DRN-2547218

The complaint

Mr M says TFS Loans Limited lent to him irresponsibly.

What happened

Mr M took out a guarantor loan from TFS on 4 January 2018. It was for £5,000 over 36 months. The monthly repayment was £242.01 and the total repayable was £8712.36. I understand there is an outstanding balance.

Mr M says the loan was unaffordable for him as he already had numerous loans and if TFS had checked his bank statements they would have seen numerous gambling transactions.

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 M.

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 M. 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 M 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 M. 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 M.

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 M, and have considered the following questions:

- did TFS complete reasonable and proportionate checks when assessing Mr M'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 M 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 verified his declared income with a recent payslip and used an income verification tool. It also asked about the purpose of the loan which was debt consolidation. From these checks combined TFS concluded Mr M would have monthly disposable income (after the repayment of this loan) of £361.97 and so the loan was affordable.

But I don't agree that these checks were proportionate. Mr M 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 three years. So I would expect that TFS would want to gather, and independently check, more detailed information about Mr M's financial circumstances before it agreed to lend to him. I can't see it verified his declared living costs in any way. His credit file from one of the agencies showed that he had unsecured of debt over £13,600 - a second report showed it was higher at £17,129. He was close to his overdraft limit; one credit card was over limit and four of his credit/store cards had been running at or close to their credit limit for several months. So, in the round, I think it would have been proportionate for TFS to independently check the actual state of Mr M's finances before agreeing the loan.

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

I have looked at Mr M's bank statements. This is one way TFS could have gathered the information I think it needed on Mr M's financial situation. Mr M also shared these with TFS when he made his complaint. The adjudicator set out in his view why he had reached the conclusion that the statements showed that Mr M did not have the disposable income TFS had calculated, rather he had no disposable income available to spend, or to make this loan repayment. He highlighted that Mr M was spending on average more than twice his monthly income on gambling transactions. It followed he concluded the loan was not affordable for Mr M.

In response to this TFS shared its analysis of Mr M's gambling transactions and said it didn't agree it was a sign of customer vulnerability or financial difficulty, or of irresponsible lending. It argued the gambling transactions, and loan transactions to maintain the gambling, should not be included in the affordability assessment. It speculated Mr M could be running a professional gambling business.

From my review of Mr M's bank statements I think there are a number of concerns that should have caused TFS, as a responsible lender, to decline Mr M's application. I disagree with TFS's view that the gambling transactions should not be included in the affordability assessment. It argued in its final response letter to Mr M that CONC 5.2A.18 provides for it not to consider them as they are discretionary expenses and so could be reduced accordingly to service any non-discretionary expenses such as credit commitments.

But they were a significant and defining factor in Mr M's financial position. So I find TFS needed to consider this expenditure when determining if the loan was sustainably affordable. It had to do this to meet its regulatory obligations under CONC 5.3.1(G) which stated -

1. In making the creditworthiness assessment or the assessment required …, a firm should take into account more than assessing the customer's ability to repay the credit.
2. The creditworthiness assessment and the assessment required … should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

And I can't find any evidence that there was any likelihood Mr M would no longer gamble on receipt of this loan as TFS suggests could happen. The level of Mr M's spending on gambling should have been a clear signal that there was a high risk he might not be able to repay the loan sustainably. I also don't think TFS can fairly include the loan payments from his guarantor in its review of Mr M's net position from gambling that led it to say there was no sign of financial difficulties. And whilst I note Mr M was employed in a business sector adjacent to the gambling industry, I haven't seen any evidence to support TFS's claim that he was running a professional gambling business.

With regards the other items that I think should have concerned TFS, Mr M's bank statements show that in the month before this application he had taken out over £7,400 in high-cost short-term loans/running credit from five different providers – and he was making repayments to at least three other high-cost short-term lenders. From this TFS ought to have realised Mr M was having problems managing his money. I have considered that Mr M told TFS this loan was for debt consolidation but given the total level of his debt, and the clear signs of financial instability that I have set out above, this does not change my conclusion that TFS was wrong to lend to Mr M. He was theoretically only going to be paying off around 35% of his overall debt. And it was clear from the level of his gambling that his finances were not stable.

Overall I think that if TFS had completed proportionate checks, it would have realised the loan was sustainably unaffordable for Mr M and that he was unlikely to be able to repay it without borrowing further or suffering other adverse financial impacts. 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.

Putting things right

It’s reasonable for Mr M 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 M made as payments towards the capital.
- As reworking Mr M’s loan account will result 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 M’s credit file in relation to the loan.

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

My final decision

I am upholding Mr M’s complaint. TFS Loans Limited must out things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 9 June 2021.

Rebecca Connelley
Ombudsman