DRN-2610520

Complaint

Mr S has complained that TFS Loans Limited ("TFS Loans") irresponsibly provided him with an unaffordable guarantor loan. He says that TFS didn't properly assess whether he could afford the payments. And if it had done this it would have seen that he wasn't able to repay this loan.

Background

TFS Loans provided Mr S with a guarantor loan in July 2017. The loan was for £7,500 and it was due to be repaid in 60 instalments of £293.19. The APR of the loan was 48.9% and the total amount to be repaid was £17,591.40, which included total interest of £10,091.40.

One of our investigators considered Mr S' complaint. He told TFS Loans that the checks it carried out before providing Mr S with this loan weren't reasonable and proportionate and if such checks had been carried out it would have seen that it 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 this loan 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 loan in a sustainable way?
    - If so, did it make a fair lending decision?
    - 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 loan 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 an income and expenditure assessment with Mr S. During this assessment, Mr S was ascertained to be receiving around £4,663.73 a month. TFS Loans requested the accounts of the company Mr S was a director to work out this income amount. TFS Loans has also said it carried out credit check on Mr S.

The credit check showed that Mr S was jointly responsible for a mortgage. Even though Mr S said that his ex-wife was now responsible for this mortgage, half of the payment was included in Mr S' expenditure. As Mr S said he was now living with a new partner who shared all the bills on his new place with him half the total expenditure was included together with payments to Mr S' existing credit commitments. TFS concluded when Mr S' expenditure was deducted from his income he'd still have approaching £1,400.00 left in disposable income once the payment to his new loan was included. TFS says this was enough for him to be able to comfortably afford the payments.

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 approaching £1,400.00 remaining in disposable income after repaying this loan. Yet it clearly must have had doubts about this as it refused Mr S' initial application for a loan £10,000.00, presumably because it considered Mr S might have had difficulty repaying the extra £50 a month. Equally, TFS Loans was also aware that Mr S had taken out two loans for relatively large amounts in the period leading up to this application. In my view, TFS Loans' doubts about his ability to afford a further £50 a month together with the recent applications for credit called the monthly disposable income it arrived for Mr S into question. And I think that this meant further investigation was needed into Mr S' expenditure.

I say this while especially mindful of the fact that the rules themselves provide guidance on the proportionality of affordability/creditworthiness assessments. The rules and guidance suggest that the risk of any credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation. This was an expensive loan and TFS Loans was aware of Mr S' increasing debts.

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, what its actions said about the plausibility of the disposable income figure it arrived 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 this loan.

<u>*Would reasonable and proportionate checks have indicated to TFS Loans that Mr S would have been unable to sustainably repay this loan?*</u>

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' increase in debt was mainly because of his gambling. And that his ability to repay this loan would, to in all intent and purpose, be based on his success as a gambler. It also would have seen that Mr S was a regular user of payday loans.

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 this loan 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 this loan.

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 loan;

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

- 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 a guarantor loan in July 2017.

Did Mr S lose out as a result of TFS Loans unfairly and unreasonably providing him with his guarantor loan?

I think that this loan had the effect of unfairly increasing Mr S' indebtedness as it led to him to being provided with expensive credit for a significant sum. This loan was expensive and he ended up paying interest and charges on a loan 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 this loan.

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 the interest and charges Mr S paid as a result of his guarantor loan;

- add interest at 8% per year simple on any interest and charges from the date they were paid by Mr S to the date of settlement†;

- removing any adverse information recorded on Mr S' credit file as a result of this loan.

† 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 22 March 2021.

Jeshen Narayanan
Ombudsman