The complaint

Mr S and Mrs S complained that TFS Loans Limited lent to them irresponsibly and provided them with a loan that was unaffordable.

What happened

Mr S and Mrs S were given a loan by TFS as follows:

Date taken	Loan status	Number of monthly instalments	Loan amount	Monthly repayment*	Total amount repayable
16 August 2018	Outstanding	60	£10,000	£349.00	£20,940.00

Mr S and Mrs S haven't been able to maintain the loan monthly repayments and they feel the loan was unaffordable for them from the start and should not have been provided.

One of our investigators reviewed Mr S and Mrs S's complaint. He didn't think that TFS should've provided the loan to Mr S and Mrs S and he set out the steps that TFS needed to take to put things right.

TFS disagreed with our investigator and asked for the case to be reviewed by an ombudsman. So the complaint comes 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 unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint.
There are some general principles I will keep in mind and questions I need to think about when deciding whether to uphold Mr S and Mrs S's complaint.

Before agreeing to lend, lenders must work out if a borrower can afford the loan repayments alongside other reasonable expenses the borrower also has to pay.

This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation. A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

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 (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).

I've kept all these things in mind when thinking about this complaint.

When Mr S and Mrs S applied for the loan, TFS asked about their income and did a background check to verify their pay. It asked Mr S and Mrs S about their regular expenditure and did its own credit checks in order to understand their credit history and see what they were paying to service existing debt.

TFS relied on statistical information to determine what a couple in Mr and Mrs S's situation would be likely to need to spend on their monthly living costs

TFS said its affordability checks were adequate and proportionate and based on the information gathered at the time of the application and, bearing in mind the purpose of the loan was for debt consolidation, the loan was affordable for Mr and Mrs S.

But I don't think TFS made a fair lending decision when it lent to Mr S and Mrs S based on the information it had gathered. I don't think TFS thought carefully enough about what the information it had gathered showed about Mr S and Mrs S's overall financial situation – and the likelihood of them being able to pay its loan in a sustainable manner.

After doing its own background checks, TFS recorded a figure of £3,618 for Mr and Mrs S's joint monthly household income. Mr and Mrs S told TFS their combined mortgage and rent payments came to £673 per month. TFS calculated the council tax for the property was around £115 and allowed for Mr and Mrs S needing to spend around £624 on other regular expenditure, plus an additional £288 to cover the running costs of their cars.

The loan was to be used to consolidate some existing debts. TFS calculated that Mr and Mrs S needed around £1,331 each month to cover the cost of the credit repayments they would still have to pay after consolidating other accounts. After also including a 'buffer' of 15% to allow for fluctuation in income or spending and taking into account the monthly repayments they would be making on this loan, TFS calculated that Mr and Mrs S have had around £84 left each month after meeting their normal monthly expenses.

I think that low amount of surplus cash was a warning sign that the loan risked being unaffordable for them – even with the 15% buffer that TFS built into its affordability assessment.

As well as this, TFS was aware from its credit checks that Mr and Mrs S were already in serious debt, between them owing around £52,000 to existing unsecured creditors, a mixture of high-street borrowing, high-cost lending, mail order and credit card debt.

I think this looked like an excessive amount of credit built up over a number of years. And the indications were that Mr and Mrs S had ongoing money problems and their debts were escalating. TFS could also see that Mr S had taken out two large unsecured loans (with balances outstanding totalling £27,762) within the previous 6 months. His credit card was close to its £200 credit limit. Mrs S had a long record of reliance on expensive credit and just a couple of months earlier she had taken an expensive unsecured loan (the balance on that showed as £14,334). And she was £1,713 overdrawn at the bank – so given the amount TFS understood her pay to be, it should've realised Mrs S was effectively paying her credit debts with borrowed money it didn't look like she was in a position to repay.

I think TFS should have understood that Mr and Mrs S showed all the hallmarks of being in serious financial difficulty and that the potential for debt consolidation that its loan offered wasn't a good enough reason to lend to them. I think the scale of their overall debt and the extent of their evident money problems and apparent reliance on high cost credit would suggest that Mr and Mrs S would remain in serious financial trouble regardless.

At the very least, given that Mr and Mrs S were signing up to make costly monthly repayments on this loan for the next five years I think reasonable and proportionate checks would've involved TFS doing more to ensure it had a thorough knowledge of Mr and Mrs S's financial circumstances, including evidence. I say this because I don't think TFS was reasonably able to be satisfied on the information it had that the loan was likely to be sustainably affordable over the term.

If TFS had done more and better checking, I think it likely that TFS would've seen nothing to reassure it that it was fair to provide this loan to Mr S and Mrs S – and more clear evidence that the loan *wasn't* likely to be sustainably affordable for them over the loan term. And had TFS done a proportionate check this would've revealed further reasons why the loan was likely to be unsustainable and why TFS shouldn't have provided it.

Mr and Mrs S provided us with their own credit reports and bank statements. TFS will already be aware that different credit searches can show different results – so I think it would've understood that its own credit checks didn't necessarily show Mr S and Mrs S's whole credit record.

And TFS could, of course, decide for itself how to undertake proportionate checking. But, in the absence of other evidence, I think the information that Mr and Mrs S sent us does give a reasonable insight into their finances at the time.

So I've looked through it to see what TFS was likely to have found out about their overall financial situation had it carried out more in-depth checks.

If TFS had looked more closely at Mr and Mrs S's finances it would likely have seen that they had taken out and were paying for other credit that didn't appear on its credit checks and Mr S and Mrs S hadn't mentioned.

Our investigator pointed out that the statements show Mrs S was working two jobs at the time – her typical monthly income from her main employment was around £1,764 and the pay from her second job was around £671. Mr S's normal monthly income was around £1,806. So I think it's fair to say that a reasonable assessment of Mr and Mrs S's average monthly household income was around £4,241 - which is more than the figure TFS relied on when it worked out affordability.

But set against this is the information on Mrs S's bank statements revealing two debts that were unknown to TFS - a hire-purchase agreement costing around £311 each month and a regular payment clearly marked as a 'loan' to the proposed guarantor for the TFS Loan Mr and Mrs S were taking out. That cost them a further £322.66 each month.

Excluding the debts being consolidated and Mrs S's mortgage, Mr and Mrs S needed more than £2,000 to repay their remaining credit commitments. With the loan from TFS as well, this would mean they would be paying more than half of their net household income each month just on servicing their debt.

Even if debt consolidation offered the opportunity to lower their monthly credit repayments this doesn't affect my view overall. Still having to pay more than half of their joint take home pay each month just to meet their credit obligations on unsecured debts was such a significant proportion of household income that it was unlikely in my view to be sustainable over the long loan term.

So, thinking about all this, I don't think TFS should've provided this loan.

As Mr S and Mrs S have been further indebted with a high amount of interest and charges on a loan that they shouldn't have been provided with, I'm satisfied that they have lost out as a result of what TFS did wrong. So, I think TFS needs to put things right.

I have dealt in my decision only with Mr and Mrs S's irresponsible/unfair lending complaint. I am aware that they have raised other complaint issues they may want to pursue but those will be looked at separately and have not been considered here as part of my decision.

Putting things right

I think it is fair and reasonable for Mr S and Mrs S to repay the principal amount that they borrowed, because they had the benefit of that lending.

But they have paid extra for a loan that should not have been provided to them. In line with this Service's approach, Mr and Mrs S shouldn't repay more than the capital amount they borrowed.

If TFS has sold any outstanding debt it should buy this back if able to do so and then take the following steps.

Otherwise, TFS should liaise with the new debt owner to achieve the results outlined below and do the following:

- add up the total amount of money Mr S and Mrs S received as a result of being given the loan. The payments Mr S and Mrs S made should be deducted from this amount

- if this results in Mr S and Mrs S having paid more than they received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement)

- if any capital balance remains outstanding, then TFS should attempt to arrange an affordable/suitable payment plan with Mr S and Mrs S bearing in mind the need to treat them positively and sympathetically in those discussions.

- remove any adverse information placed on Mr S and Mrs S's credit file regarding the loan.

*HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Mr S and Mrs S a certificate showing how much tax it has taken off if either of them asks for one.

My final decision

I uphold Mr S and Mrs S's complaint and direct TFS Loans Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 15 November 2021.

Susan Webb
Ombudsman