DRN-2719311

The complaint

Mr L says 1st Stop Personal Loans Limited didn't complete proper checks to make sure the loan he applied for was affordable.

What happened

Mr L took out a 60-month instalment loan from 1st Stop on 26 June 2017. It was for £6,000 and the monthly repayments were £162.40. The total repayable was £9744. I understand the loan remains outstanding and the debt has been sold.

Mr L said 1st Stop didn't carry out sufficient checks before lending to him.

Our adjudicator found that the loan should not have been given. He said whilst the checks were initially proportionate, from the information 1st Stop gathered it should have realised further investigation was needed as Mr L's income was variable and there were signs that Mr L may have been struggling financially. So there was a risk the loan was not sustainably affordable for him.

1st Stop disagreed saying, in summary, that its checks showed the loan was affordable. It checked Mr L's income with payslips and used a year-to-date average to take account of fluctuations. The loan reduced Mr L's monthly repayments by consolidating other debt and even after taking into account the revised expenditure figures provided by the adjudicator it said Mr L had enough disposable income to afford the loan. His credit file showed he was managing his credit. The loan only became unaffordable after a change in Mr L's circumstances.

As agreement couldn't be reached the complaint was passed to me for a final decision.

What I've decided – and why

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

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when 1st Stop lent to Mr L required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So 1st Stop had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr L. In other words, it wasn't enough for 1st Stop to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr L. Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether 1st Stop did what it needed to before agreeing to lend to Mr L. So to reach my conclusion I have considered the following questions:

- did 1st Stop complete reasonable and proportionate checks when assessing Mr L's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did 1st Stop make a fair lending decision?
- did 1st Stop act unfairly or unreasonably in some other way?

I can see 1st Stop asked for some information from Mr L before it approved the loan. It asked for details of his income and expenditure. It verified his income with copies of his payslips from the two weeks prior to application. It also checked Mr L's credit file to understand his existing monthly credit commitments and credit history. And finally it asked about the purpose of the loan which was debt consolidation. From these checks combined 1st Stop concluded Mr L had enough monthly disposable income to afford to repay the loan.

I'm not wholly persuaded the checks were proportionate. I can't see the lender verified Mr L's expenditure and given the term of the loan I don't think it was appropriate to rely solely on Mr L's declaration. But I won't comment further on this as even based on the information it gathered, I don't think 1st Stop made a fair lending decision. I'll explain why.

Mr L was borrowing to consolidate some of his existing debts. These were two loans that he had taken out recently (February and May 2017). As the adjudicator said, 1st Stop was aware that the February loan had also been taken out to refinance existing debts.
So, essentially, Mr L was only a few months later further increasing his indebtedness and borrowing to repay. And it knew from his credit file that his indebtedness was already significant and at times challenging for him: he had unsecured debts of £17,516 with seven instances of delinquency in the previous 12 months. So whilst it argues that his monthly cost of credit was decreasing (by £18.60) I think it ought to have realised his overall financial position was most likely not stable and he was having problems managing his money. It could see from Mr L's credit file that he had refinanced a number of loans through 2016 and he didn't seem to be getting out of this cycle of borrowing to repay.

Given this context the fact Mr L's income was variable should have further concerned the lender that the borrowing might not be sustainable for Mr L over the 60-month term. I note it used a year-to-date average, but as the analysis our adjudicator completed showed there could be significant variance by month and his income ranged from £253.20 in one month to £1838.42 the next. And whilst the lender used an average that wasn't how Mr L received his income which could have meant the repayments weren't affordable for him some months.

1st Stop argues Mr L's credit history was considered in the affordability assessment, but I am unsure how. From what I have seen its analysis focused largely on the pounds and pence affordability, and not on the overall sustainability of the loan for Mr L.

I think given how Mr L was managing his finances – Mr L had only needed not to draw on his overdraft in one months out of the previous six and was again borrowing to consolidate recently consolidated debt - I think the lender credit ought to have realised it was unlikely Mr L would be able to repay his loan sustainably – even if it seemed affordable on a pounds and pence basis. And this was what 1st Stop needed to check to meet its regulatory obligations. CONC 5.3.1(G) stated:

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.

So, in summary, I don't think 1st Stop made a fair lending decision using the information it gathered when it gave Mr L his loan. It follows I think he has lost out as result of 1st Stop's decision.

I haven't found any evidence that 1st Stop acted unfairly or unreasonably towards Mr L in any other way.

Putting things right

I think it's fair and reasonable for Mr L to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

It seems 1st Stop has sold the outstanding debt. If this is the case it should buy it back if it is able to do so and then take the following steps. If 1st Stop is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr L made as payments towards the capital.
- If reworking Mr L's loan account results in him having effectively made payments above the original capital borrowed, then 1st Stop should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking the account leaves an amount of capital still to be paid, then 1st Stop should work to agree an affordable repayment plan with Mr L, bearing in mind its obligation to treat him positively and sympathetically in these discussions.
- Remove any adverse information recorded on Mr L's credit file in relation to the loan

*HM Revenue & Customs requires 1st Stop to deduct tax from this interest. 1st Stop should give Mr L a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I am upholding Mr L's complaint. 1st Stop Personal Loans Limited should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 June 2021.

Rebecca Connelley
Ombudsman