

The complaint

Mrs C says TFS Loans Limited lent to her irresponsibly.

What happened

Mrs C took out a guarantor loan from TFS in February 2014. It was for £3,500 over 36 months. The monthly repayments were £153.94 and the total repayable was £7,306.39.

Mrs C says TFS didn't carry out effective affordability checks and she had to borrow from family and friends to make her repayments and protect the guarantor.

Our investigator recommended the complaint should be upheld. He said TFS didn't make a fair lending decision based on the information it gathered as part of its checks.

TFS disagreed saying it whilst there was adverse information on Mrs C's credit check it was historic, and it had taken into account how much she was spending repaying old and existing debt.

As agreement wasn't reached, the complaint was passed to me 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Office of Fair Trading (OFT) was the regulator when Mrs C borrowed from TFS. The relevant rules and guidance set out by the OFT in its Irresponsible Lending Guidance (ILG) said that the lender needed to check that Mr G could afford to meet her repayments in a sustainable manner. This meant Mrs C being able to meet her repayments out of her normal income without having to go without or borrow further.

The checks also had to be borrower-focused. So TFS had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mrs C. In other words, it wasn't enough for TFS to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mrs C.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (eg. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.

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 for (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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether TFS did what it needed to before agreeing to lend to Mrs C, and have considered the following questions:

- did TFS complete reasonable and proportionate checks when assessing Mrs C's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did TFS make a fair lending decision?
- did TFS act unfairly or unreasonably in some other way?

TFS asked for some information from Mrs C before it approved the loan. It asked for details of her income (it seems it checked this against an extract of her bank statement), her monthly housing costs and her existing credit commitments. It checked her credit file to understand her credit history. It also asked about the purpose of the loan which was debt consolidation and car repairs. From these checks combined TFS concluded Mrs C would have around £445.07 of monthly disposable income after making this loan repayment and so it was affordable.

I'm not persuaded the checks TFS carried out were proportionate given it needed to be sure Mrs C would be able to sustainably repay the loan for a three-year period. I can't see it considered her living costs at all, and it was aware from the extract of the bank statement that she had taken out a payday loan in the previous month. So it ought to have taken steps to make sure it had a fuller understanding of her actual finances before lending. But I won't comment further on this as even based on the information it gathered I don't think it made a fair lending decision.

There was a high volume of adverse data on the credit check TFS carried out for Mrs C. I accept, as it argues, much of it was historic and I agree that in some circumstances a certain level of adverse historic data would not necessarily be a reason to decline an application. But Mrs C had over £40,000 of unsettled County Court Judgments (CCJ) registered against her - and she has told us she was unable to make settlement payments as she was prioritising two guarantor loans she had in order to protect the guarantors. She also had a very significant level of debt outstanding on defaulted accounts. Whilst the majority of this adverse information was more than 36 months old, some was more recent (notably there was a CCJ for almost £22,000 that was less than 36 months old) and there was evidence that Mrs C's finances continued to be under pressure as she had an active home credit agreement and, as I said earlier, the extract from her bank statement showed she had taken out at least one payday loan in January 2014. I think by agreeing to lend to Mrs C TFS was increasing Mrs C's indebtedness in a way that was harmful as it extended her dependency on credit. TFS argues it considered Mrs C's existing credit commitments of £447 and £63.72 in its affordability assessment. I have two concerns here: it did not take into account her

actual living costs and nor has it evidenced that it looked beyond the pounds and pence affordability and carried out borrower-focused checks. Given Mrs C's credit history, I don't think it's fair and reasonable for TFS to say that it lent to Mrs C in the knowledge that doing so carried no risk of causing her financial harm in some way. It references her improved employment circumstances, but it hasn't shown it did enough to fully understand her financial situation before making its lending decision, given what it knew.

It follows I think TFS was wrong to lend to Mrs C.

I haven't found evidence that TFS acted unfairly or unreasonably in some other way.

Putting things right

It's reasonable for Mrs C to have repaid the capital amount that she borrowed as she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been given to her. So she has lost out and TFS needs to put things right.

It should:

- Remove all interest, fees and charges on the loan and treat all the payments Mrs C made as payments towards the capital.
- If reworking Mrs C's loan account results in her having effectively 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 Mrs C's loan account results in an outstanding capital balance TFS must try to agree an affordable repayment plan with Mrs C.
- Remove any adverse information recorded on Mrs C's credit file in relation to the loan.

*HM Revenue & Customs requires TFS to deduct tax from this interest. TFS should give Mrs C a certificate showing how much tax it's deducted, if she asks for one.

My final decision

I am upholding Mrs C's complaint. TFS Loans Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 10 January 2022.

Rebecca Connelley
Ombudsman