DRN-2195210

The complaint

Mr W says TFS Loans Limited lent to him irresponsibly.

What happened

Mr W took out a guarantor loan from TFS in March 2015. It was for £7,500 over 48 months. The monthly repayment was £304.63 and the total repayable was £14,622.24.

He says TFS lent irresponsibly as he had so much unsecured debt at the time of application and they knew this from the credit check yet still lent him the money.

Our adjudicator recommended the complaint should be upheld. He said TFS's checks were not proportionate, and proportionate checks would have shown the loan wasn't affordable for Mr W.

TFS disagreed with the adjudicator's view, so the complaint was 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when TFS lent to Mr W. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged TFS to lend responsibly. Amongst other things, TFS was required to carry out a reasonable and proportionate assessment of whether Mr W could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So TFS had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr W. 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 the loan repayments on Mr W.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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 repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments 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 the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether TFS did what it needed to before agreeing to lend to Mr W, and have considered the following questions:

- did TFS complete reasonable and proportionate checks when assessing Mr W'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 act unfairly or unreasonably in some other way?

TFS asked for some information from Mr W before it approved the loan. It asked for details of his income, his monthly living costs and his existing credit commitments. It checked his credit file to understand his credit history. It also asked about the purpose of the loan which was debt consolidation. From these checks combined TFS concluded Mr W had monthly disposable income of £628 and so the loan was affordable.

But I don't agree that these checks were proportionate. Mr W was applying to borrow a significant amount of money from TFS. He was entering into a long-term commitment and would need to make monthly repayments for four years. So I would expect that TFS would want to gather, and independently check, more detailed information about Mr W's financial circumstances before it agreed to lend to him. His credit file showed that he had 16 active accounts, total unsecured of debt over £14,500 and two of his credit cards had been running at or close to their credit limit for over a year. So, in the round, I think it would have been proportionate for TFS to independently check the actual state of Mr W's finances before agreeing the loan, rather than relying primarily on his disclosures.

However its failure to do so doesn't in itself mean Mr W's complaint should succeed. I need to look at what proportionate checks would have shown TFS and consider if it ought to have realised that Mr W most likely couldn't sustainably afford the repayments.

I have looked at Mr W's bank statements. This is one way TFS could have gathered the information I think it needed on Mr W's financial situation. Our adjudicator sent TFS a summary of what the statements showed in the month prior to Mr W's loan application. He said Mr W's income was £1936 as he'd declared, his living costs were £1290, and his credit commitments came to £803. So he concluded Mr W didn't have the disposable income TFS had calculated, rather he had no disposable income available to spend, or to make this loan repayment.

In response to this finding TFS said as Mr W was taking out its loan for the purpose of debt consolidation a number of his debts would be cleared and could not be taken into account as ongoing expenditure. It worked out Mr W would have had disposable income of £529.

This is a fair to a point. What I would have expected TFS to understand and verify would be Mr W's ongoing credit commitments. Whilst Mr W was clearing the majority of his high-cost short-term debt with the TFS loan, he was only paying off half of his overall debt. And I can see from his bank statements that he would still have had at least three active payday loans (two of which were taken out in the week before this loan) - and a significant amount of his credit card debt remained. So, discounting the debts that he cleared with this loan, but including ongoing credit commitments (which seem to total £348) a more realistic view of Mr W's monthly disposable income would have been £297 – this was before the TFS loan repayment. So even after making adjustments to take into account the consolidated debts, he still did not have sufficient disposable income to make this loan affordable.

TFS also asked why Mr W gave a false value for his rent payment when he applied. I can't know the answer to this, but it does not change my conclusion as that inaccuracy does not change TFS's obligation to carry out proportionate checks before lending.

And I think that if TFS had completed proportionate checks, it would have realised the loan was unaffordable for Mr W. So as a responsible lender it would have decided not to approve his application.

I have also looked at whether TFS acted unfairly or unreasonably in some other way. I haven't found any evidence that it did. I think it responded appropriately when Mr W notified it of his change in employment circumstances by agreeing to a reduced payment plan for a period of time.

Putting things right

It's reasonable for Mr W to have repaid the capital amount that he borrowed as he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been given to him. So he has lost out and TFS needs to put things right.

It should:

- Remove all interest, fees and charges on the loan and treat all the payments Mr W made as payments towards the capital.
- If reworking Mr W's loan account results in him having effectively made payments above the original capital borrowed, 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 of settlement*.
- Remove any adverse information recorded on Mr W's credit file in relation to the loan.

*HM Revenue & Customs requires TFS to deduct tax from this interest. TFS should give Mr W a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I am upholding Mr W's complaint and TFS Loans Limited must now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 March 2021.

Rebecca Connelley

Ombudsman