DRN-3410830

The complaint

Mrs A has complained that The Funding Corporation Limited (TFC) lent to her irresponsibly.

What happened

I issued a provisional decision about this complaint in March 2022 that I summarise below.

Mrs A entered into a credit agreement for a loan of £6,999 from TFC in August 2011. The loan was due to be repaid in 60 monthly instalments of around £206. The total amount payable, including interest was just over £13,061. I understand the loan has been settled.

TFC thought Mrs A's complaint had been brought too late, but an Ombudsman decided this Service could investigate the matter.

One of our adjudicators looked into the complaint. She thought TFC ought not to have provided the loan to Mrs A and she asked the lender to put things right. TFC didn't agree with the adjudicator's assessment. As the complaint hadn't been settled, it was passed to me to resolve the matter.

I explained the basis on which I would decide the complaint, in particular the reasonable and proportionate checks that TFC needed to do. There was no set list of checks that TFC had to do, but it could take into account a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrower's overall financial circumstances.

TFC needed to take reasonable steps to ensure that it didn't lend to Mrs A irresponsibly. I considered some key questions in order to decide what's fair and reasonable in the circumstances of this particular complaint:

- Did TFC complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to repay her loan in a sustainable way? If not, what would reasonable and proportionate checks have shown at the time?
- Ultimately, did TFC make a fair lending decision?
- Did TFC act unfairly or unreasonably in some other way?

I said 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 loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).

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

TFC asked Mrs A for information about her income and expenditure and it acquired a credit report. TFC assessed that the loan was affordable for Mrs A.

I explained that I had not been able to review the credit report that TFC carried out at the time and that TFC had not provided a further copy as requested. I also said I had come to my provisional findings based on the information that I *had* been able to review.

Mrs A provided a pay slip that showed net income of around £1,486. She also received child benefit. The I&E form says that her share of household expenditure was '100%' – but there was no information given about Mrs A's regular expenditure related to mortgage or rent, utilities or Council Tax. I thought TFC ought reasonably to have realised that Mrs A's regular outgoings were most likely more than she had estimated.

TFC says that any defaults and arrears on Mrs A's credit report were factored into her credit score and that it 'risk based priced' accordingly. TFC also says there was evidence of debt management in the file and that Mrs A was maintaining her repayments. TFC says the active CCJ on Mrs A's credit file was 'due to come off shortly' and that it considered this to be historic. TFC also says that the missed payments on Mrs A's credit cards were arrears that were at least 12 months prior to her loan application; that she had not missed any other payments, and she could have paid more than the minimum amounts if she wished. TFC says that although her credit report showed she had previously had difficulties repaying credit, the payment status showed these accounts were up to date and she had some available credit which showed she was not financially distressed. TFC says the fact that Mrs A was utilising two bank overdrafts should not be viewed as negative and overall, it was not unusual to see adverse information on a credit report, given the type of lending involved.

But I thought this was a costly loan, repayable over an extended five-year period. TFC might have considered the adverse information on Mrs A's credit report to be largely historic, but I thought it would have been aware that Mrs A had previously had some significant difficulties repaying credit.

Taking everything into account I would have expected the lender to want to obtain a thorough understanding of Mrs A's financial circumstances to satisfy itself that she could sustainably repay the loan over the whole loan term. Overall, I hadn't seen enough information for me to say that I thought TFC's checks were reasonable or proportionate.

But in any event, from what I'd seen, I didn't think that on this occasion TFC made a fair lending decision and I explained why.

TFC was required to establish whether Mrs A could sustainably repay her loan – not just whether the loan payments were affordable on a strict pounds and pence calculation. The loan payments being 'affordable' on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

Mrs A declared other existing credit obligations on the income and expenditure form. It seems that she told TFC that the purpose of its loan was to purchase a car – so I thought TFC would have been aware that the loan would not improve but would deepen Mrs A's debt position. Given the proportion of monthly income that Mrs A would have to commit every month to repay her existing debts as well as the repayments to TFC, together with her history of difficulties repaying credit, I thought the lender ought reasonably to have realised that Mrs A might struggle to repay the loan in a sustainable manner, over the extended loan term.

Taking everything into account, I thought TFC ought reasonably to have realised that this consumer might have difficulties managing her finances and that she would be unlikely to be able to repay her loan in a sustainable manner. I didn't think TFC ought reasonably to have concluded that it would be right to provide the loan to her.

I'd not seen anything which made me think that TFC treated Mrs A unfairly in some other way. But taking everything into account, I didn't think it should have agreed to provide the loan to her. I said I was I intending to uphold Mrs A's complaint and that TFC needed to put things right.

I invited both parties to send me any further comments or evidence.

TFC disagreed with my provisional decision and provided its business file in full again, including the credit report that I had previously been unable to review. TFC also made a number of further comments. In summary, TFC says that it still thinks that Mrs A has brought her complaint too late to be considered by this Service. TFC says it provides finance for customers who may otherwise struggle to obtain credit from mainstream lenders. It also says that when Mrs A applied for finance, appropriate checks and verification were carried out and that Mrs A completed an I&E form and was given pre contract documents to review, which included financial information. TFC also says that Mrs A signed the agreement and watched a DVD, confirming this during a welcome call with the lender and that she repaid the loan with no late payments and without further charges or fees being applied.

I have read all the information that has been provided for this matter, including all of TFC's further comments, and carefully considered everything before coming to my 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.

I'd like to thank TFC for responding to my provisional decision and for re-sending its business file and further comments. I have looked at everything again very carefully, but my view of this case has not changed overall.

I appreciate that TFC thinks that Mrs A has brought her complaint too late and that she should have complained sooner. But TFC is aware that this issue has previously been carefully considered, and an Ombudsman decided this Service could investigate the matter. So I do not need to re-visit the question of time limits again in this decision, which is about the merits of Mrs A's complaint.

The fact that Mrs A didn't miss any payments does not mean it was repaid sustainably or that it was affordable for her to do so. I accept that Mrs A entered into the agreement about the finance at the time. But it was TFC's responsibility to carry out appropriate checks to ensure that it did not lend irresponsibly and to ensure that Mrs A could repay the loan sustainably, in her circumstances.

TFC's checks showed that Mrs A had an active CCJ as well as an historic CCJ. And that Mrs A had a number of credit or store cards – and was in a debt management plan on two of them, having missed payments on these previously. She also had arrangements to pay with other creditors, at least four outstanding defaults and two overdrafts, one of which was around 85% of its limit and the other around 93%.

TFC may consider that Mrs A's difficulties repaying credit were largely in the past and that she was managing her credit accounts. But as I explained in my provisional decision, I think TFC would have been aware that its finance would not improve but would deepen Mrs A's debt position. I think TFC ought reasonably to have been aware that this consumer was at considerable risk of not being able to repay the loan sustainably over an extended loan term - given the proportion of her income going towards existing creditors, the repayments to TFC, together with her history of difficulties repaying credit.

Taking everything into account, I think TFC ought reasonably to have realised that Mrs A was already struggling to manage her finances and that she would be unlikely to be able to repay her loan sustainably. I don't think TFC ought reasonably to have concluded that it would be right to provide the loan to her.

I've thought very carefully about all of TFC's further comments and the information it has provided, as well as all the information provided by both parties during the course of this complaint. But none of this has changed my view of this matter overall. So I confirm the conclusions that I reached in my provisional decision and I uphold this complaint.

Putting things right

I think it is fair and reasonable for Mrs A to have repaid the principal amount that she borrowed, because she had the benefit of that lending. But she has paid interest and charges on a loan that shouldn't have been provided to her.

TFC should:

- Remove all interest, fees and charges on the loan and treat all the payments Mrs A made as payments towards the capital.
- If reworking Mrs A's loan account results in her having effectively made payments above the original capital borrowed, then TFC should refund these overpayments
- with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled*.
- Remove any adverse information recorded on Mrs A's credit file in relation to the loan.

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

My final decision

For the reasons given above, I uphold this complaint and direct The Funding Corporation to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs A to accept or reject my decision before 28 April 2022.

Sharon Parr
Ombudsman