

The complaint

Mr H complains that TFS Loans Limited lent to him in an irresponsible manner.

What happened

I issued a provisional decision on this complaint in September 2021. In that decision I explained why I thought most of the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mr H was given four loans by TFS between April 2016 and November 2018. The later loans were used, in part, to refinance Mr H's earlier borrowing from TFS. Mr H agreed to repay each loan in 24 monthly instalments, and the loans were guaranteed by Mr H's brother. A balance remained outstanding on the last loan when Mr H made his complaint. A summary of Mr H's borrowing from TFS is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	06/04/2016	Refinanced	£ 2,000
2	06/12/2016	Refinanced	£ 3,000
3	22/01/2018	Refinanced	£ 3,000
4	12/11/2018	Outstanding	£ 3,500

TFS gathered some information from Mr H before it agreed each loan. It asked him for details of his income and verified this using a third-party checking service. It used some industry statistical data to estimate Mr H's normal expenditure. And it checked his credit file to assess how much he was repaying to other creditors and how he'd managed credit in the past.

Mr H was entering into significant commitments with TFS. On each loan he would need to make monthly repayments for a period of two years. And Mr H borrowed repeatedly from TFS over the length of their relationship. I think TFS needed to be mindful of both these factors when deciding whether its normal checks were appropriate.

I think that it was right that TFS wanted to gather, and independently check, some detailed information about Mr H's financial circumstances before it agreed to give him the first loan. I think that the checks I've described above were sufficient to achieve that aim – I think that TFS's checks were proportionate.

But simply performing proportionate checks isn't always enough. A lender also needs to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan

application outright. So I've looked at the results of the checks to see whether TFS made a fair lending decision.

When TFS looked at Mr H's credit file before agreeing the first loan it noted that he had defaulted on a payday loan around three years earlier, and a mobile phone account just four months before. I think that the more recent default should have been particularly concerning to TFS. The credit check also showed that Mr H had two credit cards, that were approaching their agreed credit limit, and two other active payday loans.

When it discussed the credit check with Mr H he explained that he wanted to use part of the proceeds of the loan to repay the two payday loans, and that he would then be able to stop using credit of that nature. I think it was reasonable for TFS to rely on what Mr H said. It seems to me that there was little, at this early stage of its relationship with Mr H, to lead TFS to conclude that it would be likely Mr H would face problems repaying this loan in a sustainable manner. I don't think it was wrong for TFS to give the first loan to Mr H.

Around eight months into the two-year loan term Mr H asked to borrow again from TFS. The amount he asked to borrow had increased by 50% - he said he would use the loan to repay his earlier borrowing and to pay for a forthcoming holiday. I think the fact that Mr H needed to refinance his earlier loan should have caused concerns to TFS.

And I think those concerns should have been amplified by the changes that were apparent on Mr H's credit file. The default to the mobile phone account was no longer present - but the payday loan default remained, meaning that what Mr H had previously said about the loan having been paid back was untrue. He now said that he had tried to contact the lender, but had received no response.

The credit check also showed that Mr H had taken a new instalment loan just over a month before. And he now held four credit or store card accounts each of which were approaching their agreed credit limit. I think, taken together with the fact this loan was to refinance some earlier borrowing, that increase in Mr H's use of credit should have caused TFS to undertake some more detailed checks into Mr H's financial situation.

I've looked at Mr H's bank statements, and what he's told us about his financial situation, to see what better checks might have shown TFS. At this stage I want to be clear that I am not suggesting that this is the exact check that TFS should have carried out. I do think TFS needed further evidence to corroborate what Mr H said was happening with his finances. And looking at his bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Mr H's bank statements I can get a good idea of what better checks might have shown.

Mr H has told us that he was suffering from a gambling addiction at the time he asked for these loans. I want to be clear that I think that is distinct from a consumer using gambling as a controlled and legitimate leisure activity. Mr H's bank statements from the time show the extent of the problems he faced. In the month before he took the second loan from TFS he spent more than three times his normal income on gambling transactions. And I agree with Mr H that spending would have been readily apparent had TFS done better checks.

So I think further checks would have shown TFS that it was unlikely that Mr H would be able to repay any further borrowing in a sustainable manner. To do so would be

reliant on him either overcoming his addiction, or being successful with his gambling activities. I don't think that it would have been reasonable for TFS to conclude either outcome was likely, or an appropriate basis on which to lend money to Mr H. So I don't think the second loan should have been agreed.

Mr H refinanced his borrowing on two further occasions. And each time TFS's credit check showed a further deterioration in his use of credit. By the time of the third application Mr H now held five credit cards, and three other home credit loans. And by the time of the fourth application things had become even worse. By then Mr H held six credit card accounts, and a number of his loan and credit card accounts were now showing as being in arrears.

Mr H's bank statements from the time continue to show his gambling expenditure and that he was funding that expenditure by taking loans from other lenders and borrowing from family and friends. By the time of the fourth loan Mr H was also making regular and significant use of an overdraft facility on his bank account. So I don't think it was reasonable for TFS to allow Mr H to refinance his borrowing by taking loans 3 or 4 either.

In summary I currently think the checks TFS undertook before agreeing the first loan were proportionate and the results didn't suggest that Mr H might struggle to repay that loan. But I think TFS needed to undertake further checks before providing the remaining loans. And I think that better checks would have led the lender to conclude Mr H wouldn't be able to repay that borrowing in a sustainable manner. So TFS needs to put things right for Mr H.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr H has said that he accepts my provisional findings. TFS hasn't provided us with anything further.

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.

Given that neither party has provided me with any new evidence or further comments I see no reason to alter the conclusions I reached in my provisional decision. So I think the checks TFS undertook before agreeing the first loan were proportionate and the results didn't suggest that Mr H might struggle to repay that loan. But I think TFS needed to undertake further checks before providing the remaining loans. And I think that better checks would have led the lender to conclude Mr H wouldn't be able to repay that borrowing in a sustainable manner. So TFS needs to put things right for Mr H.

Putting things right

I don't think TFS should have agreed to lend to Mr H after, and including, the loan that he took on 6 December 2016 (loan 2). So TFS should;

- refund all the interest and charges Mr H paid on loans 2 and 3.
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- remove any interest and charges still outstanding on loan 4 and treat all the payments Mr H made towards this loan as payments towards the capital

- if reworking Mr H's loan 4 account as I've directed results in Mr H effectively having made payments above the original capital borrowed, then TFS should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement†.
- If reworking Mr H's loan 4 account leaves an amount of capital still to be paid, then TFS can use the total refund for loans 2 and 3 (after the deduction of tax) to offset this. And if there is still an outstanding capital balance then I remind TFS that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mr H
- remove any adverse information recorded on Mr H's credit file in relation to the loans

† HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Mr H a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold most of Mr H's complaint and direct TFS Loans Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 November 2021.

Paul Reilly
Ombudsman