

The complaint

Mrs M has complained that TFS Loans Limited (“TFS” or “the lender”) should not have agreed a guarantor loan for her in November 2014.

What happened

TFS agreed a loan of £7,500 for Mrs M on the 24 November 2014. The monthly repayment was £288 over a term of four years, and the total amount to be repaid came to about £13,830 (figures rounded). This was a guarantor loan, in other words it was granted on the basis that Mrs M had a guarantor who would be responsible for repaying the loan if she failed to meet her repayments.

Mrs M says that she should never have been given the loan as it was clearly unaffordable for her. She says she was in financial difficulty, had defaulted on several loans and had a county court judgement awarded against her. Mrs M says the loan made her financial situation worse and she had to borrow from high cost lenders to meet her living costs. She also explained that she has a disability and that her mental health has suffered, because managing her loan repayments has caused her severe stress and anxiety.

Our adjudicator assessed the complaint and found that TFS was irresponsible when it agreed to lend to Mrs M. They recommended that TFS refund Mrs M’s interest repayments along with compensatory interest.

TFS disagreed with this recommendation and asked for the complaint to come to me, as an ombudsman, to review and resolve. I sent out a provisional decision on the 9 November 2020 explaining why I planned to uphold Mrs M’s complaint. I gave both parties a month to respond to my findings and to provide any new information or arguments they wished me to consider. Mrs M responded to say that she agreed with my provisional decision but I have had no response from TFS.

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.

I’ve had no new information to consider and, altogether, I see no need to depart from my initial conclusions. For completeness I will set out my reasons and conclusions again here.

The Financial Conduct Authority (FCA) was the regulator when TFS lent to Mrs M. Its rules and guidance obliged TFS to lend responsibly. As set out in its Consumer Credit Sourcebook (CONC), TFS needed to *“pay due regard to the interests of its customers and treat them fairly”* and it would not be doing so if *“it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.”* (CONC 2.2.2G).

When agreeing credit, TFS needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable

manner over the lifetime of the agreement.

CONC 5.3.1G stated that

- 1. In making the creditworthiness assessment or the assessment required ... a firm should take into account more than assessing the customer's ability to repay the credit.*
- 2. The creditworthiness assessment and the assessment required ... should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or in particular without incurring or increasing problem indebtedness (ILG 4.3). ILG refers to the 'Irresponsible Lending Guidance' produced by the previous regulator - the Office of Fair Trading - which this part of CONC specifically references.

Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment 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.

As set out in CONC, the risk to the borrower directly relates to the particulars of the lending and the circumstances of the borrower. In other words the assessment needs to be borrower-focussed. It is not an assessment of the risk to the lender of recouping its money, but of the risk to the borrower of incurring financial difficulties or experiencing significant adverse consequences as a result of the decision to lend. So even in this case where Mrs M had a guarantor who agreed to step in and meet repayments in the event that she couldn't, this doesn't absolve TFS of its obligation to assess whether in the first instance Mrs M could meet her repayments without undue difficulty.

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

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

TFS says that it gathered information from Mrs M about her income and expenditure. It recorded that she had an income of £3,845 comprising her salary of approximately £1,100 and various benefits amounting to about £2,745. These benefits included two separate Disability Living Allowances (DLA) – one for her and one for her daughter, who Mrs M says is highly disabled and spends much of her time in hospital. TFS also noted that Mrs M said she had three dependents.

TFS recorded Mrs M's monthly expenses as approximately £2,770, which included £270 of existing credit repayments each month. TFS estimated that this left Mrs M with a disposable monthly income of over £1,000, after she made her loan repayment.

TFS says it checked Mrs M's payslip and three months of her bank statements and provided copies of these covering the two months' prior to the loan. These support what she'd said about her income. It also says it carried out a check on Mrs M's credit file and provided a summary of this which showed a recent current account and mail order, and a defaulted payday loan.

It would seem, on the face of it, that Mrs M had enough disposable income to meet her loan repayments each month. And that TFS carried out a proportionate check by looking into her income and expenses and considering her monthly disposable income. However, as the regulations set out, TFS needed to take reasonable steps to assess that Mrs M would be able to meet her repayments sustainably, in other words without having to borrow further or without increasing problem indebtedness. I've looked through the two months bank statements that TFS provided (covering the 24 September to 21 November 2014) and I think the information in these should have prompted TFS to look into Mrs M's finances in more depth before agreeing such a relatively large loan for her.

These statements showed that Mrs M was paying other debts aside from those TFS took into account in its estimate of her disposable income. These include a short term high cost loan and a credit union loan. In addition, there were several large cheque payments (amounting to over £1,200 in October) and Mrs M was spending money on gambling, amounting to over £850 in November. TFS said in response to our adjudicator's view that Mrs M was spending her disposable income as she saw fit and within her limits. It said specifically that the amounts she was spending on gambling were "only a small percentage" of her monthly income. However, taking this spending pattern into account alongside the other unaccounted for regular spending I can see, I think TFS ought to have been concerned about the sustainability of the loan repayments for Mrs M and looked into her expenses in more detail.

Had TFS acted on this, I think it's likely it would have seen that Mrs M was having difficulty managing her finances. In its final response letter TFS said that when asked about adverse credit Mrs M said that her sister had run up a debt in her name incurring a county court judgement (CCJ) for £700. Mrs M said that when she found out about it she repaid the debt immediately and it was due to come off her credit file shortly. Mrs M has provided a copy of her credit file and I can see from this that there was a CCJ awarded against her in June 2014, just a few months before taking out this loan, for an amount of over £4,000. I can also see that she had at least ten active accounts at that time, most of which had recently defaulted and were with third-party debt collectors.

I don't think TFS would have agreed to lend to Mrs M under these circumstances. I think it would have been obvious that her financial situation was such that it wasn't likely she'd be able to meet further credit in a sustainable manner and agreeing this loan simply prolonged her indebtedness, potentially for another four years. And so I think TFS was irresponsible to have agreed to lend to Mrs M on this occasion.

A statement of Mrs M's loan account shows that she didn't manage to repay this loan as agreed. She incurred late payment and missed direct debit fees in most months in 2015 and 2016, eventually entering into a repayment plan in 2019. I understand that, as of October 2020, there is an outstanding account balance of over £1,200.

Putting things right

As I've found TFS was irresponsible to have agreed to lend to Mrs M, she shouldn't have to repay more than the capital amount of the loan. Therefore, in order to put Mrs M back in the position she would have been in had it not agreed to lend to her, TFS should:

- consider all payments made by Mrs M (including missed payment fees and returned direct debit fees) as payments towards the original capital amount of £7,500; and
- refund all amounts Mrs M paid above this capital amount; and
- pay interest on these refunds at 8% simple* per year from the dates they were paid to the date of settlement;
- remove any adverse information about this loan from Mrs M's credit file.

*HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

My final decision

I'm upholding Mrs M's complaint about TFS Loans Limited (trading as TFS Loans) and require it to put things right for her as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 2 February 2021.

Michelle Boundy
Ombudsman