DRN-2963152

The complaint

Ms F complains that the loan she had from TFS Loans Limited was unaffordable to her.

What happened

Ms F took out a guarantor loan with TFS Loans on 11 May 2016. She borrowed £7,500 and was due to repay £304.63 monthly for 48 months.

Ms F says that TFS Loans didn't carry out enough affordability checks when she applied for the loan. She says the repayments were unaffordable and the loan worsened her financial situation which was already poor. Ms F adds that she now owes money to a family member who helped her pay off her debts.

TFS Loans says it asked Ms F about her income and discussed her credit report with her. It says it also verified her income using payslips. TFU says it agreed that part of the loan would be used to repay one of Ms F's existing loans and that she would be left with around £589 of disposable income per month after the loan repayment. It says the information from its checks did not indicate further checks were required and it was satisfied the loan was affordable.

Our adjudicator recommended the complaint should be upheld. He wasn't satisfied TFS Loans's checks went far enough and found that proportionate checks were likely to have found the loan was unaffordable. He recommended that TFS Loans should deduct any payments Ms F made from the principal and refund any overpayments plus 8% interest. He said it should also ensure that any associated negative information is removed from Ms F's credit file.

TFS Loans said that it would like to see the bank statements that our adjudicator used in his assessment. When our adjudicator explained why he considered that would add little value TFS Loans responded to say that Ms F had few outgoings as she was living with her parents and there was no evidence that she was struggling to meet her credit commitments.

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.

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

The Financial Conduct Authority (FCA) was the regulator when TFS Loans lent to Miss L. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that TFS Loans needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.3.1G states that:

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 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.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or without incurring or increasing problem indebtedness (ILG 4.3).

(The Office of Fair Trading was the previous regulator and it produced a document entitled 'Irresponsible Lending Guidance' which the FCA referenced in its consumer handbook. CONC 5.3.1G – 6 specifically referenced ILG 4.3.)

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

- the *lower* a person'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 that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).

In addition, as per CONC 5.3.1G – 4b: it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer.

Bearing this in mind, in coming to a decision on Ms F's case, I've considered the following:

- Did TFS Loans complete reasonable and proportionate checks when assessing Ms F's loan application to satisfy itself that she 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?
- Did TFS Loans act unfairly or unreasonably in some other way?

I've seen and listened to evidence to show TFS Loans asked about Ms F's financial circumstances, checked her credit file and verified her income. However, based on the information it received I'm not satisfied that the checks carried out by TFS Loans were reasonable and proportionate. I say that because:

- The loan was over a term of 48 months and TFS Loans needed to ensure the repayments were sustainable over that period;
- Ms F's credit file showed:
    - two defaults in the last year, of which one was now satisfied;
        - I acknowledge that Ms F explained the other was due to an unused current account where a small overdrawn balance had continued to accrue;
    - She was in arrears on a communications account and recently on a mail order account;
    - A credit card that was over its credit limit;
    - She'd taken out a six-year loan less than a year earlier, for which she was paying £276 per month;
    - A short-term loan taken out two months earlier with £180 monthly repayments;
    - An ongoing reliance on short-term lending;

I accept that Ms F was going to use the new loan to repay the larger of her existing loans, but, with her other existing credit, this still meant she'd be committing almost 50% of her income to credit repayments. Even for someone who lived with her parents, who had declared few other outgoings, I consider this could be an indication that further lending was unsustainable. As her credit file also showed recent defaults, over-limit accounts and arrears, and multiple previous short-term loans, I think TFS Loans should have made sure it fully understood her financial situation before it approved the loan, especially as it didn't verify what Ms F said about her other outgoings.

So I've had a look at Ms F's recent credit file and bank statements from the time to see what proportionate checks were likely to have shown:

- Ms F had two additional loans at the time of her TFS Loans application which she hadn't declared and weren't on the credit search carried out at the time:
    - She was paying £235 per month on a high cost loan she'd taken out in December 2015;
    - And £269 per month on a £925 short-term loan from March 2016;
- Her bank statements showed direct debits were regularly returned unpaid;
- Ms F was spending around £120 each month on gambling transactions.

In total, excluding the loan that was to be settled, Ms F was committed to paying over £1,000 of her £1,190 income on credit repayments when she took out the TFS Loan. With her other regular expenditure and significant spending on gambling, I think TFS Loans would have seen this was unsustainable if it had carried out proportionate checks.

In summary, I find it was irresponsible to lend to Ms F and TFS Loans did not make a fair lending decision, although I cannot conclude that it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint. TFS Loans Limited should:

A. Add together the total of the repayments made by Ms F towards interest, fees and charges on the loan;
B. Calculate 8% simple interest* on the individual payments made by Ms F which were considered as part of “A”, calculated from the date Ms F originally made the payments, to the date the complaint is settled;
C. Pay Ms F the total of “A” plus “B”;
D. Remove any adverse information recorded on Ms F’s credit file.

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms F to accept or reject my decision before 28 October 2021.
Amanda Williams
Ombudsman