DRN-3167884

The complaint

Mr M complains that TFS Loans Limited lent to him in an irresponsible manner.

What happened

Mr M was given a single loan by TFS in March 2017. He borrowed £7,500 and agreed to repay the loan in 48 monthly instalments. Mr M repaid his loan in December 2020.

Mr M's complaint has been assessed by one of our investigators. He thought that the results of TFS's checks should have led the lender to conclude that Mr M was facing problems managing his money. So he didn't think the loan should have been agreed, and asked TFS to pay Mr M some compensation.

TFS didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr M accepts my decision it is legally binding on both parties.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr M's complaint.

The rules and regulations at the time TFS gave this loan to Mr M 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 assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so TFS had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr M. In practice this meant that TFS had to ensure that making the repayments wouldn't cause Mr M undue difficulty or adverse consequences. 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 any repayments on Mr M.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes 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 / cost of credit they are seeking.

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 M.

TFS gathered some information from Mr M before it agreed the loan. It asked him for details of his income, and his normal expenditure. And it checked his credit file to assess how much he was repaying to other creditors and how he had managed credit in the past.

Mr M was entering into a significant commitment with TFS. He would need to make monthly repayments for a period of four years. So I think it was right that TFS wanted to gather, and independently check, some detailed information about Mr M's financial circumstances before it agreed to lend to him. I think that the checks I've described above were sufficient to achieve that aim – I think TFS's checks were proportionate.

But simply performing proportionate checks isn't always enough. A lender also needs to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. And that is what I think should have happened in this case.

The credit checks results showed that Mr M was heavily indebted across a range of other credit accounts including bank overdrafts, loans, credit cards, hire purchase agreements and mail order accounts. In total he had at least 14 other active accounts with outstanding balances amounting to more than £30,000. And Mr M's credit file showed that he had opened and closed a significant number of short-term loans over the past year.

I accept that the credit check suggested that Mr M was managing his credit in line with the agreements he'd taken – it showed little evidence of late or missing payments. But that in no way suggests that Mr M was repaying his credit in a sustainable manner. In fact I think it shows the opposite – it seems relatively likely that Mr M was using new credit to meet his existing liabilities. I think that in itself would be a strong reason to decline his application for a new loan.

Even if I was minded (which for clarity I am not) that the results of the credit check should have simply led TFS to undertake some further checks, I think it most likely that those too would have supported a decision to not lend to Mr M. Mr M has told us that at the time he asked for this loan he was suffering from what he now knows was a gambling problem.

Mr M hasn't been able to provide his bank statements from the time of the loan. But he has given us statements from around five months later. And I think those clearly reflect the problems he said he was facing. On balance, given the pattern of his earlier borrowing and the extent of his indebtedness, I think it almost certain that these gambling problems were present at the time he asked for the loan from TFS.

So in conclusion I think the results of TFS's checks should have led the lender to conclude that Mr M was facing serious problems managing his money, and that any further credit would have simply worsened those problems. I don't think TFS should have agreed to give this loan to Mr M, and so it needs to pay him some compensation.

Putting things right

I don't think TFS should have agreed to lend to Mr M in March 2017. So TFS should;

- refund all the interest and charges Mr M paid on the loan
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- remove any adverse information recorded on Mr M's credit file in relation to the loan

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

My final decision

My final decision is that I uphold Mr M's complaint and direct TFS Loans Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 February 2022.

Paul Reilly
Ombudsman