

The complaint

Miss S says TFS Loans Limited lent to her irresponsibly.

What happened

Miss S took out a guarantor loan from TFS in April 2016. It was for £7,500 over 60 months. The monthly repayment was £279.25 and the total repayable was £16,755.

Miss S says she is finding it very hard to repay the loan and perhaps it should not have been provided in the first place as she had other guarantor loans at the time. TFS has offered to reduce her monthly repayment and extend the loan term but she would like this service to assess if that is the fair outcome.

Our investigator recommended the complaint should be upheld. He said TFS's checks were not proportionate, and proportionate checks would have shown the loan wasn't affordable for Miss S.

TFS disagreed so the complaint was passed to me for a final decision.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when TFS lent to Miss S. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged TFS to lend responsibly. Amongst other things, TFS was required to carry out a reasonable and proportionate assessment of whether Miss S could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So TFS had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Miss S. 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 the loan repayments on Miss S.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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 Miss S, and have considered the following questions:

- did TFS complete reasonable and proportionate checks when assessing Miss S'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?
- did TFS act unfairly or unreasonably in some other way?

TFS asked for some information from Miss S before it approved the loan. It asked for details of her income, her monthly living costs and her existing credit commitments. It checked her credit file to understand her credit history. It also asked about the purpose of the loan which was debt consolidation and money for her wedding. From these checks combined TFS concluded Miss S would have monthly disposable income of £67.14 after making the repayment for this loan and so concluded the loan was affordable.

But I don't agree that these checks were proportionate. Miss S was applying to borrow a significant amount of money from TFS. She was entering into a long-term commitment and would need to make monthly repayments for five years. So I would expect that TFS would want to gather, and independently check, more detailed information about Miss S's financial circumstances before it agreed to lend to her. Particularly as its income and expenditure analysis showed she would be left with little money for any unforeseen expenses – and she had three dependents. So, in the round, I think it would have been proportionate for TFS to independently check the actual state of Miss S's finances before agreeing the loan, rather than relying solely on her disclosures for certain items.

However its failure to do so doesn't in itself mean Miss S's complaint should succeed. I need to look at what proportionate checks would have shown TFS and consider if it ought to have realised that Miss S most likely couldn't sustainably afford the repayments.

I have looked at Miss S's bank statements. I'm not saying TFS had to do this, but it is one way TFS could have gathered the information I think it needed on Miss S's financial situation. As our investigator said these show Miss S's expenses exceeded what she had declared and included around £650 per month of gambling transactions. So he concluded – as I have – that Miss S didn't have the disposable income TFS had calculated, and wouldn't be able to afford this loan. Had TFS carried out better checks it would have most likely become aware of the amount of her income Miss S was spending on gambling and been concerned she having problems managing her money. From that TFS would have realised there was a high risk Miss S would be unable to sustainably repay the loan.

TFS has said it has the right to use information provided by the customer as well as what the credit report showed, and it is not an FCA rule to check expenditure or see bank statements. As it knows, the FCA does not set out exactly what checks are required, but the rules and guidance are clear that things like the term, the value and the cost of the loan should influence the level of checks carried out. And here Miss S was borrowing £7,500 over 60 months with £9255 of interest payable - so I remain of the view that a fuller financial review was needed.

TFS also said Miss S had a responsibility to provide accurate information and it seems she withheld information on purpose. But this does not change my conclusion, it does not alter TFS's obligation to carry out proportionate checks before lending. And as I've said I think that if TFS had completed proportionate checks, it would have realised the loan was unaffordable for Miss S. So as a responsible lender it would have decided not to approve her application.

I have also looked at whether TFS acted unfairly or unreasonably in some other way. I haven't found any evidence that it did. It agreed to a reduced payment plan and refunded arrears management fees once it knew Miss S was struggling to make her repayments.

Putting things right

It's reasonable for Miss S to have repaid the capital amount that she borrowed as she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been given to her. So she has lost out and TFS needs to put things right.

It should:

- Remove all interest, fees and charges on the loan and treat all the payments Miss S made as payments towards the capital.
- If reworking Miss S's loan account results in her having effectively made payments above the original capital borrowed, then TFS should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- Remove any adverse information recorded on Miss S's credit file in relation to the loan.

*HM Revenue & Customs requires TFS to deduct tax from this interest. TFS should give Miss S a certificate showing how much tax it's deducted, if she asks for one.

My final decision

I am upholding Miss S's complaint and TFS Loans Limited must now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 July 2021.

Rebecca Connelley
Ombudsman