DRN-2442000

Financial Ombudsman Service

The complaint

Mr H has complained that TFS Loans Limited ("TFS Loans") provided him with an unaffordable loan.

What happened

TFS Loans provided Mr H with a loan of £7,500 in March 2018. This loan had a 48-months term with a monthly repayment amount of £288.13. This all meant the total amount repayable of £13,830.24 was due to be repaid.

One of our investigators looked at this complaint and thought that TFS Loans unfairly provided this loan as proportionate checks would have shown it was unaffordable. TFS Loans disagreed with our investigator and asked for an ombudsman to review the complaint.

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 general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr H's complaint.

I need to take into account the relevant rules, guidance and good industry practice.

When TFS Loans lent to Mr H, the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

TFS Loans was entering a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr H's creditworthiness before it entered the agreement. This means that TFS Loans had to consider both the risk to it that Mr H wouldn't make the repayments under the agreement when due, and the risk to Mr H of not being able to make these repayments. In particular, TFS Loans had to consider Mr H's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it is down to the lender to decide what specific checks it wishes to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what is appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks:

- the *lower* a consumer'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 period of time a borrower will be indebted for (reflecting the fact that the total cost of credit is likely to be greater and the borrower is required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr H's case, I have considered the following questions:

- Did TFS Loans complete reasonable and proportionate checks when assessing Mr H'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 Loans make a fair lending decision?

I've carefully thought about all of the relevant factors in this case.

Were the checks that TFS Loans carried out reasonable and proportionate?

I can see from the documents TFS Loans have submitted that it verified Mr H's income by asking him for payslips. Mr H declared his income to be £1200 but TFS Loans used a figure of £1063 that it said came from verifying from the payslips he submitted. It also asked Mr H about his expenses and used a credit search to check for his credit commitments. It says after it did this, it worked out that Mr H's disposable income was £178.72 after it factored in the loan repayment.

I've carefully considered what TFS Loans has said. But when I consider the amount Mr H was borrowing in relation to his income, the total cost and length of the loan, I think TFS Loans should have carried out a complete review of his finances to see whether the loan repayments were sustainable over the life of the loan.

As I can't see that this TFS Loans did do this, I don't think that the checks it carried out before providing Mr H with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to TFS Loans that Mr H would have been unable to 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 Loans that Mr H would have been unable to sustainably repay this loan.

Mr H has provided bank statements to our service from a short period of time leading up to when the loan was granted and I've carefully considered the information provided. Having done so, it's clear Mr H was gambling significant amounts of money in relation to how much he was earning, leading up to the date when he applied for the loan. I can also see that he was making payments to other short term loan providers.

Bearing all this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have shown TFS Loans that Mr H would not have been able to repay this loan in a sustainable manner as the information he has provided shows he was having problems managing his finances. In particular his gambling transactions were such that he was paying out more than he was earning. On balance, I think it would have become apparent to TFS that the loan repayments wouldn't have been sustainable over the life time of the loan. So, I'm satisfied that its failure to carry out proportionate checks resulted in it unfairly providing this loan to Mr H.

So, it follows that TFS Loans needs to put things right.

Putting things right

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Mr H's complaint for TFS Loans to put things right by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr H made, direct to TFS Loans and any third-parties, should be deducted from the new starting balance – the £7,500 originally lent.

- If there is a balance still to be repaid, then TFS loans will need to exercise forbearance and arrange an affordable repayment plan with Mr H.

- If Mr H has already repaid more than £7,500.00 then TFS Loans should treat any extra as overpayments. And any overpayments should be refunded to Mr H; adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr H to the date of settlement†

† HM Revenue & Customs requires TFS Loans to take off tax from this interest. TFS Loans must give Mr H 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 H's complaint about TFS Loans Limited and it now needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 September 2021.

Mark Richardson
Ombudsman