DRN-2784008

The complaint

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

What happened

TFS Loans provided Mrs H with a loan of £2,000.00 in November 2010. This loan had a 30-month term with a monthly repayment amount of £143.73. This all meant the total amount repayable of £4312.90 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 Mrs H's complaint.

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

Guidance issued by the Office of Fair Trading in March 2010 explained that its purpose was "*to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices".*

Section 4.2 says:

"*Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question. We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner*".

It defined *'in a sustainable manner'* in this context as meaning credit that can be repaid by the borrower:

"without undue difficulty – in particular without incurring or increasing problem indebtedness while also meeting other debt repayments and other normal/reasonable outgoings and without having to borrow further to meet these repayments;

over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time;
out of income and/or available savings, without having to realise security or assets."

Section 4.10 said that "*in the OFT's view, the extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon - and proportionate to - a number of factors - which may include some or all of the following as appropriate:*

the type of credit product;
the amount of credit to be provided and the associated cost and risk to the borrower;
the borrower's financial situation at the time the credit is sought;
the borrower's credit history including any indications of the borrower experiencing – or having experienced - financial difficulty;
the borrower's existing and future financial commitments including any repayments due in respect of other financial products and significant non-credit commitments."

The OFT said creditors could employs a variety of sources of information to assess affordability which might include some or all of the following examples:

record of previous dealings with the borrower;
evidence of income;
evidence of expenditure;
a credit score;
a credit report from a credit reference agency;
information obtained from the borrower.

The OFT added that "*creditors who do not require documentary evidence of income and/or expenditure as part of their assessment of affordability…should ensure that whatever means and sources of information they employ are sufficient to make an appropriate assessment*."

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

- Did TFS Loans complete reasonable and proportionate checks when assessing Mr U'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 Mrs H's income by asking her for payslips. Her income from the payslips came to around £1120. I can see on the application form it asked her about her rent and it then carried out an assessment of her expenditure through a credit search. The credit search that it carried out showed a defaulted account that had been settled by Mrs H.

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

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

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

Mrs 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 Mrs H was gambling significant amounts of money leading up to the date when she applied for the loan. I can also see that she was making payments to 4 other loan providers. Mrs H was also not keeping within her overdraft limit and her bank was charging her an unauthorised borrowing fee on a regular basis.

Bearing all this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have shown TFS Loans that Mrs H would not have been able to repay this loan in a sustainable manner as the information she has provided shows she was having problems managing her finances. So, I'm satisfied that its failure to carry out proportionate checks resulted in it unfairly providing this loan to Mrs 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 Mrs 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 Mrs H made, direct to TFS Loans and any third-parties, should be deducted from the new starting balance – the £2,000.00 originally lent.

- If Mrs H has already repaid more than £2,000.00 then TFS Loans should treat any extra as overpayments. And any overpayments should be refunded to Mrs H; adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mrs H to the date of settlement†

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

My final decision

For the reasons I've explained, I'm upholding Mrs 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 Mrs H to accept or reject my decision before 22 June 2021.

Mark Richardson

Ombudsman