DRN-2425424

The complaint

Mr C says TFS Loans Limited lent to him irresponsibly.

What happened

Mr C took out two guarantor loans from TFS as summarised below. He used funds from loan 2 to repay loan 1 and I understand there is an outstanding balance on loan 2.

Loan	date	value, £	term, months	monthly repayment, £	total repayable, £
1	06/12/2016	2500	60	97.73	5863.80
2	01/04/2019	3500	36	169.41	6098.76

Mr C says he had credit problems when he took out loan 1 and was gambling to repay debts. And when he applied for loan 2 he was still borrowing to repay other loans he'd taken out to fund his ongoing gambling issue. He says if TFS had done proper checks it would have seen he had money problems - he was missing repayments and starting to default on other accounts.

Our investigator recommended the complaint should be upheld. She said TFS's checks were not proportionate. Better checks would have shown Mr C was having problems managing his money and the loans weren't sustainably affordable for Mr C.

TFS disagreed so the complaint was passed to me to make 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 C. 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 C 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 C. 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 C.

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 (eg. 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 C, and have considered the following questions:

- did TFS complete reasonable and proportionate checks when assessing Mr C's loan applications 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 C before it approved the loans. It asked for details of his income, his monthly living costs and his existing credit commitments. It checked his declared income against a recent payslip. It checked his credit file to understand his credit history. It also asked about the purpose of the loans which on both occasions was mainly to repay existing debt. From these checks combined TFS concluded on both occasions that Mr C had sufficient monthly disposable income for the loans to be affordable.

But I don't agree that these checks were proportionate for either loan. I'll explain why.

<u>Loan 1</u>

Mr C 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 five years. In response to the investigator's view TFS said Mr C's credit search did not show multiple borrowing. I disagree. It showed Mr C had debt of over £10,000 across 30 accounts; that he had defaulted on a credit card in the previous six months; had an arrangement to pay in place on a loan; and more than ten active payday loans. TFS also knew Mr C's income varied as a significant proportion came from commission so there was a risk it could reduce going forward.

In this context, and given the term of the loan, I would expect that TFS would want to gather, and independently check, more detailed information about Mr C's financial circumstances before it agreed to lend to him. So I think it would have been proportionate for TFS to independently check the actual state of Mr C's finances before agreeing the loan.

However its failure to do so doesn't in itself mean Mr C'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 C most likely couldn't sustainably afford the repayments.

I have looked at Mr C's bank statements in the three months prior to his loan application. I'm not saying TFS had to do this but it's one way TFS could have gathered the information I think it needed on Mr C's financial situation. And it's a way for me to see now what it would most likely have found.

Our investigator explained the statements show the loan was not affordable for Mr C on a pounds and pence basis, even after taking into account the debt he was consolidating. TFS has challenged the assumption she made about his income and explained that it used an average based on the year-to-date information on the payslip, but this does not change my conclusion. Irrespective of the monthly income calculation, had TFS carried better checks it would have realised Mr C was having problems managing his money and there was a high risk he would not be able to sustainably repay the loan. I say this as the statements show returned direct debits, payments to debt collections agencies, a heavy reliance on payday lending and frequent gambling transactions.

Mr C said the loan was to clear some of his debts but at most he could have repaid 25% the outstanding debt listed on the credit search TFS completed. Based on all the available evidence I don't think this should have given TFS the assurance it needed that approving the loan wouldn't lead to Mr C suffering adverse financial consequences. It follows I think TFS was wrong to give loan 1 to Mr C.

Loan 2

Mr C applied for a higher value loan when loan 1 was still outstanding. It was to be repaid over a long period of time – three years. So again I would have expected TFS would want to gather, and independently check, more detailed information about Mr C's financial circumstances before it agreed to lend to him. TFS argues the reduction in Mr C's indebtedness level on the credit check it completed shows his finances had improved. But I think it's most likely better checks would have shown this not to be the case.

His bank statements from the months prior to this application indicate his financial stability had worsened. He spent in excess of his income on gambling in the month prior to this application, had a number of returned direct debit payments and was still using high-cost short-term credit to try to meet all his commitments. So had TFS carried out proportionate checks I think it would have realised Mr C was unlikely to be able to repay the loan without suffering adverse financial consequences. It follows I think TFS was wrong to give loan 2 to Mr C.

In response to the investigator's view TFS said Mr C also had a responsibility to be honest and asked why Mr C didn't share the information he has now provided to this service at the time of his applications. But any inaccuracies or omissions in his declarations do not alter TFS's obligations to carry out reasonable and proportionate checks before agreeing to lend.

I have also looked at whether TFS acted unfairly or unreasonably in some other way. I haven't found any evidence that it did.

Putting things right

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

It should:

- Add up the total amount of money Mr C received as a result of being given loans 1 and 2. The repayments Mr C made should be deducted from this amount.
- If this results in Mr C 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*.
- If this results in an outstanding capital balance TFS must try to agree an affordable repayment plan with Mr C, remembering its obligation to treat him positively and sympathetically if he is having financial difficulties.
- Remove any adverse information recorded on Mr C's credit file in relation to the loans.

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

My final decision

I am upholding Mr C's complaint. 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 C to accept or reject my decision before 10 August 2021.

Rebecca Connelley
Ombudsman