

The complaint

Mr W complains that TFS Loans Limited lent to him in an irresponsible manner.

What happened

Mr W was given a single loan by TFS. He borrowed £6,500 in February 2016 and agreed to repay the loan over 54 monthly instalments. Mr W's loan was guaranteed by a family member. The guarantor has brought a separate complaint about TFS's decision to allow them to act as the guarantor that I have decided separately. So I don't need to consider the addition of the guarantor any further in this decision, however I will take account of the redress that has been paid to the guarantor when deciding what compensation TFS needs to pay to Mr W. Mr W's loan had an outstanding balance when he brought his complaint to this Service.

Mr W's complaint has been assessed by one of our adjudicators. She didn't think the checks TFS had carried out before agreeing the loan had been sufficient. And she thought that better checks would have led to his loan application being declined. So she didn't think TFS should have given this loan to Mr W and asked the lender to pay him some compensation.

TFS didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr W accepts my decision it is legally binding on both parties.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr W's complaint.

The rules and regulations at the time TFS gave this loan to Mr W required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so TFS had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr W. In practice this meant that TFS had to ensure that making the repayments wouldn't cause Mr W undue difficulty or adverse consequences. In other words, it wasn't enough for TFS to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr W.

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.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I’ve kept all of this in mind when thinking about whether TFS did what it needed to before agreeing to lend to Mr W.

TFS gathered some information from Mr W before it agreed the loan. It asked him for details of his income, and his normal expenditure. And it checked his credit file to assess how much he was repaying to other creditors.

The credit check highlighted that Mr W hadn’t always managed his borrowing well in the past. He had defaulted on a number of other accounts which still remained on his credit file. And he had been made bankrupt around the same time. I accept that those problems had taken place a number of years earlier, and so might not be representative of Mr W’s current financial position. But I think they should have led to TFS at least undertaking some more detailed investigations.

Mr W was entering into a significant commitment with TFS. He would need to make monthly repayments for a period of more than four years. So, given what I have said above, I would expect that TFS would want to gather, and independently check, some detailed information about Mr W’s financial circumstances before it agreed to lend to him. I don’t therefore think that the checks it did were enough. I think it would have been proportionate for TFS to independently check the true state of Mr W’s finances before agreeing the loan.

But although I don’t think the checks TFS did before agreeing the loan were sufficient, that in itself doesn’t mean that Mr W’s complaint should succeed. I’d also need to be persuaded that what I consider to be proportionate checks would have shown TFS that Mr W couldn’t sustainably afford the repayments. So I’ve looked at Mr W’s bank statements, and what he’s told us about his financial situation, to see what better checks would have shown TFS.

At this stage I want to be clear that I am not suggesting that this is the exact check that TFS should have carried out. I do think TFS needed evidence to corroborate what Mr W said was happening with his finances. And looking at his bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Mr W’s bank statements I can get a good idea of what better checks might have shown.

Mr W's bank statements show clear evidence that he was facing problems managing his expenditure. In the month before the loan was agreed I can see that Mr W spent over half his normal income on what appear to be online gambling transactions. He regularly supported his expenditure with payments from a relative. I haven't seen anything that suggests this sort of spending was a one-off or likely to reduce in the future. So based on what Mr W told TFS about his other expenditure it wouldn't be reasonable to conclude that he would be able to afford his repayments in a sustainable manner.

So in summary, I don't think the checks TFS did before agreeing this loan were sufficient. And I think better checks would have identified Mr W's gambling expenditure that would have led a responsible lender to decline his loan application. So I don't think TFS should have given this loan to Mr W and needs to put things right.

Putting things right

I have considered the current status of Mr W's loan, although I appreciate that might have changed since the last statement that was provided to us. So the redress I am directing below will need to take account of any repayments that have recently been made.

In upholding the complaint from the guarantor I directed that TFS should refund all the repayments that the guarantor has made on the loan. I think it is reasonable that TFS takes that refund into account when looking at what remains for Mr W to repay on this loan.

My starting principle is that Mr W shouldn't be expected to repay more than is outstanding at the point that TFS makes the refund to the guarantor. But I think it reasonable that TFS should only receive back the capital that it lent to Mr W. So, if the amount of capital originally borrowed (£6,500), less the repayments made by Mr W himself, is lower, TFS should amend the loan balance to that lower amount.

TFS should seek to agree an affordable repayment arrangement for any balance that remains on the loan in line with what I have set out above. I would remind TFS that it should treat Mr W positively and sympathetically in those discussions.

TFS should remove any adverse information recorded on Mr W's credit file in relation to the loan.

My final decision

My final decision is that I uphold Mr W's complaint and direct TFS Loans Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 March 2021.

Paul Reilly
Ombudsman