

The complaint

Miss K complains that TFS Loans Limited trading as TFS Loans irresponsibly provided her with an unaffordable loan.

What happened

TFS provided Miss K with a loan as follows:

Date agreed	Amount received	Term (months)	Monthly repayment	Interest (APR)	Total Amount repayable	Loan status
04/10/18	£10,000	48	£384.17	39.9%	£18,440.16	Outstanding

Miss K mainly said that TFS didn't check properly before providing the loan. She soon ran into payment problems and the loan hasn't been paid. When she wasn't able to resolve her complaint directly with TFS she brought her complaint to us.

Our investigator assessed the complaint and recommended upholding it. He set out the steps TFS should take to put things right.

TFS didn't agree that the loan was unaffordable for Miss K and asked for an ombudsman to review the case. In brief summary, it said:

- there is no dispute that between 2013 and 2017 Miss K had financial difficulty. But by the middle of 2017 she was in a better position
- TFS didn't believe a consumer should be denied access to credit just because she had a bad experience, especially when Miss K had taken responsibility for her debt and was making token payments
- Miss K had sufficient disposable income to repay all her existing financial commitments including the contractual payment on another high cost loan recently taken out and her everyday living expenses - it also allowed a 'buffer' to cover any emergency expense for the duration of the loan
- Miss K's circumstances had improved and active accounts on the credit report all seemed to be maintained well with good recent history in terms of repayments
- TFS believed the checks it carried out were proportionate and is satisfied it had an accurate understanding of Miss K's financial circumstances and its lending decision was fair.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"There are some general principles I will keep in mind and questions I need to think about when deciding whether to uphold Miss K'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 in order that a lender can make a fair lending decision. 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 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. 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. 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 of this in mind, in coming to a decision on Miss K's case.

TFS asked Miss K some questions about her income and expenditure. TFS did its own checks, which included obtaining information about Miss K's credit history and taking into account statistical information about how much someone in Miss K's position typically spent each month. Also allowing for Miss K's spending on her other credit commitments, TFS worked out that, after making the monthly repayments for this loan, Miss K would still have around £2,296 spare cash. So TFS felt the loan would be comfortably affordable for her.

I've taken into account what TFS has said about how it calculated the affordability of this loan before it agreed to lend to Miss K. But, I don't think TFS made a fair lending decision when it lent to Miss K based on the information it had gathered.

I say this because TFS was able to see from its credit checks that Miss K had at least four previous defaults with balances totalling £6,827. The most recent default had happened within the previous 18 months and it looked like Miss K was making some repayments towards defaulted accounts under a payment arrangement. Miss K also had six County Court Judgements (CCJ's) shown on her record – mostly within the previous three years -

totalling £18,806. TFS was also aware that Miss K had very recently taken out a £10,000 loan with another high cost credit provider.

I don't think TFS thought carefully enough about what this credit history showed about Miss K's overall financial situation, especially bearing in mind it had calculated that she had disposable income in excess of £2,000 each month. To my mind, the information TFS saw on the credit checks it had carried out would've seemed at odds with what TFS concluded about Miss K's financial situation.

Even if it accepted that Miss K's previous adverse credit history was the result of a big drop in her income some years earlier when she had lost her well paid job, I think TFS should have considered carefully why someone with the amount of disposable income its checks suggested Miss K now had would have still needed to make use of expensive credit the way it could see Miss K was doing – especially as she told TFS she had been in her new and better paid job for around three years.

I think TFS should have questioned how much confidence it could have in the information it had gathered – especially as it appears also to have acquired a copy of one page of Miss K's bank statement dated 2 October 2018 (it looks like TFS supplied this to us as part of its business file). Whilst the information shown is very limited – it covers just part of 3 days' worth of banking transactions - I think TFS should reasonably have been interested in finding out about multiple payments it could see that were being made out of the account to a single named business. I say that because it looks like a spending pattern that should potentially have alerted a responsible lender to at least make further enquiry so it could be reassured that it had a proper understanding of the way Miss K was using her money.

I've carefully listened to the call recordings between TFS and Miss K and I haven't heard anything that makes me think TFS followed up this information as it should have done.

So I don't think, based on what TFS had in front of it, I can fairly say that TFS saw enough to reasonably be satisfied that Miss K was going to be able to make the repayments for this loan in a sustainable way.

I think TFS should have considered more carefully why someone with the amount of disposable income its checks suggested Miss K had would have needed to make use of expensive credit the way it could see Miss K was doing. And I don't think, based on what TFS had in front of it, I can fairly say that TFS saw enough to reasonably be satisfied that Miss K was going to be able to make the repayments for this loan in a sustainable way.

I think that TFS should've done more in-depth checks when considering Miss K's loan application. I don't think its checks were proportionate because, to my mind, the amount borrowed, the total repayments Miss K would have to make for this loan and the length of the loan term all lead me to think, on balance, that TFS should have carried out a complete review of Miss K's finances and done more to verify what she had told it – especially bearing in mind also what it saw on the credit checks it did carry out and the information it acquired.

I've looked at more bank statements provided by Miss K from around the time she took out this loan which I think are a useful guide to understanding Miss K's overall financial situation at the time. And I think, if TFS had done a proportionate check before lending, it would've seen nothing to reassure it that this loan was going to be sustainably affordable for Miss K. I can see that, far from having the amount of disposable income left over each month that TFS had calculated, in reality Miss K was frequently barely in credit. And had TFS looked in

depth at Miss K's finances it would likely have seen that she was facing serious problems managing her money and learnt that Miss K was regularly spending significant amounts on gambling transactions.

I think, had it done a proportionate check, TFS would've most likely realised that this loan wasn't going to be sustainably affordable for Miss K given the clear evidence of the extent of her gambling spending at the time. And TFS, as a responsible lender, should've declined Miss K's loan application.

I don't think the fact that this expensive loan was intended to be used partly to repay other expensive credit means it was fairly provided. Overall, I don't think TFS could reasonably have satisfied itself that providing this loan to Miss K wouldn't put her in a worse position given the evidence it should've seen which would've suggested there was a real and foreseeable risk that Miss K might use the loan for gambling purposes – as appears to be what happened in the event.

All this leads me to conclude that TFS should not have provided the loan.

Our investigator didn't feel he'd seen enough to say that TFS acted unfairly or unreasonably towards Miss K some other way. I agree with our investigator and as I haven't seen anything to suggest that Miss K is unhappy with our investigator's view on this point I don't think I need to say more about it.

So I'm not proposing to award any additional redress over and above what I've set out below. But as Miss K has been further indebted with a high amount of interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what TFS did wrong. For all the reasons I have explained above, I think it is fair and reasonable for TFS to take the following steps to put things right."

What the parties said in response to my provisional decision

Miss K agrees with what I've said in my provisional decision.

TFS said that it felt able to comment only on the information it saw and that it was entitled to rely on this when making its lending decision. It said it was fair to assume that if the loan wasn't affordable then it would have seen missed payments very early on in the loan term. TFS also told us that it sold the loan on a non-advised basis and so it was up to Miss K to decide if it was a suitable loan for her.

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.

I've taken carefully into account everything that's been said in response to my provisional decision.

I'd like to assure TFS that I've thought carefully about everything again before coming to my final decision. And whilst I have highlighted above only what seem to me to be the main points of concern they've raised, I have read thoroughly and taken into account everything they have asked me to reconsider.

TFS hasn't provided me with any new information that changes what I think about this case.

I'd already considered all the main points mentioned above when thinking about my provisional decision.

I have addressed in my provisional decision all the points which have a bearing on the outcome.

The fact that Miss K began by making the monthly repayments to TFS doesn't mean that she was able to do so in a way that was ultimately sustainable for her over the loan term – as proved to be the case when she stopped being able to maintain her payments to the account.

I appreciate that TFS takes a different view to me. But I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

Putting things right

In line with this Service's approach, Miss K shouldn't repay more than the capital amount she borrowed.

But she has had to pay extra on a loan that shouldn't have been provided to her – which isn't fair or reasonable.

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 Miss K received as a result of being given the loan. The payments Miss K made should be deducted from this amount
- if this results in Miss K having paid more than she 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 Miss K bearing in mind the need to treat her positively and sympathetically in those discussions
- remove any adverse information placed on Miss K's credit file regarding the loan

*HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Miss K a certificate showing how much tax it takes off if she asks for one.

My final decision

I uphold this complaint and direct TFS Loans Limited trading as TFS Loans to take the steps set above to put things right for Miss K.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 17 November 2021.

Susan Webb
Ombudsman