DRN-3116146

## The complaint

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

## What happened

TFS Loans provided Mr M with a loan of £5,000 in August 2010. This loan had a 48-month term with a monthly repayment amount of £244.80. This all meant the total amount repayable of £11,751.40 was due to be repaid.

One of our investigators looked at this complaint and thought that TFS Loans unfairly provided this loan. They said, due to the amount of time that had passed, that they were unable to determine whether proportionate checks were carried out. They went on see what they felt proportionate checks would have found. They said further checks would have shown Mr M was having problems managing his finances at the time. 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 M's complaint.

I need to take into account the relevant rules, guidance and good industry practice.

The Office of Fair Trading (OFT) was the regulator when Mr M borrowed from TFS Loans. The relevant rules and guidance set out by the OFT in its Irresponsible Lending Guidance (ILG) said that before agreeing credit it needed to check that Mr M could afford to meet his repayments in a sustainable manner. This meant Mr M being able to meet his repayments out of his normal income without having to go without or borrow further. I've set out some of the relevant guidance below for ease.

ILG Paragraph 4.2 stated:
*Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.*

Paragraph 4.3 stated:
*The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:*
*without undue difficulty – in particular without incurring or increasing problem indebtedness*
*over the life of the credit agreement or, in the case of open-end agreements, within a*

*reasonable period of time*
*out of income and/or available savings, without having to realise security or assets.*

And Paragraph 4.4 described “undue difficulty”:
*The OFT would regard ‘without undue difficulty’ in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):*

*while also meeting other debt repayments and other normal/reasonable outgoings*
*and*
*without having to borrow further to meet these repayments.*
Paragraph 4.26 gave an example of irresponsible lending as “*Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.”*

The regulations weren’t prescriptive about what checks TFS Loans needed to carry out in order to reasonably assess whether or not Mr M would be able to meet his repayments sustainably. But the regulations said that such checks needed to be proportionate. This suggests that the same checks might not be appropriate for all borrowers, or for the same borrower in all circumstances. In general, I’d expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person’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 borrower is required to make payments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr M’s case, I have considered the following questions:

- did TFS Loans complete reasonable and proportionate checks when assessing Mr M’s application to satisfy itself that he would be able to repay the credit in a sustainable way? And, if not, what would reasonable and proportionate checks have shown?
- did TFS Loans make a fair lending decision?

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

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

This has been a difficult complaint to look into due to the lack of documentation provided. But I have been able to look through some evidence and consider on the balance of probabilities what more likely than not happened here.

TFS Loans hasn’t been able to provide too much information about the loan or how it carried out its checks. It has told us that Mr M was earning £24,000 a year at the time and was a homeowner. It has also provided credit search results that it would have seen at the time.

I agree with the investigator and understand as well why TFS Loans doesn’t have complete records from when it agreed to lend to Mr M in August 2010 due to the amount of time that has passed. But I also, with the information in front of me, am unable to determine the type of checks it carried out at the time. When I also consider the amount Mr M was borrowing in relation to what TFS Loans thought was his income, 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 over the life of the loan.

As TFS Loans have been unable to show that it did do this, I cannot conclude the checks it carried out before providing Mr M with his loan were reasonable and proportionate. So, I need to go on and consider what TFS Loans would have seen if proportionate checks had been carried out here.

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

As I haven't been able to conclude that proportionate checks were carried out, I need to decide whether it is more likely than not that a proportionate check would have told TFS Loans that Mr M would have been unable to sustainably repay this loan.

Mr M has provided payslips and also evidence of another loan at the time this one was granted. Mr M has also told our service that he was gambling heavily at the time. I've carefully considered the information provided.

This has been a difficult decision to make due to the lack of information provided. But when I consider the information I do have in front of me, on balance, I think its more likely than not Mr M was having problems managing his finances at the time the loan was granted. And that TFS Loans would have uncovered this if it had carried out proportionate checks.

I say this because Mr M has provided evidence that he held another loan at the time this one was granted. The monthly repayment on the loan with another finance provider was for £137.46. When I consider the monthly repayment amount of this loan was £244.80, the total amount Mr M was repaying in credit was significant in relation to his monthly wage. Mr M would have been paying around 28% of his income for these two loans.

In addition, I can see that Mr M was over his credit limit for two credit cards at the time and was also in arrears on both too. All of this would support what Mr M was saying about his situation at the time and that he was having problems managing his finances.

TFS Loans say Mr M took out the loan for debt consolidation and so would have reduced his debt to income ratio but paying off credit. But it has not provided any evidence of what Mr M was intending to do with the loan or if this was discussed when it agreed to lend.

Bearing all this in mind, on balance and based on what I have in front of me, I agree with the investigator that Mr M was having problems managing his finances at the time TFS Loans agreed to lend here. It's more likely than not, based on what I have seen that TFS Loans wouldn't have agreed to lend if it had carried out proportionate checks. It would have seen that the loan wasn't sustainable for Mr M, for the reasons I have given above.

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 M'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 M made, direct to TFS Loans and any third-parties, should be deducted from the new starting balance – the £5,000 originally lent.

- If Mr M has already repaid more than £5,000.00 then TFS Loans should treat any extra as overpayments. And any overpayments should be refunded to Mr M; adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr M to the date of settlement†

† HM Revenue & Customs requires TFS Loans to take off tax from this interest. TFS Loans must give Mr M 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 M'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 M to accept or reject my decision before 21 November 2021.

Mark Richardson
**Ombudsman**