DRN-3081509

The complaint

Mr M has complained that TFS Loans Limited ("TFS Loans") provided him with two unaffordable loans.

What happened

TFS Loans provided Mr M with two guarantor loans. The details are as follows:

Loan	Amount	Term	Total to repay	Monthly Instalment
1	£1000	24m	£1650	£68.76
2	£3000	60m	£7035	£117.25

One of our investigators looked at this complaint and thought that TFS Loans unfairly provided these loans. They concluded that although TFS Loans carried out proportionate checks, it didn't make fair lending decisions for either loan. 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 Mr M's complaint.

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

When TFS Loans lent to Mr M, the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

TFS Loans was entering a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr M's creditworthiness before it entered the agreement. This means that TFS Loans had to consider both the risk to it that Mr M wouldn't make the repayments under the agreement when due, and the risk to Mr M of not being able to make these repayments. In particular, TFS Loans had to consider Mr M's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it is down to the lender to decide what specific checks it wishes to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what is appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

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

- the *lower* a consumer'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 period of time a borrower will be indebted for (reflecting the fact that the total cost of credit is likely to be greater and the borrower is required to make repayments for an extended period).

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

- Did TFS Loans 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 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 for loans 1 and 2?

I have looked through some documents and also listened to call recordings that TFS have provided and by doing this I have managed to obtain an understanding of what happened when it agreed to lend to Mr M. I can see that it verified Mr M's income on both occasions by asking him for payslips. Mr M declared his income to be around £1900 a month and TFS verified this. It also asked Mr M about his expenses, looked through bank statements and used a credit search to check for his credit commitments. It says after it did this, it worked out that Mr M's disposable income on both occasions and says it could see that he could afford the loan repayments. I can see that it also took into consideration what it found on Mr M's credit file on each occasion, including asking him about defaults that he had and factoring these into its assessment.

I've carefully considered what TFS Loans has said and on the surface of it, it had assessed Mr M to have enough disposable income to afford the loans. I've listened at length to all of the calls it has submitted to our service. On this occasion, I think it carried out enough checks and gathered enough information that I think were proportionate for both loans so that it could make a lending decision.

But it also needed to act on any information that it would have gathered and make a fair lending decision based on what it had in front of it. So, I need to go on and consider whether it did this for loans 1 and 2.

Did TFS make a fair lending decision for loans 1 and 2?

I've concluded the checks TFS Loans carried out, on balance were proportionate. But I don't think TFS Loans made a fair lending decision on each occasion it lent to Mr M, based on what it had in front of it.

As I have already mentioned, I have listened to the call recordings carefully. For loan 1 Mr M discusses several gambling transactions on his bank statements with TFS Loans. I haven't been able to see the bank statements that TFS Loans used in its assessment and it hasn't been able to supply a copy of these to our service. But on balance, after listening to the call, I agree with our investigator that Mr M was having problems managing his finances. He discusses with TFS Loans gambling transactions in a call recording. These add up to significant amounts of money in relation to how much he was earning. And when he applies for his second loan several months later, TFS Loans raises this again with Mr M and asks him if he is gambling the same amounts and he responds, *"yeah probably about the same".* So there has been no improvement or change with Mr M's circumstances here between loan 1 and loan 2.

TFS Loans took Mr M's winnings from his gambling off his expenditure and used the difference as to what he would spend on average each month on gambling. It has told our service that it has done this and used Mr M's winnings as income. But I don't think that this is a fair assessment of Mr M's finances. I can't see how this would give it confidence that Mr M would be able to repay either loan in a sustainable way, as Mr M would need to win at gambling every month in order to have enough disposable income to repay all that he had committed too.

Bearing all this in mind, I think the information TFS Loans gathered showed that Mr M would not have been able to repay either loan in a sustainable manner. In particular from what was discussed by the parties about his gambling transactions were such that he was paying out more than he was earning. He was having problems managing his finances and this didn't improve when he asked for loan 2 either. On balance, I think it would have become apparent to TFS Loans that the loan repayments wouldn't have been sustainable over the lifetime of either loan.

So, it follows that TFS Loans needs to put things right.

Putting things right

In line with this Service's approach, Mr M shouldn't repay more than the capital amount he borrowed for each loan. With this in mind, TFS Loans should:

- add up the total amount of money Mr M received as a result of being given loans 1-2. The payments Mr M made should be deducted from this amount. Any payments made after the total repaid exceeds the amount Mr M was given should be treated as overpayments and refunded to him;

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

- remove any adverse information placed on Mr M's credit file because of loans 1-2;

*HM Revenue & Customs requires TFS Loans to take off tax from this interest. TFS Loans must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr M'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 Mr M to accept or reject my decision before 21 December 2021.

Mark Richardson
Ombudsman