

The complaint

Mr V has complained that TFS Loans Limited ("TFS Loans") provided him with an unaffordable loan.

What happened

TFS Loans provided Mr V with a loan of £7,500.00 in June 2017. This loan had a 48-months term with a monthly repayment amount of £3127.75. This all meant the total amount repayable of £15,252 was due to be repaid.

One of our investigators looked at this complaint and thought that TFS Loans unfairly provided this loan as proportionate checks would have shown it was unaffordable. TFS Loans disagreed with our investigator and asked for an ombudsman to review the complaint.

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 the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr V's complaint.

Having carefully thought about everything, I think that there are overarching questions that I need to answer in order to fairly and reasonably decide Mr V's complaint. These questions are:

- Did TFS Loans complete reasonable and proportionate checks to satisfy itself that Mr V would be able to repay his loan in a sustainable way?
- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr V would've been able to do so?

TFS Loans provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required TFS Loans to carry out a reasonable and proportionate assessment of Mr V's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so TFS Loans had to think about whether repaying the loan would cause significant adverse consequences *for Mr V*. In practice this meant that TFS Loans had to ensure that making the payments to the loan wouldn't cause Mr V undue difficulty or adverse consequences.

In other words, it wasn't enough for TFS Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr V. 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.

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 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); and

the *greater* the number and frequency of loans, and the longer the period of time 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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were the checks that TFS Loans carried out reasonable and proportionate?

I can see from the documentation TFS Loans submitted that it carried out checks before it agreed to lend to Mr V. It says it recorded down his declared income and expenditure and did this through a series of phone call discussions. It says it verified Mr V's income using an online tool. It then carried out a credit check and asked Mr V questions about what it found from this.

I've carefully considered what TFS Loans has said. And based on its calculation and the disposable income that it assessed Mr V to have, the loan repayments on the surface of it looked affordable. But when I look through the credit search results that it would have had in front of it, the amount of impaired credit data doesn't seem to add up with the amount of disposable income TFS assessed Mr V to have. Mr V had mortgage arrears, two defaults that hadn't been settled, two open payday loans, two credit cards that were spent up to the limit and a third that was spent over the limit. I appreciate TFS asked Mr V about some of the impaired credit on his file but when I consider what I've seen on the search and also the amount Mr V was borrowing in relation to his income along with the total cost and length of the loan, I think TFS Loans should have carried out a complete review of his finances to see whether the loan repayments were sustainable, including verifying his expenditure in greater detail.

As I can't see that TFS Loans did do this, I don't think that the checks it carried out before providing Mr V with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to TFS Loans that Mr V would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So, I need to decide whether it is more likely than not that a proportionate check would have told TFS Loans that Mr V would have been unable to sustainably repay this loan.

Mr V has provided bank statements to our service from a three-month period of time leading up to when the loan was granted, and I've carefully considered the information provided. Having done so, it's clear Mr V was gambling heavily on a regular basis. The amounts were significant. In April for example he spent over eight times his monthly income on gambling transactions and this significant spend continued in May and June. It is clear from looking at these statements that Mr V was having serious problems with his finances. If TFS loans had carried out further checks, it would have seen that the loan repayments were not sustainable in anyway.

Bearing all this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have shown TFS Loans that Mr V would not have been able to repay this loan in a sustainable manner as the information he has provided shows he was having significant problems managing his finances. So, I'm satisfied that its failure to carry out proportionate checks resulted in it unfairly providing this loan to Mr V.

So, it follows that TFS Loans needs to put things right.

Putting things right

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Mr V's complaint for TFS Loans to put things right by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr V made, direct to TFS Loans and any third-parties, should be deducted from the new starting balance – the £7,500.00 originally lent.
- If a balance remains, TFS Loans should look to arrange an affordable repayment plan with Mr V.
- If Mr V has already repaid more than £7,500.00 then TFS Loans should treat any extra as overpayments. And any overpayments should be refunded to Mr V; adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr V to the date of settlement†

† HM Revenue & Customs requires TFS Loans to take off tax from this interest. TFS Loans must give Mr V a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr V's complaint about TFS Loans Limited and it now needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 19 October 2021.

Mark Richardson
Ombudsman