DRN-1514171

The complaint

Mr G complains about a guarantor loan provided to him by TFS Loans Limited ("TFS") which he says was unaffordable.

What happened

TFS provided Mr G with a loan of £10,000 on 12 January 2018. The loan was secured by a guarantor who would be responsible for repaying it if he failed to make his repayments. The interest rate was 21.9% (39.9% APR). The loan was to be repaid by 60 monthly repayments of £349. If Mr G made each payment when it was due, he'd pay £20,940 in total. The loan hasn't yet been repaid.

Mr G said that at the time of taking out this loan he was in a terrible cycle of debt and was heavily reliant on high interest short term loans as well as guarantor loans. Mr G was in a desperate situation and was dependant on such credit to get through each month. He would have expected TFS, given the value of the loan and his very obvious dependency on high interest credit, to scrutinise his income, outgoings and current debt much more closely. TFS would have seen from his credit report that he was in a great deal of debt and his records showed a number of late payments and defaults. Mr G was never asked to provide any supporting documentation (such as bank statements) which again would have easily highlighted his ever growing debt problem. He would borrow from one lender to pay the next and would repeat this on a weekly/monthly basis. Mr G said that the continual stress and worry as to how he would meet the repayment obligations has been awful. With a family member acting as a guarantor (who would not have been able to afford the repayments had he defaulted) he always made sure he had enough to meet the repayment to TFS at whatever cost (i.e. borrowing from elsewhere - other loans, friends or family) and cutting back on essential living.

In its final response letter, TFS concluded that it wasn't upholding Mr G's complaint. It provided details about the information provided to it by Mr G. The lender said that it had assessed the affordability of the loan using the information Mr G had provided to it and the information on his credit file and it had no reason to believe that the loan was not affordable for Mr G.

Our adjudicator assessed the complaint and recommended that it be upheld. She said that TFS should have carried out better checks and that proportionate checks in this case would've included TFS requesting evidence to verify the figures Mr G provided to it. The adjudicator had reviewed Mr G's bank statements to see what better checks would have suggested. She noted that Mr G's income was a little over £3,400 and that he had regular total expenses of £1,877. He was also borrowing from short term lenders and his statements showed a significant number of gambling transactions. The adjudicator concluded that TFS should have known from better checks that further lending was unlikely to be sustainable for Mr G. So, TFS shouldn't have agreed to lend Mr G this loan.

TFS responded to ask for confirmation of Mr G's income from October to December 2017 and for a breakdown of Mr G's regular expenses.

The adjudicator responded to say that Mr G’s income for November 2017 was £3,429 and his income for December 2017 was also £3,429. Mr G's living costs which included rent, utilities, food and transportation was around £1,000. His regular monthly commitments included loans that he held at the time as well as credit card payments.

TFS responded to ask for a breakdown of these figures which the adjudicator provided. After reviewing this, the lender said that it was clear that based on Mr G's income and his regular commitments and living costs, that its loan was affordable to him. It said that “gambling related activities”, was a "discretionary expense", which could be reduced. TFS noted that Mr G had never missed a payment on his account in the two years he had been a customer and it believed this further demonstrated that Mr G was able to manage his discretionary expenditure. Mr G hadn’t disclosed the amount he was spending on gambling related activities, so this could not be included within its underwriting or affordability assessment.

TFS also said that it had verified Mr G’s net monthly income using an income verification product from a credit reference agency. It also said that the adjudicator had referred to Mr G having over £24,000 in outstanding credit. This wasn’t correct as it didn’t allow for the fact that an existing loan was to be repaid with its loan and that another account was showing the full balance payable over the full term, including future interest, rather than the true capital balance.

Mr G responded to say that if TFS had carried out reasonable and proportionate checks, he is sure they would have seen the terrible financial position that he was in, and the level of his gambling at the time.

As this complaint hasn’t been resolved informally, it has come to me, as an ombudsman, to review and resolve.

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.

When TFS lent to Mr G the regulator was the Financial Conduct Authority (“FCA”) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). Its rules and guidance obliged TFS to lend responsibly. As set out in CONC, this meant that TFS needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an “affordability assessment” or “affordability check”. Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower’s financial situation, amongst other factors.
The checks had to be “borrower” focussed. So, TFS had to think about whether Mr G could sustainably repay his loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn’t cause Mr G undue difficulty or adverse consequences. 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 loan repayments on Mr G. So even in this case where Mr G had a guarantor who had agreed to meet repayments if he couldn't, this didn't absolve TFS of its obligation to assess whether Mr G could meet his repayments without undue difficulty.

In general, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the *lower* a consumer'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 period of time a borrower will be indebted for (reflecting the fact that the total cost of credit is likely to be greater and the borrower is required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr G's case, I have considered the following questions:

- Did TFS complete reasonable and proportionate checks when assessing Mr G's loan application to satisfy itself that he 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 carry out reasonable and proportionate checks when it provided the loan?

As set out above, TFS gathered some information from Mr G about his income and expenses before it agreed the loan. It also carried out a credit check.

Mr G declared his monthly income as £5,870 and his total regular monthly expenditure (including TFS's loan repayment of £349) was shown as £2,562.10. Mr G had declared his existing loan repayments as £747. Mr G also said that he was single with no dependents and didn't have a car. He said that he wanted to use the loan for debt consolidation to reduce the interest he was paying on another guarantor loan. The balance on that loan was £9,180 and he was paying £427 a month on that loan. He was also using TFS's loan to contribute around £1,500 towards repairing a leak in the roof of his rented property. TFS calculated Mr G's disposable income as £3,307.90 after the loan repayment.

I've also reviewed TFS's credit report. TFS would have been aware from this that Mr G had a total credit balance of £25,876 outstanding. The report showed that Mr G had three defaulted accounts. These were all defaulted in 2012. Two had been repaid but one account for £375 remained unpaid. I don't think these defaults ought to have caused TFS additional concerns in view of their age. And I don't think it was unreasonable for TFS to be more interested in Mr G's more recent credit history for the purposes of assessing whether the loan was affordable.

The credit report also showed that Mr G had 18 active accounts. I note that Mr G had borrowed two high cost credit loans in around the past six months totalling around £24,600. In addition, in the eight months prior to taking out TFS's loan he'd borrowed six loans which appeared to be short term loans, although they were not described as such. Most of these had been taken out very shortly after repaying the previous one. This suggests that Mr G needed to borrow in order to fill a hole in his finances that was made by making a loan repayment which isn't a sustainable form of borrowing. Mr G had also taken out a credit card around three months previously and had made two cash advances totalling £341 around two months previously.

I think the amount and extent of Mr G's recent borrowing ought to have caused TFS concerns. I also think it might have been concerned as to why someone with such a large proportion of available income (according to his declared income and expenses) would need to borrow so much expensive credit so recently. And, I think TFS ought to have been concerned about Mr G's ability to repay its loan out of his usual means, without borrowing, as it didn't appear he was managing to do so with his existing debt.

I also don't think TFS treated Mr G fairly when it agreed to lend to him based on the information it would have seen on its credit checks because this showed it was likely that agreeing more credit for him would simply add to his debt levels, notwithstanding that Mr G had said that TFS's loan was being used to repay an outstanding loan. And given the amount being lent, the repayment amounts and the length of the loan term, I think TFS should reasonably have taken steps to build a clearer picture about Mr G's finances before lending to him in order to satisfy itself that Mr G could sustainably repay the loan over a 60 months period.

What would reasonable and proportionate checks have shown at the time? Did TFS make a fair lending decision when it provided Mr G with a loan?

Even though I think that TFS should've carried out better checks at the time, it doesn't automatically follow that TFS was wrong to provide Mr G with a loan.

Mr G has provided us with his credit report and his bank statements at the time he applied for this loan. I'm not suggesting here that these are the checks that TFS should have done. But I think looking at these gives me the best picture of what the lender should have seen. Had it sought some verification of Mr G's spending, I think TFS would've been in a better position to understand Mr G's financial situation before it decided to lend to him.

I note that TFS said that it had verified Mr G's income with a credit reference agency. But his bank statements show that his monthly income was around £3,430 and so substantially less than he'd declared to TFS.

I've also seen on the credit report and bank statements that in the two weeks prior to borrowing TFS's loan, Mr G had taken out four short term loans totalling £3,100. He'd repaid eight short term loans in the previous three weeks. He also had another high cost credit loan for £5,000 which he'd taken out four months earlier. This suggests that he was reliant on short term lending and other high cost credit. As Mr G was borrowing a significant amount of short term loans each month just to fund his existing expenditure and credit commitments, I think there was a very real prospect that Mr G would need to borrow again in order to repay his new loan and that would likely have a significant adverse effect on his financial situation.

In addition to this, Mr G had spent more than his income (around £4,130) on gambling in the month prior to TFS's loan. His spending on gambling was frequent enough throughout that month that it was more likely than not that it would continue in the same pattern and posed a risk to Mr G being able to repay the loan sustainably. In these circumstances, I don't think that TFS would have lent if it knew this, and I think it ought to have known this if it had made better checks. And in these circumstances, I don't think it's reasonable for TFS to conclude that Mr G could simply reduce his gambling expenditure to allow him to afford the loan repayments.

So, I think if TFS had carried out what I consider to be proportionate checks, I think it's likely it would have discovered Mr G's relatively substantial expenditure on gambling and the full extent of Mr G's financial commitments. I think TFS should reasonably have realised that Mr G was over committed financially and that he was having difficulty managing his finances. So, it's clear that further checks wouldn't have provided the assurance TFS needed.

I think TFS ought reasonably to have realised that it was unlikely that Mr G would've been able to sustainably repay his loan. So, it should reasonably have concluded that it treated Mr G unfairly when it agreed to lend to him. So, I think Mr G's complaint should be upheld, and that TFS should put things right as follows:

Putting things right

TFS should put things right for Mr G as follows.

- TFS needs to ensure that Mr G only repays the principal borrowed on the loan. In other words, he should not pay any interest or charges for this loan. So, TFS should remove all interest, fees and charges applied to the account from when it was opened.
- Treat any repayments made by Mr G as though they had been repayments of the principal on that loan.
- If this results in Mr G having made overpayments, 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 the complaint is settled.
- If an outstanding principal balance remains then TFS should try to agree an affordable repayment plan with Mr G, bearing in mind its obligation to treat him positively and sympathetically in these discussions.
- Remove any adverse information recorded on Mr G's credit file as a result of the loan.

*HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Mr G a certificate showing how much tax it has taken off if he asks for one. If TFS intends to use the refunds to reduce an amount Mr G owes, it must do this after tax.

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order TFS Loans Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 February 2021.
Roslyn Rawson
Ombudsman