

## **The complaint**

Miss S complains about a loan given to her by TFS Loans Limited.

## **What happened**

In April 2014, Miss S applied for a loan of £8,000 with TFS to consolidate some other debts. TFS was only prepared to lend her £5,000 to be repaid in 60 monthly instalments of £193.19 which she accepted. She says the loan shouldn't have been agreed as it wasn't affordable.

TFS looked into her complaint but didn't respond in detail. It said the complaint was out of our jurisdiction as it had been brought too late, so it chose not to deal with it.

Miss S referred her complaint to us and one of our investigators looked at it. She (and later another ombudsman) said the complaint was in our jurisdiction, so our investigator went on to consider the merits of it. She felt TFS didn't carry out thorough enough checks and didn't reach a fair decision to lend as a result. Our investigator asked TFS to put matters right.

Miss S accepted what our investigator said, but TFS didn't. It said (in summary):

- Her credit file showed accounts were all up to date.
- Consolidating her credit would reduce her commitments and allow Miss S to reduce her overall indebtedness.
- Miss S had told it her salary was £1,300 per month, but it had calculated her income and expenditure using a figure of approximately £1,100.
- It felt its checks were reasonable and proportionate.

As there was no agreement, the complaint has been referred to me for a final 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.

We've set out our approach to complaints about high cost credit on our website - including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

TFS needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Miss S irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did TFS carry out reasonable and proportionate checks to satisfy itself that Miss S was in a position to sustainably repay the loan?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did TFS make a fair lending decision?
- Did TFS act unfairly or unreasonably towards Miss S in some other way?

TFS had to carry out reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the loan sustainably - that is, that she should be able to repay the credit without undue difficulty, while being able to meet other commitments and without having to borrow further. It's not about TFS assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on her. The fact that the loan was guaranteed by a third party and the potential for TFS to pursue the guarantor instead of Miss S doesn't alter or lessen the obligation.

There is no set list of checks that TFS had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower.

I think a reasonable and proportionate check ought to be more thorough where:

- a customer has a low income (because it may make it more difficult to make loan payments of a set amount from a low level of income);
- the higher the amount due to be repaid (because it may be more difficult to meet a higher repayment for a particular level of income);
- the longer the term of the loan (because the total cost of the credit is likely to be higher, and the customer is obliged to make payments for a longer period); and
- the greater the number and frequency of loans and the longer the period of time during which a customer has been given loans (because of the risk of repeated refinancing may signal that the borrowing was becoming unsustainable).

#### Did TFS carry out reasonable and proportionate checks?

TFS obtained a payslip from Miss S and had a conversation with her about her expenditure. It obtained her permission to conduct a search of her credit file. It was satisfied with the information it obtained and felt the loan was affordable for Miss S. I can understand why TFS felt it had carried out reasonable and proportionate checks.

But as I've set out above, I'd expect checks to be more thorough when the customer has a low income and where a relatively large amount is repayable over a longer term. In this case, Miss S said she earned around £1,300 per month so I think it's fair to say she had a relatively low income. This loan was for a substantial sum with repayments due over 60 months. So I'd expect a lender to carry out very thorough checks in these circumstances.

TFS used a figure of £1,106 for Miss S's income, rather than her declared £1,300. Based on what she told it about her expenditure, TFS's calculation showed she had a monthly disposable income of just £8 per month. Some of the items given were very low, and others were missing altogether. For example, "*Housekeeping (food/drink, household shopping)*" is shown as £30 per month which is very low, and there was no allowance in the budget for a mobile phone despite Miss S speaking to TFS using one.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). At the time TFS agreed this loan, CONC 5.3.1 4(b) said "*it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer*". I've seen no evidence that, despite the tight budget, TFS asked further questions about her budget to satisfy itself that Miss S would be able to sustainably repay the loan before agreeing to lend.

It's fair for TFS to say that Miss S's credit report showed she was up to date with her other credit commitments – and there were only three showing. However, all three of those credit

commitments – a credit card, home credit and a personal loan – had been taken within nine months of this application, the newest during the last month. So I think there were signs that Miss S was beginning to rely on credit.

TFS has said that Miss S was consolidating her other debts which would reduce her overall indebtedness. But she'd initially applied for a loan of £8,000 which was refused following checks on the guarantor – TFS said it was only prepared to lend £5,000. I've heard no discussion with Miss S about the effect the reduction in the loan amount was going to have on her. Clearly she was not going to be able to achieve precisely what she'd wanted with such a large reduction. What affect would that have on her budget over the life of the loan?

I've listened to the conversation in which Miss S was told TFS would only lend £5,000. She asked what the repayments would be over five years and was given a figure of £156.25. Miss S said she'd go away and work out if she could do that. So TFS was aware it was lending £3,000 less than Miss S had requested, but it had also given her the wrong repayment figure to use in her calculations. The true repayment amount (advised later in the paperwork) was £193.19 – almost £40 a month more.

So, I've seen that Miss S's budget was tight, she was beginning to use credit regularly which she hadn't done previously and that TFS wasn't prepared to lend her what she felt she needed to consolidate her debts. In these circumstances, I'd have expected TFS to take a closer look at things to ensure she would be able to make the repayments to the loan sustainably. I don't think TFS carried out reasonable and proportionate checks.

#### What would reasonable and proportionate checks have shown at the time?

I acknowledge that Miss S told TFS that her actual usual income was around £1,300 a month – and some of the payments on her statements support that. TFS correctly used a lower amount based on the payslip she'd provided when carrying out its calculations. But as I've said, that produced such a tight budget, I'd have expected it to look further. Had it done so, it might have asked to see some bank statements to support her expenditure.

Miss S has provided some bank statements from just before and just after this loan was taken. They show that a number of the items of expenditure she'd declared were more than she'd said, and others hadn't been declared at all. For example, housekeeping had been declared as £30 a month, but she was regularly spending around £90-£100 on that. The mobile phone I mentioned earlier which isn't in the budget was approximately £27 a month, and some items such as car insurance and broadband had been understated. There's an account fee to her bank for £15 a month and other items of social expenditure not accounted for in the budget.

Even using £1,300 as Miss S's income her budget remains very tight. The items I've highlighted above equate to around £150 a month more than declared, so while her income would be increased by £200 using the higher figure, her expenditure would be higher too. This would leave a monthly disposable income of £58 a month.

There are other discretionary items of expenditure showing on Miss S's bank statement too for which there is no allowance in the budget. I don't think that £58 per month is sufficient breathing space to allow for any emergencies or discretionary expenditure which may crop up, especially considering the loan commitment was for five years.

#### Did TFS make a fair lending decision?

I explained why I don't think TFS carried out reasonable and proportionate checks when it

assessed Miss S's application. And I think if it had carried out further checks, it would have seen that her budget was very tight. I think it ought to have noticed from her credit file that she had recently begun to take on credit and, given her budget and the size and length of the loan, realised that it was unlikely to have been repayable sustainably over the five years intended. It follows that I don't think it reached a fair decision to lend to Miss S.

#### Did TFS act unfairly or unreasonably towards Miss S in some other way?

I've carefully read, listened to and thought about all the evidence provided by each party to this complaint. Having done so, I don't think TFS acted unfairly or unreasonably towards Miss S in some other way. But I do think TFS should have refused to lend to Miss S, so I am upholding her complaint about the loan.

#### **Putting things right**

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical. In this case, that would mean putting Miss S in the position she would be in now if she hadn't been given the loan. But Miss S was given the loan and used the money, so it's fair that she should repay what she borrowed.

I think TFS should:

- add up the total amount of money Miss S received as a result of having been given this loan. The repayments Miss S made should be deducted from this amount.
  - if this results in Miss S 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 S.
- remove any negative information recorded on Miss S's credit file regarding this loan.

\*If TFS considers that it's required by HM Revenue & Customs to take off tax from that interest, it should tell Miss S how much it's taken off. It should also give her a certificate showing how much tax it's taken off if she asks for one so she can reclaim it from HMRC if appropriate.

#### **My final decision**

My final decision is that I uphold this complaint. TFS Loans Limited should put things right as I've set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 February 2022.

Richard Hale  
**Ombudsman**