DRN-3119559

The complaint

Mr R complained that TFS Loans Limited lent to him irresponsibly and provided him with loans that were unaffordable.

What happened

TFS provided loans to Mr R as follows:

Loan	Date of loan	Loan amount	Term (months)	Monthly repayment	Interest (APR)	Total amount
1	06/11/18	£2,500	24	£172.77	69.9%	£4,146.48
2	04/06/19	£4,000	24	£245.83	48.9%	£5,899.92

Mr R told us that when TFS provided the loans it didn't do the necessary checks and had it done so it would've seen he had two other active large guarantor loans as well as a large car loan and other borrowing.

One of our investigators looked into the complaint. He didn't think TFS should have provided Mr R with either of the loans and so he upheld the complaint and set out the steps TFS should take to put things right.

TFS didn't agree with the investigator's assessment. It mainly said:

- it can't comment on Mr R's bank statements as it hadn't had sight of these and it can only make comments on the information it had at the time of the application
- TFS was entitled to rely on information provided to it by Mr R being accurate and it hadn't seen anything to suggest this was not the case
- it would be fair to assume if this loan was not affordable then it would have seen missed payments very early on into the loan term
- the checks it carried out were proportionate and TFS made a fair lending decision
- the application was approved based on the information provided by Mr R and a number of discussions took place to determine the details were accurate. TFS hasn't seen anything to suggest he wouldn't be able to afford the loan.

TFS requested that the case be referred to an ombudsman for review. So it 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 key questions I need to consider in order to decide what’s fair and reasonable in the circumstances of this particular complaint:

- Did TFS complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the loan in a sustainable way? If so, did TFS make a fair lending decision?

- If not, what would reasonable and proportionate checks have shown at the time?

- Did TFS act unfairly or unreasonably in some other way?

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 carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr R’s complaint.

For loan 1, TFS asked Mr R about his income and expenditure, it took steps to verify his salary and checked his credit history. I've taken into account the information TFS gathered from Mr R. I think it’s fair to say that the figures Mr R declared and the affordability calculations TFS caried out seemed to suggest he had ample disposable income after taking into account his monthly expenditure and it appeared that he should have been able to comfortably afford the monthly repayments for this loan.

But given what it saw in the credit report it acquired showing details of Mr R's credit history, I think our investigator was right to be concerned about TFS making its lending decision without doing more in-depth checks or taking steps to verify the information it was relying on. I say this particularly bearing in mind that Mr R was signing up to repay the loan for the next two years. I think that was a long enough loan term to go beyond what would be a reasonably foreseeable period to expect complete stability in his finances.

And it was evident that he had some hallmarks of serious financial difficulty apparent on his credit report. I say this because TFS saw information showing a significant amount of historical adverse information with at least nine previous defaults, most of which appear to have been active at the time, as well as an outstanding County Court Judgement. Whilst the majority of the defaults dated back at least three years or more, the most recent had been issued just over six months prior to this application. So I don't think TFS was safely able to say that it looked like Mr R was on top of managing his financial situation.

I don't agree with TFS that the information it saw wasn't enough to impact on its lending decision. What Mr R had told TFS about his income and expenditure, and its own affordability calculation suggesting he had a healthy amount of surplus cash each month, looked to be clearly at odds with what TFS saw on its own credit checks, which showed clear indications that Mr R hadn't yet resolved his money problems.

It isn't unusual for applicants for this type of high cost loan to have a credit history showing other borrowing or an impaired credit record – and these things wouldn't necessarily be reasons to prompt a responsible lender to decline a loan application. But TFS was aware that Mr R had active court debt and it saw clear signs of payment problems on other accounts. So thinking about all the information TFS had gathered, I don't think it was able to be satisfied on the information it had in front of it that it could safely conclude that its loan would be sustainably affordable for Mr R.

I think it would have been proportionate for TFS to have taken steps to independently verify the true state of Mr R's finances and it needed to do more in-depth checks to ensure it properly understood his financial situation before agreeing to provide this loan.

So, I've looked at what I think proportionate checks would likely have shown. Mr R has provided his bank statements so I've looked through these to see what TFS was likely to have found out. To be clear, I'm not suggesting the lender should necessarily have done this. But, in the absence of other evidence, I think these give a reasonable guide as to Mr R's finances at the time. And had TFS looked in depth at Mr R's finances it would likely have seen that he was facing serious problems managing his money.

I think it would have learnt that Mr R was regularly spending significant amounts on what appear to be gambling transactions. And TFS would've seen nothing to reassure it that its affordability calculations could be relied on – the indications were that Mr R didn't in reality have enough spare cash to stretch to making the loan repayments for this loan. So I don't think it was reasonable for TFS to conclude that it was likely Mr R would be able to repay this loan in a sustainable manner.

For these reasons, I am upholding Mr R's complaint that he should not have been given loan 1.

It follows that I don't think TFS acted fairly or reasonably when it topped up the loan and provided Mr R with additional credit some seven months afterwards when it provided loan 2. It followed a similar lending process and it didn't carry out what I consider would've been proportionate checking given the loan term and amount and the evidence of financial difficulty apparent on his credit history. Also, Mr R had mentioned on his loan application that he had recently had a good pay rise and extra hours at work. So I think TFS should have thought more carefully about why he still needed an “immediate loan” to help in the “short term”.

The fact that Mr R may have made his repayments to loan 1 on time doesn’t mean that he was able to do so in a way that was sustainable for him. I think TFS should have considered the likelihood that loan 1 might have been at least part of the reason for Mr R’s apparently ongoing money problems – so it should’ve realised that increasing the amount of his loan monthly repayments would obviously be problematic for him.

And had TFS done what I consider would’ve been a proportionate check it would’ve seen that Mr R’s financial situation hadn’t improved and he was still spending a disproportionate amount of his income on what appear to be gambling transactions.

To sum up, I don’t think it was reasonable for TFS to conclude that it was likely Mr R would be able to repay these two loans in a sustainable manner.

In these circumstances, I don’t think that it was fair and reasonable for TFS to conclude that Mr R would more likely than not have been able to make the payments to these loans without difficulty or borrowing further. So I think that its decision to lend in these circumstances was unfair. And whilst I've taken carefully into account everything TFS has said, including comments made in response to our investigator’s view, these don’t affect my decision overall. I’m grateful to TFS for setting out its position, and I accept that it takes a different view to me. But, for the reasons I have explained, I don’t think TFS should have given either of the loans to Mr R.

As he has been further indebted with a high amount of interest and charges on loans that he shouldn’t have been provided with, I’m satisfied that Mr R has lost out as a result of what TFS did wrong.

So it is fair and reasonable for me to require TFS to take steps to put things right.

Putting things right

I haven’t seen anything which makes me think that TFS acted unfairly or unreasonably towards Mr R in some other way. So I haven’t identified any reason for me to award any additional redress.

I think it is fair and reasonable for Mr R to repay the capital amounts that he borrowed, because he had the benefit of that lending. But he has paid extra for lending that should not have been provided to him.

In line with this Service’s approach, Mr R shouldn’t repay more than the capital amount he borrowed.

If TFS 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 R received as a result of having been given the loans. The repayments Mr R made should be deducted from this amount.
- If this results in Mr R having paid more than he 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 R keeping in mind the need to treat him positively and sympathetically if he needs further time to pay.
- remove any negative information recorded on Mr R's credit file regarding the loans.

*HM Revenue & Customs requires TFS to deduct tax from this interest. TFS should give Mr R a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold this complaint and direct TFS Loans Limited to take the steps I've set out above to put things right for Mr R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 February 2022.

Susan Webb
Ombudsman