DRN-3206494

The complaint

Mr D, through his representative, says TFS Loans Limited lent to him irresponsibly.

What happened

Mr D took out a 60-month loan for £3,000 from TFS in August 2013. The monthly repayment was £149.96 and the total repayable was £8,997.60. Mr D says TFS didn't carry out proper affordability checks or consider his overall level of indebtedness.

Our investigator said the complaint should be upheld. He found that TFS knew from the credit check it carried out that Mr D previously had problems managing his money and was also showing signs of current financial difficulty.

TFS disagreed saying whilst there was adverse information on Mr D's credit file it was historic, and it had asked about the cause of the defaults. All his active accounts were well maintained and if the loan wasn't affordable it would have seen missed payments very early into the loan term.

As an agreement couldn't be reached the complaint was passed to me to make a final 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 Office of Fair Trading (OFT) was the regulator when Mr D borrowed from TFS. The relevant rules and guidance set out by the OFT in its Irresponsible Lending Guidance (ILG) said that the lender needed to check that Mr D could afford to meet his repayments in a sustainable manner. This meant Mr D being able to meet his repayments out of his normal income without having to go without or borrow further.

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 D. 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 D.

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 (eg. 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 D, and have considered the following questions:

- did TFS complete reasonable and proportionate checks when assessing Mr D'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 make a fair lending decision?
- did TFS act unfairly or unreasonably in some other way?

TFS asked for some information from Mr D before it approved the loan. It asked for details of his income and checked this on recent bank statements, his monthly housing costs and his existing credit commitments. It checked his credit file to understand his credit history. It also asked about the purpose of the loan which was to repay a credit card. From these checks combined TFS concluded Mr D would have around £427.01 of monthly disposable income after making the repayment and so the loan was affordable.

I'm not persuaded the checks TFS carried out were proportionate given it needed to be sure Mr D would be able to sustainably repay the loan for a five-year period. I can't see it considered his living costs at all (apart from housing), and it was aware he had defaulted on a number of accounts in 2011 and had a County Court Judgement (CCJ) for over £7,500 registered against him in 2012. So it ought to have taken steps to make sure it had a fuller understanding of his actual finances before lending. But I won't comment further on this as even based on the information it gathered I don't think it made a fair lending decision.

There was significant adverse data on the credit check TFS carried out for Mr D. TFS argues it was historic and that it asked about the cause of his financial difficulties in 2011. But it could see Mr D had defaulted on more than ten different accounts only around two years ago. And in many instances he had not managed to settle the defaulted balance or make notable inroads into reducing those balances. At the time of this application he still owed over £29,500 on accounts that had defaulted. I think this ought to have concerned TFS as it indicated his financial position had possibly not improved in the way it assumed.

The fact Mr D had entered into an arrangement to pay on his mortgage, a priority debt, as recently as July 2013 should have reinforced this concern.

Mr D also had £18,000 of active debt. Whilst it was currently up-to-date, giving this loan meant Mr D would need to use an even more significant proportion of his income to service his debt and based on this I think TFS ought to have realised the loan would likely not be sustainably affordable. Whilst Mr D was settling some of his existing debt it was a credit card and so would not make a significant reduction to his monthly outgoings. He would still be spending around 65% of his income on credit commitments.

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Overall, given Mr D's credit history and amount of salary that would be needed to manage his debt, I don't think it's fair and reasonable for TFS to say that it lent to Mr D in the knowledge that doing so carried no risk of causing him financial harm in some way. TFS argues that it didn't see problems with repayments in the early life of the loan, but it does not know how Mr D met his repayments so this cannot be used as evidence that the loan was sustainably affordable.

It follows I think TFS was wrong to lend to Mr D.

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

Putting things right

It's reasonable for Mr D to have repaid the capital amount that he borrowed as he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been given to him. So he has lost out and TFS needs to put things right.

It should:

- Remove all interest, fees and charges on the loan and treat all the payments Mr D made as payments towards the capital.
- If reworking Mr D's loan account 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 D's loan account results in there being an outstanding capital balance, TFS must work with Mr D to agree an affordable repayment plan.
- Remove any adverse information recorded on Mr D's credit file in relation to the loan.

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

My final decision

I am upholding Mr D'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 D to accept or reject my decision before 21 February 2022.

Rebecca Connelley
Ombudsman