DRN-2144085

The complaint

Mr B complains that TFS Loans Limited lent to him irresponsibly.

What happened

In May 2018, Mr B was given a guarantor loan of £3,000 by TFS. It was to be repaid in 36 monthly instalments of £134.16 and the total amount repayable over the term including interest was £4,829.76. I'll refer to this as Loan 1.

A few months later, in January 2019, Mr B was given a top up of his guarantor loan to £5,000 which repaid the first loan. It was to be repaid in 60 monthly instalments of £174.50 – a total over the term of £10,470 including interest. I'll refer to this as Loan 2.

Mr B says that his credit file showed he had five County Court Judgements (CCJ) and that he had increasing balances on other credit agreements. He says had TFS carried out proper checks it ought to have refused to lend to him.

One of our investigators looked into Mr B's complaint. He didn't think TFS should have lent to Mr B and asked it to put things right. TFS didn't agree with the investigator's assessment – though Mr B did – so the complaint has been passed 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 and guarantor loans on our website – including the key relevant rules, guidance good industry practice and law. And I've considered this approach when deciding this complaint.

TFS needed to take steps to ensure that it didn't lend to Mr B irresponsibly by carrying out reasonable and proportionate checks. 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 Mr B 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 Mr B in some other way?

TFS was required to carry out a borrower focussed assessment. This assessment is sometimes referred to as an 'affordability check' or affordability assessment'. The purpose of the checks is for TFS to think about whether repaying a loan sustainably would cause difficulties or adverse consequences for Mr B. In other words, it wasn't about TFS assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on Mr B. The fact that the loan was guaranteed by a third party and the potential of TFS to pursue the guarantor instead of Mr B doesn't alter or lessen the obligation.

TFS had to carry out reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the loans sustainably. There was 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.

Taking all that into account, I think a reasonable and proportionate check ought generally to have been more thorough where:

- a customer as 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 has become or was becoming unsustainable).

Did TFS carry out reasonable and proportionate checks for Loan 1 and Loan 2?

On each occasion, TFS asked Mr B for information about his income and expenditure and got his permission to review his credit file. It says it carried out a number of checks to confirm what Mr B had told it. TFS says the checks it carried out before agreeing to lend to Mr B were reasonable and proportionate, and it believes the loans were affordable for him. But I don't think it's enough for a lender to simply carry out checks; I'd expect it to think about the information it gathers when it reaches its decision to lend.

When he applied for Loan 1, Mr B was earning an above average salary - £3,800 per month. Based on what Mr B told it, TFS calculated he had monthly expenditure of £2,806 – including the loan repayment of £134.16 - which left him with almost £1,000 disposable income.

His credit file showed at that time he had three CCJs and five defaulted credit agreements dated between 2013 and 2016. TFS asked Mr B about the information it found. He gave a reasonable explanation for what appeared to be financial difficulties from two to four years earlier, and said he was earning much more now than at that time. His income and expenditure seemed reasonable.

He told TFS he wanted to repay a credit card and there were some *'outstanding bits on my credit file I'd like to finish off'*. He listed a number of debts which had been defaulted. There had been few – if any – payments made to each. The outstanding credit card accounted for approximately £850 of the money Mr B was looking to borrow and he said his credit limit on the card had just been increased. The remainder of the money was to clear he credit file.

When Mr B first applied for Loan 1, he'd asked to borrow £2,500. But due to the way TFS priced its products, he'd have a lower monthly repayment if he borrowed £3,000 over the same term, rather than £2,500. Despite increasing the amount applied for part way through the application, the debts Mr B listed still accounted for the entire loan other than a few pounds. While it may seem sensible to borrow more money because it resulted in a lower repayment, it must still be sustainable.
I think the information TFS collected ought to have prompted it to carry out some further checks into Mr B's finances. I say this because generally, defaulted debts don't attract interest, but Mr B had applied for a loan to clear them priced at 39.9% APR. It doesn't

appear to have been in Mr B's interest to take a loan at this price to repay debts that were no longer accruing interest – especially as TFS calculated he had a large disposable income. He could simply have paid the debts off in a couple of months and yet he was making very few – if any – payments to them. I don't think TFS carried out reasonable and proportionate checks on Loan 1.

When he called to apply for Loan 2, Mr B asked to borrow an extra £2,000 to £2,500 repay a credit card bill. A repayment figure for Loan 1 was calculated as being £2,935 and he asked to borrow a total of £5,000 – giving him new borrowing of £2,065. He was asked how long he wanted to take the loan over, up to a maximum of five years. He said *'I'd do five years because that's what my current term is'*. TFS asked Mr B if he had any CCJ's or defaults and he replied that there were some *'CCJs on my account that are settled and one that has been settled but their updating at the moment. But it's the same as when I applied last time'*. By this time, Mr B was earning slightly more – around £4,000 per month. His expenditure on this occasion was calculated at £2,270 and TFS added in a 'buffer' of £125 which left him with a monthly disposable income of £1,605.

TFS called Mr B to go through entries on his credit file. This included a CCJ for £970 which had been registered in June 2018 (after Loan 1 had been taken). TFS asked if he was aware of it. Mr B said *'yes. That's part of what will repay…that and my credit card'*. He was asked if he was aware of a credit card default from April 2016 for £326. Mr B said he wasn't. The conversation continued and each CCJ and default was discussed.

The advisor then asked about a guarantor loan for £10,000 taken out in July 2018 (after Loan 1). Mr B said the guarantor for that loan was a different person from the one with TFS, and the loan had been taken to clear the CCJ's they'd been discussing. The advisor said he could also see that Mr B's credit card was reporting as being in arrears and asked why. Mr B said he had a dispute about a late payment, so until they listened to his dispute, he refused to make payments on it. He said that account has now been closed.

In the intervening six or seven months between Loan 1 and Loan 2, Mr B had taken on another sizable guarantor loan, and a further CCJ had been registered against him. A credit card default he said he was unaware of had appeared on his credit file and he'd fallen into arrears on his current credit card - something which Loan 1 had been taken to repay. Furthermore, I note that while his income had increased by £200, his expenditure had decreased by over £700. TFS had calculated Mr B's monthly disposable income as being £1,605, so it's not clear why he'd need to borrow £2,000 at relatively high rates of interest over a five-year term. This was an increase on his current term (contrary to what Mr B had said during the application call) and TFS ought to have been aware of that.

I think the issues outlined above, ought to have led TFS to make further enquiries to check the state of Mr B's finances. It seems to me he was struggling to maintain the credit he had and was becoming increasingly reliant on it. I don't think TFS carried out reasonable and proportionate checks on Loan 2.

<u>What would reasonable and proportionate checks have shown at the time? Did TFS make a fair lending decision?</u>

I've outlined above some of the circumstances which I think ought to have led TFS to carry out further checks on Mr B's finances. I think it would have been reasonable for TFS to get a detailed understanding of Mr B's expenditure, for example by asking to see several months of his bank statements from Mr B in light of what appears to be a reliance on credit.

Mr B has provided us with copies of his bank statements for periods shortly before each loan was taken. A careful review of the statements brings in to question some of the information provided to TFS and each time shows a picture of a worsening financial situation.

For example, at application, Mr B was asked about his insurance and travel expenses. He said he has no insurances and no travel expenses as he had a company car. I note that for Loan 1, he'd said he had to pay about £400 per month for petrol but the insurance, tax and servicing was taken care of by his employer. But on his bank statement – which is a sole account – for Loan 1, the statement shows an insurance payment of £36.24, several payday loans, gambling transactions and a charge for using an unarranged overdraft.

By Loan 2, there are two payments to insurers totalling almost £100 per month. One of those specifically says 'car insurance'. There are charges for using an unarranged overdraft totalling £72 and an unpaid item fee. I also note there are gambling transactions totalling several hundred pounds each month.

During the application call for Loan 2, Mr B said all his CCJ's were settled (although one was being updated). But when TFS called him back to discuss his credit file, he said this new loan was to be used to settle a recent CCJ of £970. Given he'd said at the outset he needed £2,000 to £2,500 to repay a credit card bill, it's not clear that TFS established properly what it was lending for, or that in fact, the amount requested was enough to cover what was intended. It is also evident that a number of the defaults Loan 1 had been taken to settle were still outstanding.

I think, that TFS should have thought about what it was told by Mr B and seen that some of the answers he'd given did not support what he'd said previously – either in this loan application or that for Loan 1. I think if TFS obtained his bank statements and put this together with the information it had already gathered, it would have seen that Mr B was struggling to maintain his current expenditure.

Had TFS taken the time to think about what it had been told and carried out further checks, I think it ought reasonably to have realised it was unlikely Mr B would be able to sustainably repay either loan. I think it should've concluded it wasn't appropriate to lend to him.

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

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 has acted unfairly or unreasonably towards Mr B in some other way. But I do think TFS should have refused to lend to Mr B, so I am upholding his 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 Mr B in the position he would be in now if he hadn't been given loans. But Mr B was given the loans and used the money so it's fair he should repay what he borrowed.

So, I think TFS should:

- Calculate the total amount Mr B received from TFS and deduct from that figure the repayments he's made to each loan.
    - If this results in Mr B having repaid more than he received, any overpayments should be refunded to him. Interest at a rate of 8% simple per year should be added to any overpayments from the date they were made until the date of

settlement*.
    - If the calculation means there's still a balance for Mr B to pay, TFS should let Mr B know how much is outstanding and reach a suitable, affordable payment plan with him. I remind TFS of its obligation to treat customers fairly.
- Remove any negative information recorded on Mr B's credit file regarding each loan.

*If TFS considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 July 2021.

Richard Hale
Ombudsman