

complaint

Mr F complains that TFS Loans Limited shouldn't have accepted him as a guarantor on a loan provided to a friend ("the borrower"). He says that TFS was irresponsible when it accepted him as the guarantor because it didn't adequately check he'd be able to afford to repay the loan if the borrower failed to repay it.

background

Mr F agreed to be a guarantor on a loan taken by the borrower in March 2016. The loan amount was £3,000. It was to be repaid over 60 months through monthly instalments of around £117.

At the time the loan was agreed the borrower lived in Mr F's house and paid Mr F rent. He has since moved out. The borrower has failed to meet his all his loan repayments to TFS which has enforced the terms of the guarantee against Mr F.

One of our adjudicators looked at Mr F's complaint and concluded that TFS shouldn't have accepted Mr F as the borrower's guarantor. TFS didn't agree with our adjudicator and so the complaint came to me, an ombudsman, for a decision.

A few weeks ago I issued a provisional decision. In this I explained why I was planning to uphold Mr F's complaint for broadly similar reasons to our adjudicator. In addition, I outlined why I was minded to make an award to Mr F for his trouble and upset. I invited the parties to let me have anything else they wanted me to think about before I reconsidered my decision.

Mr F has confirmed that he accepts my provisional decision. There has been some communication between our adjudicator and TFS which raised some additional points. However, TFS has agreed to put things right in line with my provisional decision.

my findings

I've once again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

TFS provided the loan in question while it was authorised and regulated by the Financial Conduct Authority ("FCA").

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with. These included PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.

The Consumer Credit sourcebook ("CONC") sets out the rules and guidance which apply to guarantor loan providers like TFS when providing loans. CONC 5 sets out a firm's obligations in relation to responsible lending.

Before the FCA became the regulator it had been the Office of Fair Trading ("OFT") which was responsible for licensing consumer credit providers.

There's a high degree of alignment between the OFT's Irresponsible Lending Guidance ("ILG") - which had been published in 2010 - and the rules set out in CONC 5. A number of

the FCA's CONC rules specifically note and refer back to sections of the OFT's Irresponsible Lending Guidance.

For example, Section 5.2.1R of CONC sets out what a lender needs to do before agreeing to give a borrower a loan. It says:

(1) Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer.

And at Section 5.2.1(2) it says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

[Note: paragraph 4.1 of ILG]

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

CONC 5.3.1G(6) clarifies what is meant by “sustainable”:

For the purposes of CONC “sustainable” means the repayments under the regulated credit agreement can be made by the customer:

- (a) without undue difficulties, in particular:
 - (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
 - (ii) without having to borrow to meet the repayments;**
- (b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*
- (c) out of income and savings without having to realise security or assets; and*
unsustainable” has the opposite meaning.

[Note: paragraph 4.3 and 4.4 of ILG]

CONC 5.3.1G (4) adds that if a firm does take account of income and expenditure in its credit worthiness assessment:

- (b) it is not generally sufficient for a firm to rely solely for its assessment of the customer’s income and expenditure on a statement of those matters made by the customer.*
- (c) its assessment should be based on what the firm knows at the time of the assessment*

CONC also contains the additional obligations owed by guarantor loan providers to guarantors when providing a guarantor loan. The additional requirements in relation to an assessment of the guarantor’s circumstances are contained in CONC 5.2.5R. It says:

- (1) This rule applies if, in relation to a regulated credit agreement:
 - (a) an individual other than the borrower (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both); and*
 - (b) the lender is required to undertake an assessment of the customer under CONC 5.2.1R or CONC 5.2.2R.**
- (2) Before entering into the regulated credit agreement, the lender must undertake an assessment of the potential for the guarantor’s commitments in respect of the regulated credit agreement to adversely impact the guarantor’s financial situation.*
- (3) A firm must consider sufficient information to enable it to make a reasonable assessment under this rule, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made.*

- (4) *For the purposes of (2), CONC 5.2.3G, CONC 5.2.4G and CONC 5.3.1G to CONC 5.3.8G apply as if:*
- (a) references to the customer were references to the guarantor; and*
 - (b) references to CONC 5.2.2R(1) were references to CONC 5.2.5R(2).*

This last paragraph means that some of the rules in CONC, relevant to the assessments undertaken in respect of a borrower, apply equally to assessments in respect of a guarantor. So the bar isn't lower when lenders are making an assessment as regards the guarantor. They had the same obligations in relation to guarantors as they did for borrowers as regards the scope of the assessment, what is proportionate, and the assessment of the guarantor's ability to meet repayments in a sustainable manner without incurring financial difficulties or experiencing significant consequences.

CONC 5.2.6G clarifies this further and contains some guidance on the scope of the assessment of the guarantor. And it says:

- (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.*
- (2) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under CONC 5.2.5R, does not remove or reduce the obligation on the lender to carry out an assessment of the borrower under CONC 5.2.1R or CONC 5.2.2R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.*

CONC 4 sets out a firm's obligations, in relation to the provision of information, prior to contracting with consumers. A firm is required to provide adequate explanations when providing loans. The additional explanations firms are required to provide to guarantors are set out in CONC 4.2.22R. It says:

- (1) This rule applies if:*
 - (a) a firm is to enter into a regulated credit agreement; and*
 - (b) an individual other than the borrower (in this rule referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the regulated credit agreement*
- (2) The firm must, before making the regulated credit agreement, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the regulated credit agreement.*
- (3) The matters are:*
 - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and*

- (b) *the implications for the guarantor of the guarantee or the indemnity (or both) being called on.*
- (4) *For the purposes of (2), the rules and guidance listed in (5) apply as if:*
 - (a) *references to the customer were references to the guarantor; and*
 - (b) *references to CONC 4.2.5R were references to this rule.*
- (5) *The rules and guidance are:*
 - (a) *CONC 4.2.6G to CONC 4.2.7AG;*

CONC 4.2.6G (referred to above) says:

The explanation provided by a lender or a credit broker under CONC 4.2.5 R should enable the customer to make a reasonable assessment as to whether the customer can afford the credit and to understand the key associated risks.

[Note: paragraph 3.3 (box) of ILG]

CONC 4.2.7G says:

In deciding on the level and extent of explanation required by CONC 4.2.5 R, the lender or credit broker should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:

- (1) *the type of credit being sought;*
- (2) *the amount and duration of credit to be provided;*
 - the actual and potential costs of the credit;*
 - (2B) *the risk to the customer arising from the credit (the risk to the customer is likely to be greater the higher the total cost of the credit relative to the customer's financial situation);*
 - (2C) *the purpose of the credit, if the lender or (as the case may be) the credit broker knows what that purpose is;*
- (3) *to the extent it is evident and discernible, the customer's level of understanding of the agreement, and of the information and the explanation provided about the agreement; and*
- (4) *the channel or medium through which the credit transaction takes place.*

[Note: paragraph 3.4 of ILG]

Finally CONC 3 sets out a firm's obligations when communicating with its customers. And CONC 3.3.2R contains general guidance regarding the clarity of a firm's communications with customers. It says:

A firm must ensure that a communication or a financial promotion:

- (1) *uses plain and intelligible language*
- (2) *is easily legible (or, in the case of any information given orally, clearly audible)*

I also mentioned in my provisional decision that whilst CONC set out the regulatory framework that authorised consumer credit providers have to adhere to it represents a minimum standard for firms. And - as an ombudsman - I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

I mentioned the FCA's Portfolio Strategy Letter to firms providing high cost lending products. On 6 March 2019, The FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all the firms it allocated to its 'High Cost Lenders' portfolio. The letter set out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:

- *a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- *firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

We also see an additional potential harm from guarantor lending:

- *the proportion of loan repayments that guarantors make has risen considerably, which could indicate that affordability on the part of the borrowers is falling*

On page three of the letter, in the section headed 'Complaints' it says:

We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio.

Further detail in relation to the FCA's future work was provided on page four of the letter. The section headed 'Additional focus for firms providing guarantor lending' said:

As well as the areas of focus above, we will also prioritise our supervisory work with firms that provide guarantor loans in the following area:

Payments made by guarantor:

Our diagnostic work on guarantor lending showed that many guarantors make at least one repayment and the proportion of guarantors making payments is growing. We want to understand the root causes for this increase, and whether firms are conducting adequate affordability assessments. We are also concerned that

guarantors may not fully understand how likely it is that they will be called upon to make a payment. So, as well as our broad portfolio-wide work on relending, we will start a piece of complementary work on guarantor lending. This will establish whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are four overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of Mr F's complaint. The questions are:

1. Did TFS complete reasonable and proportionate checks to satisfy itself that the borrower would be able to repay this loan in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that the borrower would've been able to do so?
2. Did TFS obtain Mr F's properly informed consent before binding him to the guarantee and indemnity agreement?
3. Did TFS complete reasonable and proportionate checks to satisfy itself that Mr F was in a position repay the loan in the event the borrower did not?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr F would've been able to do so?
4. Did TFS act unfairly or unreasonably in some other way?

If I determine that TFS didn't act fairly and reasonably in its dealings with Mr F and that he has lost out as a result, I will go on to consider how TFS should put things right.

This is what I said in my provisional decision:

1. ***Did TFS complete reasonable and proportionate checks to satisfy itself that the borrower would be able to repay this loan in a sustainable way?***

I've outlined above some of the regulations in place at the time TFS provided the loan to the borrower. It had to carry out a reasonable and proportionate assessment of whether he could afford to repay his loan in a sustainable way. The fact that there was a guarantee and indemnity agreement in place - and so the potential for TFS to pursue Mr F instead of the borrower - doesn't lessen that obligation.

However, the borrower isn't a party to this complaint. And I don't have information about his circumstances or evidence of what TFS did before it agreed to lend to him. But as it happens, I don't think I need to make a finding on this question for reasons I'll explain below.

2. ***Did TFS obtain Mr F's properly informed consent before binding him to the guarantee and indemnity agreement?***

TFS was required to obtain Mr F's properly informed consent before binding him to the guarantee and indemnity agreement. This could only be done after having provided him with an adequate explanation of the circumstances in which the guarantee and indemnity might be called upon and what the implications of this would be for Mr F.

Although Mr F describes himself as being “naïve” when he agreed to be a guarantor, it isn’t part of his complaint that TFS failed to inform him of the consequences of being the guarantor. However, given the outline of the regulations (above) and the recent concerns raised by the FCA, I think there is a question around whether TFS made the risks involved clear enough to Mr F. But as with question 1 I don’t think I need to make a finding on this point. This is because I am planning to uphold Mr F’s complaint as I’m satisfied that TFS failed to do enough in respect of its obligations under question 3.

3. ***Did TFS complete reasonable and proportionate checks to satisfy itself that Mr F was in a position repay the loan in the event the borrower did not? If so, did it make a fair lending decision? If not, would those checks have shown that Mr F would’ve been able to do so?***

The rules and regulations required TFS to carry out a reasonable and proportionate assessment of whether Mr F could afford to repay this loan in a sustainable manner should the borrower fail to do so. It had to carry out this guarantor-focused assessment in addition to any checks it was required to undertake in relation to the borrower. In effect this meant that TFS had to ensure that, if the guarantee was enforced against Mr F, it wouldn’t adversely impact Mr F’s financial situation. It had to consider the effect of having to make the loan repayments on Mr F if the borrower didn’t.

The checks TFS did had to be proportionate to the specific circumstances of the loan. And what is proportionate will depend on a number of factors including things like the consumer’s financial history and current situation as well as things such as the amount, type, cost of the credit being sought.

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 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 customer is required to make payments for an extended period);*

I’ve carefully considered what a reasonable and proportionate check should’ve looked like when TFS was in the process of approving Mr F as the guarantor for this loan which - to confirm - was a loan of £3,000 to be repaid over the following five years. The monthly repayments were to be around £117, meaning that the total to be repaid was over £7,000.

As I’ve mentioned above the risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for the credit, relative to the consumer’s financial situation. So it seems common sense to me that a less detailed assessment – without need for verification, is more likely to be reasonable and proportionate in situations where the amount to be repaid is relatively small and the term of the loan is relatively short.

With this in mind, I’m satisfied that TFS failed to undertake a proportionate checks when it approved Mr F as the guarantor for the loan in question. TFS should’ve carried out a much more thorough look into Mr F’s financial circumstances and verified the information he provided.

I’ve listened to the completion call between Mr F and the TFS member of staff. This was made shortly before the loan was completed.

I note that the TFS member of staff asked Mr F some general introductory questions about how Mr F knew the borrower. She then asked him whether he’d read an understood the various documents provided and Mr F confirmed he had. She then asked Mr F “Are you currently a

guarantor for anybody else on any other loans?" I'm satisfied that Mr F answered honestly when he replied that he was not.

But this question was too narrow, because had she asked whether Mr F was a guarantor on any other loans he most likely would've replied that he was: he was a guarantor for the same borrower on another loan. It strikes me that this was very important information and the opportunity to obtain it was missed by the member of staff. I suspect that had TFS realised that Mr F was acting as a guarantor for the same borrower on another loan it would've – were it acting responsibly – most likely declined Mr F as the guarantor on this loan.

It was open to TFS to go through Mr F's detailed financial circumstances during this call – something I think would've been proportionate here.

But during this call there was no detailed discussion of Mr F's finances. He confirmed he'd recently re-mortgaged and from April his monthly repayment was to be £570. He confirmed he had a personal loan to consolidate his earlier credit which was costing £233 per month. Mr F told the staff member that he paid his bills monthly and was organised about that but she didn't enquire any further into those bills.

It also seems to me that TFS placed a good deal of weight on the forms completed and signed by Mr F before the completion call. In the one page application form (half of which was directed at the borrower) Mr F was asked to confirm a number of details including his employment, his housing and personal situation, his total monthly income and his monthly mortgage cost. He declared a monthly income of £1,818 and that his mortgage was £570.

In the "monthly income and expenditure details" form Mr F declared that his "wages and salary" amounted to £1,818. He didn't include any other figures for monthly income, although "rental income net of expenses and mortgage payments" was one of the categories of income.

Under the "committed monthly expenditure" section there were six categories:

- mortgage*
- hire purchase personal loans, overdraft*
- credit/charge/store cards/catalogues*
- payments under a DMP or IV*
- alimony/child maintenance*
- other committed expenditure (specify)*

Mr F again confirmed that his mortgage was £570.47. He also added that he had two personal loans being repaid at £253 per month and that he had three credit cards (£109, £875, £395). The monthly cost of those was stated to be £41.37. So his total monthly expenditure was stated to be £864.84. This then gave a figure of £953.16 as being available after payment of Mr F's financial commitments.

But - as with the completion call - there were no questions about Mr F's normal monthly outgoings.

I'll refer to Mr F's normal monthly outgoings below but at this point I think it's important to look at his income and what TFS would've learnt had it adequately checked this aspect of his finances.

I note that TFS was made aware by the borrower that he was living with Mr F and paying him £200 per month rent. This was also mentioned in the completion call with Mr F. But TFS didn't ever clarify whether Mr F's monthly income figure included the rental income from the borrower. He didn't include a figure for rental income on the form. TFS should've done this at the very least – if only to clarify an inconsistency. If it had I'm satisfied that it would've realised the figure declared by Mr F was his total income including the rent from the borrower. This is because I can see from his bank statements that Mr F was paid his salary fortnightly at around £748 – which equates to a monthly wage of £1,620. When the borrower's rent is added to that figure the total

income of around £1,820 is achieved – almost exactly what Mr F declared to be his monthly income.

CONC 5.3.1G(4)(b) says that where a lender takes income or expenditure into account, it is not generally sufficient for it to rely solely on a statement of those matters made by the customer. TFS says it did more than rely on what Mr F told it. TFS says it used Mr F's declared income figure using its on line verification tool which was linked to Mr F's bank account. It says this uses personal current account credit turnover data to determine whether there is a sufficient, consistent and stable turnover to support an applicant's declared income amount. It concludes that, because of this, it didn't have to seek Mr F's payslips.

I'm not saying that TFS had to see payslips but they would've confirmed what Mr F's salaried income was. Bank statements could also have clarified that. But I don't agree that TFS's tool, alone, was enough to accurately verify Mr F's salaried income. It may have given a picture (a ballpark figure if you like) of what was going into Mr F's account – based on what he'd told TFS. But I'm not persuaded that was sufficient in the circumstances. The tool wouldn't have broken down the sources of income. If it did it would've revealed to TFS that Mr F's salary was around £200 less than he'd declared and that he was receiving £200 per month rent from the borrower.

I think that this was key information which TFS should've obtained, but didn't.

I accept that Mr F hadn't broken down his income into his salary and rental but had TFS checked this and done a proportionate check I'm satisfied that it would've realised this. And it seems to me that the income figures used by TFS in its assessment included the rental paid by the borrower to Mr F.

TFS says that it had no reason to believe that the borrower would not continue to live with Mr F because he had done so for four years. It adds that the purpose declared by the borrower for the loan, was to make improvements to his bedroom. TFS says this indicated the borrower intended to continue to reside with Mr F. I accept that the borrower probably planned to continue living with Mr F at that time. I expect he also intended to repay the loan. But circumstances change. And as I've pointed out – this loan was to be repaid over a five year term. Both the borrower and Mr F were relatively young men. A lot can happen in five years. Indeed it did. I understand that the borrower lost his job and he left Mr F's house. Mr F has married and had a baby. So I don't think it was reasonable for TFS to conclude that the domestic arrangements would remain unchanged. The likelihood of circumstances changing over the following five years was something TFS should've borne in mind when considering what a proportionate assessment should look like.

And this leads to another significant issue which arises out of the lender taking account of rental income being paid by a borrower to their loan guarantor, when assessing whether the guarantor would be able to afford the repayments if the borrower failed to meet them. I think that if a borrower is in a situation where they can't pay their loan it's reasonably foreseeable that they might also be unable to pay their rent too. And so if the borrower is struggling financially and fails to meet their commitments, the impact on the guarantor is likely to be a double blow. Not only does the guarantor no longer receive the rent but also the guarantee is enforced and they are called upon to make payment on the loan.

Disregarding the rental income, Mr F's monthly income salary amounted to around £1,620 and this is the figure TFS should've used in its assessment of affordability for Mr F.

I've also thought about whether TFS did enough to establish Mr F's monthly expenditure. By clarifying what Mr F was spending every month on his normal living costs TFS would've established a reasonably accurate idea of what Mr F's disposable income would be. After all it would be from Mr F's disposable income that he would have to repay TFS if the guarantee was enforced. But TFS based its assessment on some declared figures for credit commitments without satisfying itself about Mr F's other normal outgoings and it missed a further opportunity to understand Mr F's financial situation during the completion call.

TFS says that the disposable income figure of £953.16 it obtained was sufficient for Mr F to pay for everyday expenses and emergencies for the term of the loan. But - as I've mentioned above - whilst it seems TFS made some enquiries about Mr F's credit commitments it didn't find out what other actual monthly commitments he had.

As a householder it's likely Mr F would've had all the usual monthly costs including things such as utility bills, council tax, insurances, travel costs, food. I don't think TFS had an accurate enough picture of these normal outgoings. A proportionate assessment in the circumstances of this loan application would've involved a clear understanding of all of Mr F's financial commitments (not simply what he was paying to creditors) to establish whether he would be in a position to sustainably repay the loan if called upon to do so during the following five years.

I've had the benefit of carefully reviewing Mr F's bank statements. I've mentioned that his salary amounted to around £1,620 per month. He had his mortgage of £570. He'd declared that he was paying off credit at around £300 per month. But on top of this he was paying normal household bills including over £100 per month in council tax. This was something our adjudicator hadn't noticed because Mr F appears to have paid it in 10 equal amounts which meant that in Feb and March he didn't pay it; it began again at the start of the financial year – April.

Had TFS done what was reasonable and proportionate in the circumstances it would've established that the total of Mr F's monthly direct debits meeting his television, gas, electricity, insurances, and council tax amounted to about £433. On top of that he had to pay his mortgage of £570 and his loan of £233. These figures were easily identifiable from Mr F's bank statements and amounted to £1,236. If Mr F were called upon as the guarantor to the loan in question he would have to have paid TFS £117 each month. This means he would've had £268 a month from which to pay for his food and petrol as well as his credit cards (which he'd told TFS were costing over £40 per month). In other words Mr F would have somewhere in the region of £50 per week for food and petrol.

I haven't taken account of other irregular, unusual or unexpected expenses because even without those, a proportionate check would've confirmed that Mr F wouldn't be able to afford the loan sustainably.

So I'm currently satisfied that TFS shouldn't have approved Mr F as a guarantor for the borrower's loan. As it did, I think it treated him unfairly.

4. Did TFS act unfairly or unreasonably in some other way?

Mr F accepts that he was naïve to agree to act as the borrower's guarantor on this second loan. But for the reasons outlined above I'm satisfied that TFS didn't act fairly when it approved him as the guarantor. As a result of being approved and the later enforcement of a guarantee which shouldn't have been approved Mr F says that he and his family have been caused considerable trouble and upset.

Mr F has been very worried about the impact of having to meet the loan repayments. I understand that he was even contacted by TFS by emails and text on his honeymoon after the borrower had failed to pay. Mr F's representative tells me that Mr F's wife is under the care of a local mental health team and is on medication and I understand that the strain has not only caused him stress it is also having a detrimental impact on his wife.

Mr F is the sole earner in his family. He has particularly worried about the prospect of not being able to meet the repayments and the adverse implications for his credit file – given the job he has.

As Mr F was so worried he contacted TFS to ask them to agree to settle the loan on payment of a £1,000 lump sum. He intended raising this by selling what he describes as his "one asset". He was hopeful TFS would accept this as the principal which had originally been borrowed had been

repaid. In his offer letter Mr F explained to TFS that he was the sole earner and that his wife had been treated professionally for a number of years for mental health issues and was becoming “really poorly again”.

But TFS refused Mr F’s offer. And I haven’t seen anything which suggests it put forward any alternative options either. So it seems it has continued to proceed on the basis that Mr F is the guarantor and that is something to be enforced along the lines of the guarantee and indemnity agreement – without reflecting the difficulties Mr F was facing. In my view, rather than simply focusing on whether it ought to have accepted Mr F as a guarantor in the first place, TFS also needed to ensure it treated him positively and sympathetically. I don’t think TFS did this when it refused his offer aware of the difficult circumstances he’d disclosed. This has caused Mr F stress and anxiety during what must already have been a difficult time for him and his family.

So I’m minded to conclude that TFS hasn’t treated Mr F positively or sympathetically and so has acted unfairly and unreasonably towards him.

I’ve mentioned above that TFS and our adjudicator have been in correspondence since I issued my provisional decision. Whilst I acknowledge that TFS may not agree with all of my conclusions it hasn’t provided me with anything that persuades me to alter those conclusions and it has already agreed to put things right in the way I outlined. So I uphold Mr F’s complaint.

putting things right

I’m satisfied that TFS acted unfairly when it accepted Mr F as a guarantor on this loan. As he is now being expected by TFS to make repayments on a loan he shouldn’t have been accepted as a guarantor for, I think he stands to lose out because TFS did something wrong.

Where I find that a business has done something wrong, I’d expect that business – in so far as is reasonably practicable – to put the consumer back in the position they *would be in now* if that wrong hadn’t taken place. In essence, in this case, this means TFS putting Mr F in the position he’d now be in if he hadn’t unfairly and unreasonably been accepted as a guarantor on this loan.

I also have the power to make an award to reflect any trouble or upset TFS’s wrongdoing has caused Mr F. I explained in my provisional decision why I was minded to make such an award and concluded that £250 would adequately reflect the trouble and upset Mr F has been caused. I noted TFS may not have been aware of Mr F’s difficulties before he made his complaint but at the point he made his offer I was satisfied that it had failed to treat him fairly. I said that I thought its failure to do so had resulted in Mr F suffering additional stress which has impacted his broader family. I also explained that I’m not able to make an award to anyone other than Mr F.

So this is how I require TFS to put things right:

- a) release Mr F from any obligations under the guarantee and indemnity agreement and then terminate it
- b) refund any loan payments Mr F has made and to each of those sums it must add 8%* simple interest a year, from the date Mr F paid them to the date the refund is paid to him
- c) remove any information about this loan from Mr F's credit file
- d) pay Mr F a sum of £250 to reflect the trouble and upset caused to him when TFS acted unfairly and/or unreasonably towards him

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

my final decision

For the reasons outlined above and in my provisional decision I uphold Mr F's complaint and require TFS Loans Limited to put things right in the way I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 16 October 2019.

EJ Forbes
ombudsman