DRN-2541300

The complaint

Mr R complains that TFS Loans Limited agreed a loan for him which was unaffordable for him.

What happened

In December 2015, Mr R applied for a loan of £7,500 with TFS to repay some debts, pay council tax and a holiday. TFS agreed the loan which was to be repaid in 60 monthly instalments of £279. Mr R has said that at the time he had problems with gambling and the loan was unaffordable for him. He complained to TFS saying that if it had carried out thorough checks, it would have found the loan was unaffordable and refused to lend to him.

TFS looked into Mr R's complaint. It said it felt it had carried out sufficient checks in line with the regulations. Having done so it felt the loan was affordable for Mr R based on the information he'd given it and it had collected at the time.

Mr R disagreed and referred his complaint to us. One of our investigators looked into it. She said that after taking account of Mr R's declared income and expenditure including the payment to this loan, showed he had a monthly disposable income of over £130. Our investigator felt the checks TFS had carried out were reasonable and proportionate and it was not wrong for TFS to lend to Mr R.

TFS accepted what our investigator said, but Mr R didn't. In summary, he said if TFS had checked his bank statements, it would have seen he had several payday loans and a gambling problem, so would have refused to lend to him. As there was no agreement, Mr R's complaint has been passed to me for a 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 on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

TFS needed to take reasonable steps to ensure that it didn't lend to Mr R 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 R was in a position to sustainably repay the loan?
- If not, what would reasonable and proportionate checks have shown at the time and did TFS make a fair lending decision?
- Did TFS act unfairly or unreasonably towards Mr R 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 assessment is for TFS to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr R. 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 R. The fact that the loan was guaranteed by third parties and the potential for TFS to pursue the guarantors instead of Mr R, doesn't alter or lessen the obligation.

TFS had to carry out reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the loan sustainably. There was no set list of checks that it 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 has 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?

As I've said above, there is no set list of checks a lender must carry out – what it must do is satisfy itself that the borrower is able to repay the loan sustainably. In order to do so for Mr R, TFS used information he provided regarding his employment, residential status, income and expenditure. It also obtained proof of his income in the form of a salary slip and got his permission to search his credit file.

The information Mr R provided TFS showed that after the expenditure he declared was deducted from his income, he had a money left over after the loan payments were accounted for. So on the face of it, the loan appeared affordable for Mr R.

Mr R's credit file showed a default to a communications company from around ten months before this loan application. It also showed he'd had a debt management plan which had finished around four months before the application. During the sales call, the advisor asked Mr R about the reasons for those financial difficulties and he explained there had been a short period when he was out of work which had made things difficult.

The information TFS had gathered from Mr R showed he was on a stable income and it felt it had a reasonable explanation from him for the two items showing on his credit file – one of which was resolved. He'd given details of the debts he wished to repay, and it appeared from his income and expenditure that he had sufficient money to afford the loan.

On balance, I think the checks TFS carried out were sufficient in this instance to satisfy it that Mr R ought to be able to sustainably repay this loan. I've seen and heard nothing in my investigation which has led me to believe TFS ought to have been aware that Mr R had a gambling problem or was in current financial difficulty. I think the checks it carried out when assessing Mr R's application were reasonable and proportionate.

What would reasonable and proportionate checks have shown at the time and did TFS make a fair lending decision?

I've already said that I think the checks carried out on this occasion were reasonable and proportionate. While further checks – such as requesting bank statements – may have provided a fuller picture and may have led to a different decision, there's no obligation on a lender to see bank statements. They can be a useful source of information if a lender wishes to see them or it has concerns, but the regulations don't oblige the lender to obtain them.

Given that I think the checks were reasonable and proportionate in this case, it follows that I think TFS's decision to lend was a fair one.

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

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 R in some other way.

My final decision

My final decision is that I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 December 2021.

Richard Hale
Ombudsman