DRN-1692901

Complaint

Mr C has complained that TFS Loans Limited ("TFS") irresponsibly provided him with an unaffordable guarantor loan. He says that he doesn't think that enough checks were completed to make a fair judgement of affordability and the lending was unfair.

Background

TFS provided Mr C with a guarantor loan for £6,500.00 in January 2017. As I understand it, this was Mr C's second loan with TFS and some of the proceeds of this loan went towards settling his first one. The interest to be paid was £6,435.04. All of this meant that Mr C needed to make 48 monthly repayments of £269.48.

Mr C's complaint was reviewed by one of our adjudicators. She told TFS that the checks it carried out before providing Mr C with this loan weren't reasonable and proportionate and if such checks had been carried out it would have seen that it Mr C wasn't in a position to sustainably make the repayments.

So she thought that TFS shouldn't have provided Mr C with this loan and upheld the complaint. TFS disagreed with our adjudicator's assessment and asked for an ombudsman's decision. So the complaint has now been passed to me for a final decision.

My findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case. We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr C's case.

Having carefully considered matters, I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this particular complaint.

These two overarching questions are:

- Did TFS complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loan in a sustainable way?
    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Mr C would've been able to do so?
- Did TFS act unfairly or unreasonably in some other way?

If I determine that TFS didn't act fairly and reasonably in its dealings with Mr C and that he has lost out as a result, I will go on to consider what is fair compensation.

<u>Did TFS complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loan in a sustainable way?</u>

The rules and regulations in place when TFS lent to Mr C required it to carry out a reasonable and proportionate assessment of whether he could afford to repay his loan in a sustainable manner. TFS was required to carry out this borrower focused assessment in addition to a similar one on the guarantor. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so TFS had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr C*. In practice this meant that TFS had to ensure that making the payments to the loan wouldn't cause Mr C 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 C. The existence of a guarantee and the potential for TFS to pursue the guarantor instead of Mr C, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

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 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); and

- 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 also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've carefully thought about all the relevant factors in this case.

Were TFS's checks reasonable and proportionate?

TFS has said that it completed an income and expenditure assessment with Mr C and produced a credit report. During this assessment Mr C confirmed that he a monthly income of £1,560.00 and he'd be left with around £360 a month once his TFS loan payments were also taken into account.

I’ve carefully thought about what TFS has said. But simply requesting information from a borrower doesn’t, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower’s ability to sustainably repay a loan.

TFS was aware that Mr C had previously defaulted on a number of previous credit commitments. I accept that Mr C may have said that his financial difficulties were due to him previously having a lower salary. But, in my view, Mr C’s financial history coupled with the fact that he’d his first TFS loan was already supposed to have consolidated his existing debts, was inconsistent with someone having the level of disposable income that Mr C declared.

I say this while especially mindful of the fact that the rules themselves provide guidance on the proportionality of affordability/creditworthiness assessments. The rules and guidance suggest that the risk of any credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer’s financial situation. This was an expensive loan and TFS had been told that Mr C had previous problems repaying credit.

I accept that TFS might have been prepared to accept this credit risk because the existence of Mr C’s guarantor might have given it more confidence that the payments would be made, But I don’t think that the existence of the guarantor, on its own, meant that Mr C himself would be able to sustainably make the payments given what the credit file showed.

Indeed I also think that it might also be helpful for me to explain that a less detailed affordability assessment, without the need for verification, is only really likely to be fair, reasonable and proportionate in circumstances where the amount to be repaid is relatively small, the consumer’s financial situation is stable and they will be indebted for a relatively short period.

But, in circumstances – such as here - where a customer’s finances are showing signs of significant strain and distress, they are expected to maintain payments for a longer period of time and there is the potential that a guarantor will be required to step in and make payments, I think it’s far more likely that any affordability assessment would need to be more detailed and contain a greater degree of verification, in order for it to be fair, reasonable and proportionate.

In my view, bearing in mind the term of the loan, the cost of the credit, what TFS had seen or ought to have seen in the information gathered and the potential implications for the guarantor, TFS needed to get a thorough understanding of Mr C’s financial position in order to properly assess whether he’d be able to sustainably make the loan payments he was being asked to commit to.

So as well as asking Mr C about the details of his income and expenditure, I think that TFS needed to verify what it was being told by Mr C, rather than relying on what Mr C declared for his monthly expenditure. It could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Mr C did have enough funds to be able to make the payments.

As there’s no evidence that TFS did properly scrutinise the information provided, or that it asked Mr C to provide documentary evidence to support the expenditure declarations made, I find that it didn’t complete fair, reasonable and proportionate affordability checks before providing Mr C with this loan.

Would reasonable and proportionate checks have indicated to TFS that Mr C would more likely than not have been unable to sustainably repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told TFS that Mr C would've been unable to sustainably repay this loan.

Mr C has now provided us with evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr C has provided, it doesn't mean it would've shown up in any checks TFS might've carried out.

But in the absence of anything else from TFS showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr C's financial circumstances were more likely than not to have been at the time.

As I've already explained, TFS was required to establish whether Mr C could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Mr C has provided in light of all of this.

The information I've been provided with shows that that Mr C was gambling unsustainable amounts of money. In these circumstances, I don't think that TFS would have lent if it knew, as I think it ought to have, that Mr C's difficulties in repaying his previous credit was due to gambling. And that his ability to repay this loan would, to in all intent and purpose, be based on his success as a gambler.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr C would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted TFS to the fact that Mr C would not be able to sustainably make the repayments to this loan.

<u>*Did TFS act unfairly or unreasonably towards Mr C in some other way?*</u>

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude TFS acted unfairly or unreasonably towards Mr C in some other way.

So I find that TFS didn't act unfairly or unreasonably towards Mr C in some other way.

<u>*Did Mr C lose out as a result of TFS unfairly and unreasonably providing him with his guarantor loan?*</u>

Mr C is being expected to pay interest and charges on a loan that he shouldn't have been given in the first place. So I find that Mr C did suffer adverse consequences and as a result lost out because TFS unfairly provided him with this loan.

Fair compensation – what TFS needs to do to put things right for Mr C

I've carefully thought about what TFS should do to put things right in this case. Having done so, I think that it would be fair and reasonable in all the circumstances of Mr C's complaint for TFS to put things right by:

- remove all the interest and charges applied to the loan from the outset – in other words Mr C should not pay any more than the £6,500.00 he was originally lent. The payments Mr C made should then be deducted from the new starting balance. If the payments Mr C has made total more than the amount he was originally lent then any extra should be treated as overpayments and refunded to him;

- add interest at 8% per year simple on any overpayments made, if there were any, from the date they were paid by Mr C to the date of settlement†;

- removing any adverse information recorded on Mr C's credit file as a result of this loan.

† HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Mr C a certificate showing how much tax it has taken off if he asks for one.

I would also remind TFS of its obligation to exercise forbearance should Mr C be experiencing financial difficulty, if an outstanding balance remains after all adjustments have been made and it wish to collect this from Mr C.

My final decision

For the reasons I've explained, I'm upholding Mr C's complaint. TFS Loans Limited should put things right for Mr C in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 May 2020.

Jeshen Narayanan
Ombudsman