entitled to use that formula to calculate any rebate of interest.

I have noted TM's offer to pay £150 for its poor complaints handling, particularly its long delay in answering Mr L's complaint. As I've explained separately to Mr L, complaints handling by a business isn't a regulated activity and I have no power to investigate how it handles complaints, or to award compensation in respect of that. That said, as TM has agreed to the payment, it should comply with that and make the payment to Mr L directly.

Putting things right

Mr L has had the capital payment, so it's fair that he should repay this. So far as the loan is concerned I think TM should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr L as payments towards the capital amount of £3,000.
- If Mr L has paid more than the capital, refund any overpayments to him with 8%* simple interest from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, TM should come to a reasonable repayment plan with Mr L.
- Remove any adverse information about the loan from Mr L's credit file.

*HM Revenue & Customs requires TM to deduct tax from this interest. It should give Mr L a certificate showing how much tax it's deducted if he asks for one.

My final decision

I uphold the complaint and require TM Advances Limited to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 April 2022.

Ray Lawley
Ombudsman