Financial Ombudsman Service

complaint

Mrs L has complained that TFS Loans Limited ("TFS" or "the lender") should not have agreed a guarantor loan for her in July 2015.

background

TFS agreed a loan of £3,000 for Mrs L on the 2 July 2015. The monthly repayment was £127 over a term of four years, and the total amount to be repaid came to about £6,100 (figures rounded). This was a guarantor loan, in other words it was granted on the basis that Mrs L had a guarantor who would be responsible for repaying the loan if she failed to meet her repayments.

Mrs L says that she was struggling with her finances at the time and had to take out loans to meet her living costs, so TFS shouldn't have agreed to lend to her. She's also complained about TFS's customer service regarding incorrect payments being added and then deducted from her loan account. Mrs L says that she has repaid the loan.

Our adjudicator assessed the complaint and found that TFS should have gone further in its assessment of Mrs L's ability to meet the loan repayments. However, they concluded that they didn't have enough information available to determine whether TFS would have declined the loan, had it carried out proportionate checks. So they didn't recommend that Mrs L's complaint be upheld.

Mrs L disagreed with this recommendation and asked for her complaint to come to me, as an ombudsman, to review and resolve. I issued my provisional decision on 22 September 2020 explaining why I was thinking of coming to a different view of Mrs L's complaint and upholding it. I gave both parties a month to respond and let me have any further comments or information they would like me to consider.

Mrs L agreed with my provisional decision but I have had no response from TFS.

As I said in my provisional decision, I understand that TFS gave Mrs L an amount of £140 to compensate her for its handling of her loan account. I understand that Mrs L has accepted this and our adjudicator thought that it was fair compensation. So I do not plan to look into this part of Mrs L's complaint. My final decision deals solely with the matter of irresponsible lending.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. Neither party has provided anything new for me to consider and so, altogether, I see no need to depart from my provisional conclusion which is that I uphold Mrs L's complaint. I've attached an extract from my provisional decision to this document and it forms part of this final decision.

what TFS needs to do to put things right

In order to put Mrs L back in the position she would have been in, had it not agreed to lend to her, TFS should:

- refund all interest, fees and charges Mrs L paid for this loan;

- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement;
- remove any adverse information about this loan from Mrs L's credit file;

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

my final decision

My final decision is that I uphold Mrs L's complaint about TFS Loans Limited and require it to put things right for her as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 2 December 2020.

Michelle Boundy
ombudsman

EXTRACT FROM THE PROVISIONAL DECISION

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Having done so, I plan to uphold Mrs L's complaint that TFS was irresponsible to agree to lend to her. I appreciate this will be very disappointing for TFS and I hope my explanation below makes it clear why I have come to this conclusion.

The Financial Conduct Authority (FCA) was the regulator when TFS lent to Mrs L. Its rules and guidance obliged TFS to lend responsibly. As set out in its Consumer Credit Sourcebook (CONC), TFS needed to *"pay due regard to the interests of its customers and treat them fairly"* and it would not be doing so if *"it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason."* (CONC 2.2.2G).

When agreeing credit, TFS needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.3.1G stated that

1. *In making the creditworthiness assessment or the assessment required … a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required … 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.*

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or in particular without incurring or increasing problem indebtedness (ILG 4.3[1]).

Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

As set out in CONC, the risk to the borrower directly relates to the particulars of the lending and the circumstances of the borrower. In other words the assessment needs to be borrower-focussed. It is not an assessment of the risk to the lender of recouping its money, but of the risk to the borrower of incurring financial difficulties or experiencing significant adverse consequences as a result of the decision to lend. So even in this case where Mrs L had a guarantor who agreed to step in and meet repayments in the event that she couldn't, this doesn't absolve TFS of its obligation to assess whether in the first instance Mrs L could meet her repayments without undue difficulty.

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

[1] *ILG refers to the 'Irresponsible Lending Guidance' produced by the previous regulator - the Office of Fair Trading - which this part of CONC specifically references.*

- did TFS complete reasonable and proportionate checks when assessing Mrs L's loan application to satisfy itself that she 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?

TFS says that it gathered information from Mrs L about her income and expenditure. It recorded that she had an income of £1,350 comprising her wages (£450) and pensions (£900). Her monthly living costs came to approximately £234 and her repayments for existing credit commitments came to £500. TFS estimated that this left Mrs L with a disposable monthly income of over £600. Mrs L said she owned her house outright, and that her daughter now lived with her and would pay rent of £200.

It would seem, on the face of it, that Mrs L had enough disposable income to meet her loan repayments each month. Mrs L told TFS on a call that she was working part-time on a zero hours contract and was in receipt of two pensions. Given the nature of her employment and considering the size of the loan and that Mrs L would need to meet her repayments for four years, I think TFS ought to have verified the figures she gave in order to reasonably check she would be able to meet her repayments in a sustainable manner over the full term. TFS provided a copy of the land registry details of Mrs L's property and a copy of the results from a check on her credit file. But I don't know if it verified her income or her outgoings.

Mrs L said her loan was for debt consolidation – she'd mentioned on her application form that she had some short term loans she wanted to repay and, on a call with TFS, that she had some credit card debts she'd also like to consolidate. As mentioned, TFS noted on its affordability assessment that Mrs L was repaying £500 a month on existing debt – almost 40% of her declared income. The credit file report TFS provided shows that Mrs L had over £15,000 of unsecured debts across seven credit cards and mail order accounts, and a recent home credit loan. She had exceeded her limit on one credit card and was running at an average of about 95% on her other credit accounts. TFS also knew that Mrs L had a history of taking out short term loans and had at least two outstanding at that time. Furthermore, had the lender looked into Mrs L's existing debts in more detail, I think it's likely it would have seen she'd taken out another high cost loan just the month before, which added a further £4,000 to her debt.

Mrs L hasn't provided her bank statements from the time and I don't know enough about her circumstances to say that this loan was unaffordable on a strict pounds and pence basis. However, taking all the above into account, I think it's unlikely that Mrs L would have been able to afford her repayments in a sustainable manner. TFS knew the extent of her debt and had established on a call with her that she was paying the minimum on her running account credit each month. I think it should have been clear to TFS that its loan of £3,000 wasn't going to help Mrs L to consolidate her lending and was more likely than not going to prolong her indebtedness. I understand Mrs L struggled to meet her repayments, incurring returned direct debit fees almost immediately, and that she's only recently managed to clear this debt. I think her difficulties were foreseeable, and so I think TFS treated Mrs L unfairly when it agree to lend to her on this occasion.

what TFS needs to do to put things right

In order to put Mrs L back in the position she would have been in, had it not agreed to lend to her, TFS should:

- refund all interest, fees and charges Mrs L paid for this loan;
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement;
- remove any adverse information about this loan from Mrs L's credit file;

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

my provisional decision

I intend to uphold Mrs L's complaint for the reasons set out above and require TFS Loans Limited to put things right as I've set out above.

I'll wait a month to see if either party has anything further to add before considering my decision on this complaint once more.