DRN-2432244

Complaint

Mr S has complained that TFS Loans Limited ("TFS Loans") irresponsibly provided him with unaffordable guarantor loans. He says that TFS should have seen that he was struggling to make payments across all his debts and so shouldn't have lent to him.

Background

TFS Loans initially provided Mr S with a guarantor loan in January 2018. The loan was for £4,000 and it was due to be repaid in 36 instalments of £193.61. Loan 1 was repaid in August 2018 with some of the proceeds of loan 2, which was for £5,000.00. Loan 2 was due to be repaid in 60 instalments of £195.46. Loan 2 was repaid in June 2019 with some of the proceeds of loan 3, which was for £7,000.00. Loan 3 was due to be repaid in 54 instalments of £254.99.

One of our investigators considered Mr S' complaint. He told TFS Loans that the checks it carried out before providing Mr S with these loans weren't reasonable and proportionate and if such checks had been carried out it would have seen that Mr S wasn't in a position to sustainably make the repayments. So he thought that TFS Loans shouldn't have provided Mr S with these loans and upheld the complaint.

TFS Loans disagreed with our investigator'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've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Taking into account the relevant rules, guidance, good industry practice and law, 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 Loans complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay his loans in a sustainable way?
    - If so, did it make fair lending decisions?
    - If not, would those checks have shown that Mr S would've been able to do so?
- Did TFS Loans act unfairly or unreasonably in some other way?

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

Did TFS Loans complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay his loans in a sustainable way?

The rules and regulations at the time TFS Loans lent to Mr S required it to carry out a reasonable and proportionate assessment of whether he could afford to repay his loan in a sustainable manner. TFS Loans 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 Loans had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr S*. In practice this meant that TFS Loans had to ensure that making the payments to the loan wouldn't cause Mr S undue difficulty or adverse consequences.

In other words, it wasn't enough for TFS Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mr S. The existence of a guarantee and the potential for TFS Loans to pursue the guarantor instead of Mr S, 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. Even for the same customer, a proportionate check could look different for different applications.

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 of the relevant factors in this case.

Were TFS Loans' checks reasonable and proportionate?

TFS Loans has said that it completed income and expenditure assessments with Mr S. During these assessments, Mr S was ascertained to be receiving around £1,800.00 a month at the time of loan 1, £2,015.00 at the time of loan 2 and £2,094.00 at the time of loan 3. Mr S provided payslips to verify his income.

The credit checks it carried out showed an outstanding CCJ and a number of defaults. But Mr S explained that these were due to temporary difficulties which had since been resolved. TFS accepted this explanation and concluded that when Mr S' expenditure was deducted from his income he'd still have more than enough for him to be able to comfortably afford the payments to these loans.

I've carefully thought about what TFS Loans 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 Loans says it concluded that Mr S would have had enough to pay these loans and that he explained that his previous difficulties were down to not working after splitting up with his ex-wife. But the CCJ was relatively recent and there were other defaulted accounts too.

I accept that TFS Loans might have been prepared to accept this credit risk because the existence of Mr 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 S 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 debt is showing signs of relatively rapid increase, 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 Loans had seen, Mr S was returning for further funds not too long afterwards and what it ought to have seen in the information gathered, meant TFS Loans needed to get a thorough understanding of Mr 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 S about the details of his income and expenditure, I think that TFS Loans needed to verify what Mr S said about his expenditure, like it did for his income. 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 S did have enough funds to be able to make the payments.

As there's no evidence that TFS Loans did properly scrutinise the information provided, or that it asked Mr S 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 S with his loans.

Would reasonable and proportionate checks have indicated to TFS Loans that Mr S would have been unable to sustainably repay his loans?

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 Loans that Mr S would’ve been unable to sustainably repay this loan.

Mr S 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 S has provided, it doesn’t mean it would’ve shown up in any checks TFS Loans might’ve carried out.

But in the absence of anything else from TFS Loans 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 S’ financial circumstances were more likely than not to have been at the time.

As I’ve already explained, TFS Loans was required to establish whether Mr S 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 S has provided in light of all of this.

The information I’ve been provided with shows that that Mr S was gambling unsustainable amounts of money. In these circumstances, I don’t think that TFS Loans would have lent if it knew, as I think it ought to have, that Mr S difficulties managing credit was mainly because of his gambling. And that his ability to repay these loans 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 S would not have been able to make the repayments to these loans 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 Loans to the fact that Mr S would not be able to sustainably make the repayments to these loans.

Did TFS Loans act unfairly or unreasonably towards Mr S in some other way?

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

So I find that TFS Loans didn’t act unfairly or unreasonably towards Mr S in some other way.

Conclusions

Overall and having carefully thought about the two overarching questions, set out on page one of this decision, I find that:

- TFS Loans *didn't* complete reasonable and proportionate checks on Mr S to satisfy itself that he was able to repay his loans;

- reasonable and proportionate checks *would* more likely than not have shown Mr S was unable to sustainably make the repayments to these loans;

- TFS Loans *didn't* also act unfairly or unreasonably towards Mr S in some other way.

The above findings leave me concluding that TFS Loans unfairly and unreasonably provided Mr S with guarantor loans in January 2018, August 2018 and June 2019.

<u>Did Mr S lose out as a result of TFS Loans unfairly and unreasonably providing him with his guarantor loans?</u>

I think that these loans had the effect of unfairly increasing Mr S' indebtedness as it led to him to being provided with expensive credit for a significant sum. These loans weren't cheap, certainly when compared to mainstream credit providers, and he ended up paying interest and charges on loans that he shouldn't have been given in the first place.

So I find that Mr S did suffer adverse consequences and as a result lost out because TFS Loans unfairly provided him with these loans.

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

I've carefully thought about what TFS Loans 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 S' complaint for TFS Loans to put things right by:

- refunding all interest, fees and charges Mr S paid on loans 1 and 2;

- adding interest at 8% per year simple on the refunded interest, fees and charges Mr S paid from the date they were made to the date of settlement†;

- removing all interest, fees and charges applied to loan 3 from the outset. The payments made should be deducted from the new starting balance – the £7,000.00 originally lent. TFS Loans should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Mr S with interest added at 8% simple a year.

If after all adjustments have been made an outstanding balance remains on loan 3, TFS Loans can use the compensation due for loans 1 and 2 to reduce this.

I'd also remind TFS Loans of its obligation to exercise forbearance if it intends to collect on an outstanding balance, should one remain on loan 3 after all adjustments have been made to the account, and it's the case that Mr S is experiencing financial difficulty.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 16 April 2021.

Jeshen Narayanan
Ombudsman