DRN-3167845

Financial Ombudsman Service

The complaint

Mr L says TFS Loans Limited lent to him irresponsibly.

What happened

Mr L took out two guarantor loans from TFS. A summary of his borrowing follows.

loan	taken out	value, £	term in months	monthly repayment, £	total repayable, £
1	27/04/2018	7,500	48	288.13	13,830.24
2	06/05/2019	10,000	48	384.17	18,440.16

He says the lender did not carry out effective checks and had it done so it would have seen the loans were not affordable.

The investigator said TFS was wrong to give both loans to Mr L. She said the credit checks the lender completed showed Mr L was having financial difficulties and would be unlikely to be able to sustainably repay either loan.

TFS disagreed saying, in summary, it had asked Mr L about his previous defaults and County Court Judgments (CCJ) and taken into account all the related payments. And with loan 2 Mr L was going to repay another more expensive loan thus decreasing his expenditure on debt.

As an agreement wasn't reached the case was passed to me to make a decision.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when TFS lent to Mr L required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So TFS had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr L. In other words, it wasn't enough for TFS to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr L.

Checks also had to be proportionate to the specific circumstances of each loan application.

In general, what makes up 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 and cost of credit they have applied for. 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 repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments 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 the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether TFS did what it needed to before agreeing to lend to Mr L. So to reach my conclusion I have considered the following questions:

- did TFS complete reasonable and proportionate checks when assessing Mr L's loan applications to satisfy itself that he would be able to repay the loans in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did TFS make fair lending decisions?
- did TFS act unfairly or unreasonably in some other way?

I can see TFS asked for some information from Mr L before it approved the loans. It asked for his monthly income and expenditure. It completed income verification with a third party to check his minimum income for the first loan, and it checked it against recent payslips for his second loan. It added a 15% buffer to his declared expenses for loan 1 and £100 for loan 2. For loan 2 it also checked his declared expenses against national statistics.

It then checked Mr L's credit file to understand his existing monthly credit commitments at the time of both applications and his credit history. It asked about the purpose of the loans which was debt consolidation. From these checks combined TFS concluded Mr L had sufficient disposable income to sustainably afford the loans.

Given the term, values and monthly repayments of the loans I don't think these checks were proportionate. Mr L was making a long-term commitment and given the size of the loans and the results of the credit checks I think TFS needed to do more to independently verify the actual state of Mr L's finances before agreeing to lend. However I won't comment further on this as even based on the information it gathered I don't think TFS made fair lending decisions. I'll explain why.

Loan 1

The results from the credit check showed TFS that Mr L had two CCJs registered against him, one as recently as 9 January 2018. There were also three defaulted accounts and whilst two were historic and settled, one had defaulted as recently as 21 January 2018 and remained unpaid. He had also entered into an arrangement to pay for the overdraft on his current account in March 2018. And he was in arrears on a mail order account. So there

were clear signs his finances were under pressure as he was failing to make timely repayments to multiple existing credit commitments.

TFS argues that it asked about this adverse information and Mr L gave reasons, but I'm not persuaded this means it was fair for it to go ahead and lend. I can't see it verified his explanations in anyway: it hasn't evidenced that it quantified his temporary reduction in income due to illness, or the cost of the unexpected car repairs, to make sure these were valid reasons for his poor repayment history on certain debts. It seems once it had Mr L's explanation it was happy to proceed, without checking the credibility and plausibility of his answers. I don't find this to be responsible in the circumstances of this case.

I note the purpose of loan 1 was to repay a more expensive loan that it seems Mr L was currently repaying at £374 a month. But he would still be left with repayments on another loan, a home credit agreement and a hire purchase agreement that in addition to this loan would mean he had to commit a significant proportion of his income to service his debt.

So I think in the round the results of the credit check ought to have alerted TFS to the fact there was a high risk Mr L would be unable to sustainably repay loan 1. It follows I think TFS was wrong to give loan 1 to Mr L.

Loan 2

Mr L applied to refinance and increase his borrowing from TFS only around a year after loan 1. In this time the results from the credit check showed Mr L's overall unsecured indebtedness had increased from £14,739 to £17,212. Whilst Mr L had settled one of the CCJs registered against him, he had defaulted on two additional accounts: his current account in May 2018 and a mail order account in July 2018. He had also entered into two new arrangements to pay, one on his hire purchase agreement between February and March 2019 and one on his home credit agreement in December 2018. So I think it was clear that Mr L was still having problems managing his money.

TFS argues that Mr L was going to use the money for debt consolidation so he was decreasing his expenditure, but this was also the purpose of loan 1 and it could clearly see that his overall financial position had not improved as a result. Whilst loan 2 may have reduced his monthly outgoings on credit, it was prolonging his use of high cost credit and significantly increasing his total indebtedness, so I think TFS ought to have been concerned that this would be harmful for Mr L given the indicators of financial difficulties that were already evident on his credit check.

So, as with loan 1, I think the results of the credit check ought to have alerted TFS to the fact there was a high risk Mr L would be unable to sustainably repay loan 2. It follows I think TFS was wrong to give loan 2 to Mr L.

I haven't found any evidence that TFS acted unfairly or unreasonably in some other way towards Mr L.

Putting things right

I think it's fair and reasonable for Mr L to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on loans that shouldn't have been provided to him.

It should:

- Add up the total amount Mr L received as result of being given loans 1 and 2. The repayments Mr L made should be deducted from this amount.
- If reworking Mr L's loan accounts results in him having effectively made payments above the original capital borrowed, then TFS should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking Mr L's loan accounts results in there being an outstanding capital balance the lender should agree an affordable repayment plan with Mr L.
- Remove any adverse information recorded on Mr L's credit file in relation to the loans.

*HM Revenue & Customs requires TFS to deduct tax from this interest. TFS should give Mr L a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I am upholding Mr L's complaint. TFS Loans Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 December 2021.

Rebecca Connelley
Ombudsman