

## **The complaint**

Mr C complains TFS Loans Limited didn't complete reasonable and proportionate checks when accepting him for a loan.

## **What happened**

Mr C was accepted for a guarantor loan with TFS in May 2015. The loan was for £6,000 over a term of 36 months with a monthly repayment of £280.62 and a total repayable figure of £10,102.32.

In November 2019 Mr C complained to TFS. He said the loan was unaffordable and had TFS completed reasonable and proportionate checks at the outset, it would have known this.

TFS investigated Mr C's complaint and didn't uphold it. In summary it said its checks had shown the loan to be affordable to Mr C, and he adequately explained the concerns it discussed with him about his credit file.

Our investigator reviewed Mr C's complaint and upheld it. He said TFS hadn't completed reasonable and proportionate checks based on the information it had obtained as part of its affordability assessment. He said had TFS completed reasonable and proportionate checks it would have seen Mr C was gambling and concluded it would have been irresponsible to have lent to him.

Mr C accepted our investigators findings. TFS disagreed. In summary it maintained its position that it responsibly lent to Mr C as the loan was affordable based on the proportionate checks it said were completed at the time.

Because an agreement couldn't be reached the complaint has been passed to me to decide.

## **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 complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website. I've used this approach to help me decide Mr C's complaint. Bearing in mind the complaint before me, I think there are a number of overarching questions I need to consider in order to fairly and reasonably determine Mr C's complaint. These are:

1. Did TFS complete reasonable and proportionate checks on Mr C to satisfy itself he was in a position to afford to repay the loan sustainably?
  - If so, did it make a fair decision?
  - If not, would those checks have shown Mr C would have been able to do so?
2. Did TFS act unfairly or unreasonably in some other way?

Did TFS complete reasonable and proportionate checks on Mr C to satisfy itself he was in a position to afford to repay the loan sustainably?

The relevant rules, regulations and guidance at the time TFS lent required it to carry out reasonable and proportionate checks to assess Mr C's ability to afford the loan and repay it sustainably over its term, without causing him financial difficulties.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, taking into account things like the type, amount, duration and total cost of the credit, as well as the borrowers individual circumstances.

It isn't sufficient for TFS to just complete proportionate checks – it must also consider the information it obtains from these checks before making a fair lending decision.

TFS has provided us with its response file which includes the credit file search it obtained at the time of the lending, together with the income and expenditure checks it completed.

TFS says its affordability assessment showed Mr C had a disposable income of just under £50 per month after taking into account the repayments to this loan. It says there was negative information within Mr C's credit file that prompted it to ask questions – but Mr C had plausible explanations and it accepted the answers he provided without further checks. TFS says it completed proportionate checks at the time of lending and these confirmed Mr C was in a position to sustainably afford to meet the loan payments.

Having considered TFS's arguments, I'm not persuaded I agree with it.

TFS had an obligation to obtain a clear understanding that Mr C could afford the loan and sustainably maintain the payments over the full period of the term. From the information TFS has provided I'm satisfied there were sufficient markers which ought reasonably to have caused it to ask further questions to get a better understanding of Mr C's financial circumstances.

The credit file search TFS obtained at the point of the application shows Mr C had recent and historic problems managing his money. He'd had five defaulted accounts since 2011, three of these being within the last two years. There was a combined total of just over £2,300 outstanding on these defaulted accounts. Mr C was also in arrears with another pay day loan; had been in arrears on each of his mortgage, gas, electricity and communication accounts within the last 10 months; and had taken another line of credit of £7,000 in March 2015, two months before applying for this loan.

TFS has said it asked Mr C a number of questions about the negative information on his credit file – and it seems to have accepted Mr C's explanations for these issues without further review. It has said it was clear his financial problems were now in the past as the last missed payments were towards the end of 2014. However, I don't think TFS should have been so accepting of Mr C's recent negative credit history – or his explanations for it without further checks. I say this because TFS had an obligation to challenge any contradictory information it obtained and was presented with. Mr C's arrears had all been over a sustained period of time – and had only been brought up to date within four months of this loan being approved.

TFS has said it used a formula to work out Mr C's average income as he was receiving basic pay, shift pay and an allowance. TFS has used this method to conclude Mr C's average wage as £1,898.29. But the two payslips TFS has provided this service show Mr C's net income as £1,639.96 in March and £1,834.28 in April 2015 – with April's pay including an amount of overtime. Taking into account Mr C's actual net pay across the two months it

averages out at £1,737.12. I consider it would have been reasonable for TFS to have taken account of the actual documented net pay Mr C received rather than looking to use its own calculations which it knew provided a higher figure than Mr C had actually received.

The average figure obtained from the two payslips is £161.17 less than the figure TFS used in its affordability calculations. This means had TFS used this lower income figure Mr C would have been left in a negative position each month as his outgoings were higher than his income – and this should've promoted TFS to conduct further checks to establish both Mr C's income and expenditure.

As TFS didn't do this it follows that I'm not satisfied TFS completed reasonable and proportionate checks in this instance. Instead; I'm satisfied TFS should have completed further checks to ensure it fully understood Mr C's financial circumstances by verifying the information before lending to him.

Would further checks have shown Mr C would have been able to meet any repayments sustainably?

As I don't consider TFS completed proportionate checks, I've gone on to consider what I think further checks would have shown.

The rules aren't prescriptive in how TFS needed to verify the information Mr C provided. It could have asked Mr C to provide a variety of documents. Mr C has provided this service with his bank statements covering the months before this loan. I've reviewed these statements to understand his financial position at the time he applied for this loan as these statements would have been available to TFS at the time.

In each of the months there are significant deposits to an online gambling company. In March 2015 Mr C deposited over £4,500. And although I don't have the full statements for April 2015, from what I have I can see Mr C deposited over £1,500. Mr C was consistently gambling and it's clear from these statements that the level of gambling was to such an extent that Mr C was going to continue to exceed his income because of this on a regular basis.

As such, I'm satisfied had TFS completed reasonable and proportionate checks it would have identified Mr C was gambling a significant amount of money each month, and as such his outgoings were significantly higher than his income. So, it follows TFS ought to have concluded Mr C wouldn't have been able to sustainably afford to repay the loan and he wasn't a suitable candidate to lend to.

And in any event; TFS's own affordability checks concluded Mr C would be left with a disposable income of less than £50 per month. I'm persuaded, this low level of disposable income wouldn't have provided Mr C with a reasonable amount of breathing space had any unforeseen circumstances cropped up that he needed to pay for. And given the 36-month term of the loan, I don't consider this low level of disposable income sustainable across the full term. I've already explained that any repayments Mr C needed to make needed to occur without him suffering financial difficulties; and I'm not persuaded £50 per month was a sufficient enough amount to prevent this from occurring. This is further supported by the fact TFS was aware Mr C had significant issues managing credit in the past.

Did TFS act unfairly or unreasonably in some other way?

Based on the information provided, I've not seen any evidence to suggest TFS acted unfairly towards Mr C in any other way.

## **Putting things right**

As Mr C has already repaid the loan, in order to settle this complaint TFS should do the following:

- Refund all interest and charges Mr C paid on this loan.
- Pay Mr C 8% simple interest on the refund interest and charges from the date they were paid to the date of settlement.†
- Remove any negative information on Mr C's credit file in relation to this loan.

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

## **My final decision**

For the reasons set out above, my final decision is that I uphold Mr C's complaint about TFS Loans Limited and direct it to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 October 2021.

Richard Turner  
**Ombudsman**