complaint

Miss A has complained that TFS Loans Limited ("TFS") unfairly provided her with guarantor loans.

She says that she feels the loans were unaffordable for her and if TFS had done correct checks it would have seen that she was already struggling financially.

background

TFS provided Miss A with her first guarantor loan in February 2012. The loan was for £2,500.00. It appears as though a broker fee of £375 and a lender fee of £395 were added to the loan amount. The total amount borrowed was to have interest of £3,531.48 added should the loan have run its term. So the total charge for the credit was £4,301.48. This meant that the loan had an annual percentage rate ("APR") of 122.4%. The total amount repayable - £6,801.48 – was due to be repaid in 36 monthly instalments of £188.93.

From what I can see Miss A didn't repay this loan on time. And it looks as though this loan was eventually settled – with a lump sum payment of £3,216.74 being made - in February 2016. This was more than a year after the scheduled repayment date.

TFS provided Miss A with a second guarantor loan in February 2017. This time the amount advanced was £7,500.00 and there were no broker or lender fees on this occasion. Interest of £10,091.40 was to be added if the loan ran to term. So this loan had an APR of 48.9% and the total amount - £17,591.80 - was due to be repaid in 60 instalments of £293.19.

Miss A's complaint was reviewed by one of our adjudicators And our adjudicator issued an opinion to TFS saying that the checks it carried out before providing Miss A with these loans weren't reasonable and proportionate. She also said that if such checks had been carried out TFS would have seen that it Miss A wasn't in a position to sustainably make the repayments. So she thought that TFS shouldn't have provided Miss A with either of these loans and upheld the complaint.

TFS disagreed with our adjudicator's assessment and asked for an ombudsman's decision. So the complaint has now been passed to me for a final decision.

the regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

TFS provided Miss A with loan one in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> *(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*

(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;

(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;

(c) practices and procedures that the applicant proposes to implement in connection with any such business;

(d) evidence of the kind mentioned in subsection (2A)

(2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*

(a) committed any offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under—

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)** [my emphasis]**.

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the **OFT to involve irresponsible lending** [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Mr B's case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

“In a sustainable manner” is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe “undue difficulty” and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*

- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*

- *the amount of credit to be provided and the associated cost and risk to the borrower;*

    - *the borrower's financial situation at the time the credit is sought;*

    - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*

    - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*

- *evidence of expenditure*

- *records of previous dealings with the borrower*

- *a credit score*

- *a credit report from a credit reference agency*

- *information obtained from the borrower through a form or a meeting*

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

regulation by the Financial Conduct Authority (from 1 April 2014)

TFS provided Miss A with loan two after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. TFS initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation. TFS's interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is 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")*

This 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.

It's clear there is a high degree of alignment between the OFT's *Irresponsible Lending Guidance* ("ILG") and the rules set out in CONC 5. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's ILG on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a borrower a loan. 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) goes on to say:

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]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(a) 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.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

*[**Note**: paragraph 4.31 of ILG]*

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.

As the guarantor isn't a party to this complaint, I don't think that it's necessary to set out all the rules and guidance relating to the additional obligations owed to guarantor in this decision. That said I do think it's useful for me to set out CONC 5.2.6G which says:

(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.

Section 140 of the Consumer Credit Act 1974

Both of Miss A's loans were provided after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor.

Section 140A says:

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

(5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) An order under this section in connection with a credit agreement may do one or more of the following—

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of

the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.

other relevant publications

The ILG and CONC set out the regulatory framework that regulated/authorised lenders have to adhere to. But the rules and guidance represent a minimum standard for firms. And 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.

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 entitled ***'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 entitled ***'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.

the FCA's Dear CEO letter on affordability of High-Cost Short-Term Credit ("HCSTC") loans

On 15 October 2018, the FCA wrote a '*Dear CEO'* letter to the Chief Executive Officer of all HCSTC providers. The letter was about the issues surrounding the increase in complaints about unaffordable lending.

The third paragraph of this letter said:

"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: https://www.financial-ombudsman.org.uk/publications/technical.htm). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".

Paragraph eight of the letter went on to say:

"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing".

the FCA Executive Director of Supervision's (Retail and Authorisations) speech at the Credit Summit, London, on 21 March 2019

The FCA's Executive Director of Supervision gave a speech at the Credit Summit, which took place on 21 March 2019, entitled *"What can the consumer credit sector expect from the FCA?"* .

The speech reiterated much of what was said in the High Cost Credit portfolio strategy letter (set out above) issued on 6 March 2019. And in his speech the Executive Director of Supervision said:

"Over the last few years we have seen a dramatic increase in the use of guarantor loans by consumers. Balances on guarantor loans are fast approaching £1 billion and these have more than doubled since 2016.

While these products provide an opportunity for those with thin credit files - poor or limited credit history - we do have concerns. Concerns about affordability. Recent work we have done in this area showed that many guarantors are making at least 1 payment and the proportion of guarantors making these payments is growing.

There is also growing anecdotal evidence that guarantors may not understand how likely it is that they will be called upon to make a payment. Our work will therefore focus on affordability and on understanding whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.

We have already amended certain rules to ensure that the protections they provide to borrowers also extend to guarantors, for example rules requiring forbearance, pre-contractual explanations and fair treatment. In assessing creditworthiness, we have clarified that firms must undertake a reasonable assessment of the potential for the guarantor's commitment to have a significant adverse impact on their financial situation.

And if the guarantor is called upon, we have published guidance on our view of what constitutes 'enforcement' of the guarantee under the CCA – in practice this means we expect firms to provide guarantors with adequate notice before exercising a Continuous Payment Authority (CPA).

There are also questions over the level of interest rates charged on these products considering that these guarantors are deemed to be credit worthy, we will therefore be considering this and the business models of these firms".

my findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

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

These two overarching questions are:

- Did TFS complete reasonable and proportionate checks to satisfy itself that Miss A would be able to repay her loan in a sustainable way?
    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Miss A would've been able to do so?
- 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 Miss A and that she has lost out as a result, I will go on to consider what is fair compensation.

Did TFS complete reasonable and proportionate checks to satisfy itself that Miss A would be able to repay her loans in a sustainable way?

The rules and regulations in place both times TFS lent to Miss A required it to carry out a reasonable and proportionate assessment of whether she could afford to repay her loan in a sustainable manner. TFS was required to carry out this borrower focused assessment in addition to a similar one on the guarantor. 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 loan sustainably would cause difficulties or adverse consequences *for Miss A*. In practice this meant that TFS had to ensure that making the payments to the loan wouldn't cause Miss A 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 loan repayments on Miss A. The existence of a guarantee and the potential for TFS to pursue the guarantor instead of Miss A, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

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. Even for the same customer, a proportionate check could look different for different applications.

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); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were TFS's checks reasonable and proportionate?

- loan one

For loan one, TFS has said that it completed an income and expenditure assessment with Miss A. During this assessment Miss A confirmed that she had a monthly income of £1,848.93 and existing monthly credit commitments of £822.48, which meant that she would be left with £837.52 once her TFS loan payments were also taken into account. Miss A also said that she was living at home with her parents and didn't contribute towards the household expenses. TFS also says that it carried out a credit check on Miss A.

I've carefully thought about what TFS has said. But I have grave concerns as to the steps it took to scrutinise the information it gathered. I'd like to explain why in further detail.

The credit check TFS carried out showed that Miss A had six defaults and it also included a warning which said:

"180
VERY HIGH RISK

MOST VENDORS VIEW THIS SCORE AS VERY HIGH RISK - THE MAJORITY OF APPLICANTS FOR CREDIT WITH THIS SCORE WILL EXPERIENCE SERIOUS REPAYMENT PROBLEMS IF THE APPLICATION IS ACCEPTED"

In my view, the information on TFS' credit search showed that Miss A had had previous difficulties managing credit. So I think that TFS ought to have taken steps to verify Miss A's monthly expenditure, given that her declared monthly disposable income was inconsistent with the warning on the credit file. In my view, it would be unlikely for an individual with a monthly disposable income of around £850 to have had such difficulty repaying credit.

I say this while especially mindful of the fact that the rules themselves provide guidance on the proportionality of affordability/creditworthiness assessments. The rules and guidance suggest that the risk of any 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. This was an expensive loan and the credit search carried out on Miss A showed she wasn't in the healthiest financial position.

I have to question just why it was TFS was prepared to accept what, without any verification of Miss A's monthly expenditure, on face value, appears to be such an egregious credit risk. In truth, I suspect that the existence of Miss A's guarantor might have provided TFS with the

confidence to accept this risk because ultimately it was the guarantor who stood to lose out in this arrangement should Miss A have proved unwilling or unable to make her payments. In other words, the guarantor was assuming this credit risk rather than TFS.

But, in any event, I don't think that TFS being able to pursue the guarantor for payments (in the event they weren't made by Miss A) meant that it was fair and reasonable to conclude that Miss A herself would be able to sustainably make the payments, given what the credit file showed. I say this while especially mindful of the fact that the guarantor was entitled to rely on TFS having completed a fair, reasonable and proportionate assessment of Miss A's ability to repay.

I also think that it might also be helpful for me to explain that a less detailed affordability assessment, without the need for verification, is only really likely to be fair, reasonable and proportionate in circumstances where the amount to be repaid is relatively small, the consumer's financial situation is stable and they will be indebted for a relatively short period.

But, in circumstances – such as here - where a customer's finances are showing telling signs of possible strain and distress, they are expected to maintain payments for a longer period of time and there is the potential that a guarantor will be required to step in and make payments, I think it's far more likely that any affordability assessment would need to be more detailed and contain a greater degree of verification, in order for it to be fair, reasonable and proportionate.

In my view, bearing in mind the term of the loan, the cost of the credit, what TFS had seen or ought to have seen in the information gathered and the potential implications for the guarantor, TFS needed to get a thorough understanding of Miss A's financial position in order to properly assess whether she'd be able to sustainably make the loan payments she was being asked to commit to.

So as well as asking Miss A about the details of her income and expenditure, I think that TFS needed to verify what it was being told by Miss A, rather than relying on what Miss A declared for her monthly expenditure. It could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Miss A did have enough funds to be able to make the payments.

As there's no evidence that TFS did properly scrutinise the information provided, or that it asked Miss A to provide documentary evidence to support the expenditure declarations made, I find that it didn't complete fair, reasonable and proportionate affordability checks before providing Miss A with loan one.

- loan two

TFS appears to have carried out similar checks – to those carried out for loan one – before providing loan two. This was despite Miss A's obvious and apparent difficulty in making the payments to loan one.

TFS says that it was reasonable to proceed on this basis because Miss A explained that the difficulties she had in making her payments was due to her parents having lost their business but that this had now changed, her parents were now paying the bills and her income had also gone up from when she previously applied. But while Miss A might have told TFS this, TFS recorded that she now had a lower disposable monthly income than at the

time of loan one. Equally, it was apparent that Miss A had two other guarantor loans with other providers.

In these circumstances, I think that TFS' checks didn't go far enough. Bearing in mind everything that had happened up until this point, the warning from the credit reference agency before loan one, Miss A's apparent difficulty in repaying loan one and Miss A's credit file showing her continued indebtedness at the time of application, I think that fair, reasonable and proportionate checks would have involved TFS getting a thorough understanding of Miss A's expenditure. Much like for loan one I think that TFS needed to verify Miss A's expenditure.

As there's no evidence that TFS asked Miss A to provide documentary evidence to support the expenditure declarations made, I find that it also didn't complete fair, reasonable and proportionate affordability checks before providing Miss A with loan two.

Would reasonable and proportionate checks have indicated to TFS that Miss A would have been unable to sustainably repay these loans?

As reasonable and proportionate checks weren't carried out before theses loans were provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told TFS that Miss A would've been unable to sustainably repay these loans.

Miss A has now provided us with evidence of her financial circumstances at the time she applied for these loans. Of course, I accept different checks might show different things. And just because something shows up in the information Miss A has provided, it doesn't mean it would've shown up in any checks TFS might've carried out.

But in the absence of anything else from TFS showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Miss A's financial circumstances were more likely than not to have been at the time.

As I've already explained, TFS was required to establish whether Miss A could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Miss A has provided in light of all of this.

The information I've been provided with – rather unsurprisingly bearing in mind what the credit check information TFS had showed - shows that Miss A was in a difficult financial position at the time of both loan applications. She was clearly struggling to make ends meet and was borrowing from a number of different lenders in order to try and make payments. As far as I can see she was drowning in debt. Indeed by the time of loan two the position had worsened and she was now also making payment to debt collection agents too.

So I'm satisfied that reasonable and proportionate checks would more likely than not have shown that Miss A wasn't in a position to meet her existing financial commitments let alone take on new ones without having to borrow further.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss A would not have been able to make the loan repayments to these loans without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted TFS to the fact that Miss A would not be able to sustainably make the repayments to these loans.

Did TFS act unfairly or unreasonably towards Miss A in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude TFS acted unfairly or unreasonably towards Miss A in some other way.

So I find that TFS didn't act unfairly or unreasonably towards Miss A in some other way.

conclusions

Overall and having carefully thought about the two overarching questions, set out on page thirteen of this decision, I find that:

- TFS *didn't* complete reasonable and proportionate checks on Miss A to satisfy itself that she was able to repay her loans;
- reasonable and proportionate checks *would* more likely than not have shown Miss A was unable to sustainably make the repayments for these loans;
- TFS *didn't* also act unfairly or unreasonably towards Miss A in some other way.

The above findings leave me concluding that TFS unfairly and unreasonably provided Miss A with guarantor loans in February 2012 and February 2017.

Did Miss A lose out as a result of TFS unfairly and unreasonably providing her with her guarantor loans?

I think that this loan had the effect of unfairly increasing Miss A's indebtedness as it led to her to being provided with expensive credit for a significant sum. This loan was expensive and the monthly payments, which also included interest and charges, took up a significant proportion of Miss A's income at a time where she was already struggling to make ends meet.

So I find that Miss A did suffer adverse consequences and as a result lost out because TFS unfairly provided her with these loans.

fair compensation – what TFS needs to do to put things right for Miss A

I've carefully thought about what TFS should do to put things right in this case. Having done so, I think it would be fair and reasonable in all the circumstances of Miss A's complaint for TFS to put things right by:

- refunding all the interest and charges (including all broker and lender fees) Miss A paid on loan one;

- adding interest at 8% per year simple on any interest and charges paid on loan one from the date they were paid by Miss A to the date of settlement†;

- removing all interest and charges applied to loan two from the outset – in other words, the starting balance on loan two should be reduced to £7,500.00 and Miss A should have to pay no more, in total, than this amount. The payments Miss A has already made should then be deducted from the new starting balance. TFS can then also apply the compensation due for loan one to the new remaining balance on loan two. If the amount of compensation due for loan one exceeds the new outstanding balance on loan two, the extra should be paid to Miss A;

- removing any adverse information recorded on Miss A's credit file as a result of these loans.

† HM Revenue & Customs requires TFS to take off tax from this interest. TFS must give Miss A a certificate showing how much tax it has taken off if she asks for one.

my final decision

For the reasons I've explained, I'm upholding Miss A's complaint. TFS Limited should put things right for Miss A in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 7 November 2019..

Jeshen Narayanan
ombudsman