

complaint

Mr W complains that Total Home Loans Direct Limited (THL) lent to him irresponsibly.

He also complains that it did not send to him a final response letter after he complained to it.

Mr W expresses concern at an on-line social media invitation to connect which he says he received from a Director of THL in January 2018 which was after he had complained to it in December 2017.

background and findings

I attach my provisional decision dated 17 September 2019, which forms part of this final decision and should be read with it. In it I explained why I intended not to uphold Mr W's complaint.

Both parties had time to provide any further comments they may have by 1 October 2019 before I made a decision. This 'reply date' was extended further to 9 October 2019.

I have not heard from THL. Mr W has sent me additional bank statements for a different account for the period around the time the loan was approved. So I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

On the issue of whether this was one or two loans, the new bank statements do not reveal any credits from THL on 15 November 2012 or the following month which would clarify this. So my view remains the same. And these new statements do not alter my provisional findings surrounding the proportionality of the checks THL carried out at the time it approved the loan. Mr W declared his income as £1,700 and looking at both sets of bank statements these do not show me what his usual outgoings were to deduct from this declared income.

my final decision

For the reasons set out above and in my provisional decision dated 17 September 2019, my final decision is that I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision on or before 14 November 2019.

Rachael Williams
ombudsman

the main part of the provisional decision dated 17 September 2019

background

The background details to the lending relationship between Mr W and THL has been provided to us in a piecemeal fashion from THL and it appears there has been some confusion about the number of loans and the dates of these lending decisions. I address this in the main part of my provisional decision.

Mr W complains of being in a '*debt spiral*' and that THL ought to have done proper credit checks and if it had it would have recognised his debt situation. He also maintains that additional checks would have revealed his gambling problem and potentially his health issues. I do empathise and for confidentiality I do not go into detail.

THL says that the loans were repaid and that it '*took a loss*' on them. It says it removed a great deal of interest to reduce the amount Mr W had to pay. He repaid the credit owing in December 2013.

One of our adjudicators looked at the complaint last year. Largely due to lack of information about the details of the lending decisions and the loans, he thought that there were two loans and Mr W was earning £200 a month when he applied for the credit. So his view was that THL should not have lent to Mr W and it should put things right in relation to them both. THL has sent additional evidence and explanations since then. The matter remains unresolved and has been passed to me.

my provisional findings

I have considered all the available evidence and arguments to decide what I consider to be fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

THL needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr W could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that THL should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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 *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable but I do not think that this applies in Mr W's case.

I think that it is important for me to start by saying that THL was required to establish whether Mr W could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course 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 Office of Fair Trading's publication on Irresponsible Lending in 2011 defined 'sustainable' as being the ability to repay without undue difficulties. In particular the customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr W's complaint.

final response letter

Mr W complained to THL in December 2017 and he brought his complaint to us in March 2018. At that stage he had not received a final response letter from THL. He had received an acknowledgement of the complaint having been received.

After this service contacted THL it sent a final response letter to Mr W. It is undated but as it refers to the fact that Mr W had already brought his complaint to this service then that must have been in March or April 2018.

The rules governing complaint handling do require that a business sends a final response letter to the complainant within a certain time – 8 weeks. It seems that in Mr W's case, THL was outside that time period. But I think that the impact on Mr W was negligible. And I say that because one of the important elements of final response letters is to ensure that the complainant knows that he or she has the right to refer their complaint to this service. Mr W already knew it as he had brought his complaint here. So I do not think that THL's late final response letter caused a detriment to Mr W and so I say no more about this part of the complaint.

one or two loans?

I have seen a copy of a fixed sum agreement between the parties dated 15 November 2012. I do not think there is any dispute about that loan being agreed. It was for £175 (including a £25 administration fee) and was for 12 days. So the principal sum lent was £150. The total charge for interest was £52.50. The total sum repayable was £227.50 and due on 27 November 2012. It was printed with a very specific agreement number, some of which I set out here: 56abb6***.

The significance of that reference number is that it is very specific and identifiable and appears twice on a screenshot of Mr W's account sent to us by THL. One entry is the reference with a 'Date Due' next to it of 27 November 2012 which fits with the printed agreement I have seen. And next to that entry is a tick on the column 'Was Ext'.

The other entry on the screenshot with the same reference is next to an entry to show that the 'Date Due' was 27 December 2012 and there is a tick box ticked in the column 'Is Ext.'

At some point THL has explained that the loan was extended and *'an extension charge was made of £92.5 this was a £15 payment towards the capital a £25 fee and £52.5 in interest was charged Loan 2 the same balance of £160 was then set up for payment at the end of December 2012.'* This is the THL wording. THL has explained that *'there was no new capital on loan 2 and he only repaid the capital owed'.*

And in December 2013 Mr W repaid £162.70 and the account was closed. THL says that it *'was settled at a loss incurred no late fees or interest in acknowledgement of [Mr W's]...health issues.'*

Having looked at all the details I agree with THL that this was one loan on 15 November 2012 which was extended with no additional capital funding.

In order to see what THL credited to Mr W and what was repaid, and whether the 'second loan' involved any additional funding, I looked at Mr W's copy bank statements.

I have been sent bank statements by Mr W but I think that these we have are for *one* of his bank accounts. I can see from his personal credit file that Mr W had other bank accounts and I can see transfers across to what may have been one of those other accounts. I note that in July 2012 it appears to be used as a main account with many credits and debits and a fluctuating balance. But by September 2012 the activity on the account had reduced and in October, November and December 2012 the statements show hardly any activity at all.

So it looks to me that Mr W started to use a different account for his main transactions. As this is a provisional decision, if Mr W wishes to send to us any other copy bank statements from this period he is welcome to do so.

But without more I think that THL's explanation and its screenshots with clear reference to the same fixed term agreement reference number for both transactions leads me to think it was one loan, extended in November 2012 and repaid in December 2013.

So the lending decision to consider is that made on 12 November 2012.

proportionate checks

THL has explained that Mr W applied initially for a £250 loan in November 2012. For a first loan with a company and for a loan of that size, then I think that the proportionate check would have been for THL to have known Mr W's income and his regular expenditure.

Screenshots have been sent to us showing that Mr W had applied for the loan giving a number of personal details including these: date of birth, address, he was employed full time and had been at that company since 1989 with a monthly take home pay of £1,700. The entries also show that his next take home pay was 27 November 2012 and that he was a homeowner.

I do not think that it knew about Mr W's expenditure. I have seen copy THL account notes dated 15 and 16 November 2012 which indicate that a THL representative received the application for £250, did some checks such as a '*debit card check*' and called his place of work to verify his employment. But I have not seen anything more than that.

THL chose to offer Mr W a loan of £150 and charged him a £25 administration fee which was added to the loan. It says that it did this as it was '*considerate of affordability at time*'. I have set out some of the details in the previous section of this provisional decision above.

In order to try to see what Mr W's regular expenditure was at that time, I looked at the bank statements Mr W has sent to us. As I have explained in the previous section there is hardly any information recorded for November 2012. So I was not able to see what he spent on regular expenditure such as bills, transport, credit cards, and other such items. And I cannot see the loan approved on 12 November 2012 being credited to this account and so it's likely another was given to THL for this loan.

But on the information I have I do not think that Mr W's income was £200 a month – I think it is more likely than not that Mr W's salary was being paid into a different account.

So I have not been able to see from these statements what other regular expenditure Mr W had in November 2012, and without more I think that the lending decision to offer a £150 loan despite Mr W applying for a £250 loan was a responsible one.

As an extension to the loan usually is a device used to assist a person having difficulty repaying, then the pattern of charging Mr W some interest, a further administration fee and some money to repay part of the capital is not unusual. I think that this is what happened.

I appreciate that Mr W thinks that THL ought to have done more in-depth and comprehensive checks, but for one loan plus an extension of that loan I do not think that it would have been proportionate for THL to look at further details such as his other short term loan liabilities at the time or look at his bank statements. So I do not think its likely THL would have seen his gambling transactions and if THL had asked Mr W I doubt that he would have informed them of that habit.

And in any event, on current evidence I do not know what his bank statements for his main account would have revealed in November 2012 as I do not have full details.

I am planning not to uphold Mr W's complaint.

Social media invitation

I am not in a position to address this part of Mr W's complaint. It is not a regulated activity. So I say no more about it.

my provisional decision

I am planning not to uphold Mr W's complaint and I will review it in two weeks.

Rachael Williams
ombudsman