

The complaint

Mr H says he was given loans that he couldn't afford by 1st Stop Personal Loans Limited (this was a trading name used at the time by a business called Oplo PL Ltd).

What happened

1st Stop gave Mr H two loans as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	23/01/2018	31/08/2018	60	£4,000.00	£108.27
2	31/08/2018	Debt sold	60	£8,000.00	£238.14

Mr H complained that 1st Stop lent to him irresponsibly as he thought it had taken into account his partner's income when assessing whether the loan was affordable for him. He also told 1st Stop that he hadn't been in a fit state of mind when applying for the loan

When 1st Stop looked at Mr H's complaint, it apologised to him for delay in responding to his complaint. But it didn't uphold Mr H's irresponsible/ unaffordable lending complaint. It said that it had carried out full affordability checks on both loans which showed that Mr H had enough disposable income to afford the loan repayments – and that it had only taken his income and expenditure into account. 1st Stop said it couldn't comment on Mr H's state of mind.

Mr H was unhappy with this response and he brought his complaint to us.

Our adjudicator felt that he hadn't seen enough to say it was unfair for 1st Stop to provide loan 1 to Mr H – so he didn't uphold that part of Mr H's complaint. But our adjudicator thought that loan 2 shouldn't have been lent because he didn't feel that 1st Stop did proportionate checks before agreeing to lend it. And our adjudicator said if it had, it would've seen that Mr H was spending a significant amount on gambling in the months running up to him applying for loan 2 - so 1st Stop should've realised it was unlikely that the loan would be sustainably affordable for him.

1st Stop disagreed with our adjudicator's view regarding loan 2. It sent us further information detailing the affordability checks it carried out and said that Mr H had satisfactorily explained items he was questioned about that showed on his credit file. 1st Stop also said that the loan was intended for debt consolidation. Overall, 1st Stop said it took Mr H through a robust underwriting process which demonstrated that it lent to him responsibly.

1st Stop asked for an ombudsman to review the complaint, so it comes to me to decide.

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.

We've set out our general approach to complaints about irresponsible/unaffordable lending - including all of the relevant rules, guidance and good industry practice - on our website – and I've kept this in mind when thinking about this complaint.

1st Stop needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr H could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that 1st Stop should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer'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 *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 even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

1st Stop was required to establish whether Mr H could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments, as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided and what this all means for Mr H's complaint.

As far as I can see, Mr H hasn't objected to what our adjudicator said with respect to not upholding his complaint about loan 1. So I don't think I need to say more about loan 1, except to say that I agree with our adjudicator about this loan.

When he applied for loan 2, 1st Stop gathered information about Mr H's income and expenditure and the electronic check it carried out appeared to show that he should be able to afford the monthly repayments out of his disposable income.

It asked Mr H about some matters of potential concern flagged up in its credit checks. And 1st Stop told us that repayments on all the debts that it wouldn't be settling directly when it issued loan 2 were fully considered before Mr H was accepted for the loan.

But Mr H was taking a very substantial loan, it would be double the amount of loan 1 and he was going to be making monthly repayments that were almost twice the amount he had paid for loan 1. He was signing up to make these repayments for the next 5 years or so. So although the loan might've *appeared* affordable to 1st Stop, I think that it should've realised that it needed to carry out more in-depth enquiries and checks to ensure that it had a proper understanding of his financial situation.

So, I've looked at what I think proportionate checks would likely have shown.

Mr H has provided his bank statements so I've looked through these to see what 1st Stop was likely to have found out had it done more in-depth checks as I think it should've done. 1st Stop could decide for itself what it needed to do to meet its obligation as a lender to carry out checks that were reasonable and proportionate. But in the absence of other evidence, I think the bank statements Mr H has sent me give a reasonable insight into his finances at the time.

And had 1st Stop done proportionate checking I think it would have learnt that Mr H was regularly spending very substantial amounts on what appear to be numerous online gambling transactions in the months leading up to Mr H applying for loan 2. This accounted for a significant proportion of his take home pay.

So I don't think it was reasonable for 1st Stop to conclude that it was likely Mr H would be able to repay this loan in a sustainable manner. And I think that it's decision to lend in these circumstances was unfair. The fact that the loan was intended for debt consolidation makes no difference to my overall view.

For these reasons, I'm upholding the complaint about loan 2.

I've thought about whether 1st Stop acted in any other way that was unfair or unreasonable.

Like our adjudicator, I don't feel that I've seen enough to show that it did. I've carefully listened to the call recording when 1st Stop spoke to Mr H and checked through all the available information in its notes. I can't find anything suggesting that Mr H took steps to alert 1st Stop to his state of mind or that he did or said anything to make it think that he might not be in a position to make an informed borrowing decision. It seems clear his concerns about his partner's income weren't a factor in 1st Stop's lending decisions. And whilst 1st Stop has acknowledged that there was a delay before it responded to his complaint it has explained why and apologised.

So, overall, I haven't seen enough to make me think that 1st Stop acted towards Mr H in any other way that wasn't fair and reasonable so as to warrant an award of additional redress over and above the steps I will direct it to take in respect of loan 2.

Putting things right

I think it is fair and reasonable for Mr H to repay the principal amount that he borrowed when he took out loan 2, because he had the benefit of that lending.

But he has been charged interest (and possibly charges) on a loan that shouldn't have been provided to him – which is unfair.

As 1st Stop has sold this outstanding debt it should buy this back if able to do so and then take the following steps. Otherwise, 1st Stop should liaise with the new debt owner to achieve the results outlined below and do the following:

- remove all interest, fees and charges from loan 2, and treat any repayments made by Mr H as though they had been repayments of the principal loan amount.
- If there is still an outstanding balance, 1st Stop should try to agree an affordable repayment arrangement with Mr H - bearing in mind the need to treat him positively and sympathetically in those discussions. 1st Stop shouldn't pursue outstanding balances made up of principal already written-off.
- Or, if this results in Mr H having made overpayments, then those overpayments should be refunded with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled and paid to Mr H.
- Remove any adverse information recorded on Mr H's credit file in relation to loan 2 when it is repaid.

*HM Revenue & Customs requires 1st Stop to deduct tax from this interest. 1st Stop should give Mr H a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold Mr H's complaint and direct Oplo PL Ltd trading at the time as 1st Stop Personal Loans Limited to take the steps set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 June 2021.

Susan Webb
Ombudsman