DRN-3092114

The complaint

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

What happened

TFS Loans provided Mrs C with a loan of £5,000 in August 2010. This loan had a 30-month term with a monthly repayment amount of £299.94. This all meant the total amount repayable of £8,998.20 was due to be repaid.

One of our investigators looked at this complaint and thought that TFS Loans unfairly provided this loan. They said, based on what TFS Loans had in front of it, that it should have carried out proportionate checks. They went on to conclude that based on the adverse credit information it held within its credit search, it shouldn't have provided the 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 Mrs C's complaint.

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

The Office of Fair Trading (OFT) was the regulator when Mrs C borrowed from TFS Loans. The relevant rules and guidance set out by the OFT in its Irresponsible Lending Guidance (ILG) said that before agreeing credit it needed to check that Mrs C could afford to meet her repayments in a sustainable manner. This meant Mrs C being able to meet her repayments out of his normal income without having to go without or borrow further. I've set out some of the relevant guidance below for ease.

ILG Paragraph 4.2 stated:
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.

Paragraph 4.3 stated:
The OFT regards '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
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.

And Paragraph 4.4 described "undue difficulty":
The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

while also meeting other debt repayments and other normal/reasonable outgoings
and
without having to borrow further to meet these repayments.
Paragraph 4.26 gave an example of irresponsible lending as "*Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable."*

The regulations weren't prescriptive about what checks TFS Loans needed to carry out in order to reasonably assess whether or not Mrs C would be able to meet her repayments sustainably. But the regulations said that such checks needed to be proportionate. This suggests that the same checks might not be appropriate for all borrowers, or for the same borrower in all circumstances. In general, 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 the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).

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

- did TFS Loans complete reasonable and proportionate checks when assessing Mrs C's application to satisfy itself that she would be able to repay the credit in a sustainable way? And, 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 that TFS Loans asked Mrs C about her income and expenditure. It then says it also checked through a credit search and also requested bank statements.

TFS Loans verified Mrs C's income using the bank statements (I can see that it underlined her wages received) and after it used expenditure figures provided by Mrs C and checked the credit search results it assessed that Mrs C could comfortably afford the loan.

I've carefully considered what TFS Loans has said about how it calculated Mrs C's disposable income. But I don't think its checks were proportionate. I say this because I can see that the amount borrowed, the total repayment and the length of the loan (three years) would lead me to think on balance that it should have carried out a complete review of Mrs C's finances. I think this is particularly relevant to Mrs C's loan application due to the amount of defaults that she had recorded on the credit search that it carried out also.

The information provided in the search did not correlate with the assessment it had carried out. So, I think it should have gone further and verified Mrs C's expenditure in more detail.

As I can't see that this TFS Loans did do this within the bank statements it had been provided, I don't think that the checks it carried out before providing Mrs C with her loan were reasonable and proportionate, bearing in mind Mrs C would need to meet her loan repayments over 36 months.

Did TFS Loans make a fair lending decision?

I've concluded the checks TFS Loans carried out weren't proportionate and that they needed to do more. But I don't need to look into what it would have seen if it had carried out proportionate checks, because I don't think TFS Loans made a fair lending decision when it lent to Mrs C anyway, based on what it had in front of it.

I say this because when I look through the credit search TFS Loans carried out; I can see that it shows Mrs C was having problems managing her finances.

The search showed that Mrs C had defaulted on an account with a credit card provider only 2 months before she applied for a loan with TFS loans. In addition, she had defaulted with another credit card provider and a mail order account within 4 months of her application. With all 3 defaults she had balances outstanding to repay. In addition to this she had a further 7 defaults that although largely were accrued in the past still had outstanding balances for Mrs C to repay. This was completely at odds with what TFS Loans had assessed to be her financial circumstances. In addition, it would have had three months' worth of Mrs C's most recent bank statements in front of it and it would have seen from these that there was not a lot relating to the repayment of these defaults.

I think it would have been clear from these search results that Mrs P wasn't managing to repay her debt, and this resulted in defaulted accounts, showing that she was having problems managing her finances. 3 of the defaults had been incurred within 4 months of the application indicating that her problems were recent. I think, when I consider this, I think that it was unlikely that Mrs P could repay further credit sustainably without experiencing more adverse consequences.

So, I conclude based on what TFS Loans had in front of it, it would have seen Mrs C wouldn't have been able to make repayments in a sustainable way.

As Mrs C has been further indebted with a high amount of interest and charges on the loans that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what TFS Loans did wrong.

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 C'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 C made, direct to TFS Loans and any third parties, should be deducted from the new starting balance – the £5,000 originally lent.

- If Mrs C has already repaid more than £5,000.00 then TFS Loans should treat any extra as overpayments. And any overpayments should be refunded to Mrs C; adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mrs C to the date of settlement†

† HM Revenue & Customs requires TFS Loans to take off tax from this interest. TFS Loans must give Mrs C 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 C'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 C to accept or reject my decision before 18 January 2022.

Mark Richardson
Ombudsman