

The complaint

Mr N's complained that TFS Loans Limited, trading as TFS Loans ("TFS") were irresponsible in lending him money, because they didn't take into account other debts or his gambling.

What happened

Mr N borrowed £5,000 from TFS in April 2019. Towards the end of that year, he complained to TFS that they should never have lent to him, because he had other debts and issues with gambling.

TFS investigated Mr N's complaint and upheld it in part. In their response, they set out what they'd done to get information about Mr N's financial position and how they'd assessed he could afford the loan. They said that they'd asked Mr N for information about other debts, but he hadn't disclosed anything. Nor had he told them about his gambling problem. And he'd confirmed several times that the information TFS was relying on was correct.

But TFS did say they could have requested copies of Mr N's bank statements to check his financial situation more thoroughly. Because of this they offered to reduce the interest on his loan by 50%, which reduced Mr N's monthly repayments from £174.50 to £120.87. And they gave him an immediate payment holiday of three months, as well as extending the term by three months so the cost to Mr N didn't increase.

Mr N referred his complaint to us. Our investigator considered it and concluded TFS shouldn't have lent to Mr N. He said that, had TFS requested Mr N's bank statements – as they'd accepted they should – they would have seen the volume and frequency of his gambling transactions. The investigator thought these showed Mr N's gambling wasn't under control. And he said the fact that TFS's loan meant that just over two thirds of his average income was committed to loan repayments wasn't sustainable.

Our investigator said TFS needed to put things right by deducting what Mr N had repaid from the £5,000 loan he'd received. If that meant Mr N had paid TFS more than he'd received, TFS should refund him the overpayments - plus 8% simple interest (calculated from the date the payments were made until the date TFS repay them).

If, however, those calculations show Mr N still owes TFS some of what he borrowed, the investigator said TFS should arrange an affordable repayment plan with Mr N. In either case, they should remove any negative information they'd recorded about the loan from his credit file.

TFS didn't agree with the investigator's view and maintained they were entitled to rely on the information provided by Mr N when deciding whether to lend to him. So I've been asked to make a 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.

Having done that, I'm upholding Mr N's complaint. I'll explain why.

The rules relating to lending require lenders to make sure they don't lend irresponsibly. As our investigator explained, this means lenders must check that the lending is affordable and sustainable for the borrower. The rules governing lending require the checks to be proportionate. But they don't dictate exactly what checks should be made.

The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation. This means TFS in lending to Mr N are required to carry out a reasonable assessment of whether he could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused" – so TFS needed to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr N. This means it wasn't enough for them to only think about the likelihood that they would get their money back without considering the impact of repayment on Mr N.

TFS explained the checks they made in their response to Mr N's complaint. And they said in that letter they could've done more to assess whether Mr N could afford the loan – specifically, they should've requested his bank statements.

I agree with that assessment. And – like our investigator – I think if they'd reviewed the statements, it's unlikely they would have lent to Mr N because of what they showed.

I have looked at the statements for a three month period. They showed Mr N's exact salary varied each month but averaged just under £1250. That's significant because TFS calculated Mr N would have about £26 left each month after meeting all the commitments he declared. But they based that on a monthly salary of £1300. Had the lower figure been used, the calculation would have shown he had nothing at all left.

And the bank statements show that Mr N spent almost £11,500 on gambling websites. I don't think that, had this information been taken into account, TFS would have decided Mr N could sustain the loan repayments.

Putting things right

Whenever we uphold a complaint, we look at what needs to happen to put the complainant back into the position they would've been had the business not done anything wrong. So I've thought about what should happen to put Mr N back in the position he would've been in had TFS never lent to him.

Mr N would never have had the £5,000 he borrowed. And he's had the benefit of that loan - so it's fair that he should repay it. But he'd never have incurred the interest on the loan, or any charges arising from it. So the fairest thing is for those to be refunded, in full.

So, as our investigator said, TFS need to calculate the total amount Mr N has paid them over the life of the loan. If that's more than £5,000, they need to refund him the additional sums he's paid. And, because he's not had the use of that money since he paid it to them, TFS need to pay him simple interest on those sums at the rate of 8%.

On the other hand, if TFS have received less than the £5,000 they lent Mr N, they need to agree a repayment schedule for the amount still owing which is affordable for Mr N.

And they need to remove any negative information recorded on Mr N's credit file as a result of this loan being made.

My final decision

For the reasons I've explained, I'm upholding Mr N's complaint about TFS Loans Limited, trading as TFS Loans and directing them to:

- Calculate the total payments they've received from Mr N in relation to the loan and:
 - if they come to more than £5,000, refund Mr N the additional amount, together with simple interest calculated at the rate of 8% from the date of receipt to the date they make the refund; or
 - If they come to less than £5,000, agree a schedule of repayments for the outstanding amount which is affordable for Mr N.
- Have any negative information added to Mr N's credit file as a result of this loan removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 3 February 2022.

Helen Stacey
Ombudsman