DRN-2956794

The complaint

Mr T has complained that Oplo PL Ltd (trading as "1st Stop") lent to him irresponsibly.

What happened

1st Stop provided Mr T with a personal loan of £5,000.00 in July 2016. This loan had a 40-month term with a monthly repayment amount of £180.07. This all meant the total amount repayable of £7202.80 was due to be repaid.

I issued a provisional decision on this complaint in July 2021. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"Were 1st Stop's checks reasonable and proportionate?

1st Stop says that it carried out an income and expenditure assessment with Mr T prior to providing him with this loan. It says it also carried out a credit check. 1st Stop verified Mr T's income by asking for a payslip. I can see that this payslip shows Mr T's income to be around £1134.

Mr T's reason for applying for the loan was to consolidate existing debt. 1st Stop would have seen on its credit search results that Mr T had six unsecured personal loans that were outstanding. Mr T told 1st Stop that he wanted to consolidate three of these loans, leaving three outstanding loans and the repayments from these along with the repayment of this one too. After Mr T declared his expenditure, 1st Stop calculated how much the outstanding loan repayments would be and assessed the total spend to be around £910. It calculated that Mr T had enough disposable income that showed the loan was affordable.

But I think 1st Stop should have carried out further checks to verify Mr T's expenditure and to verify what he was saying in order to make sure that he could sustainably repay the loan repayments over the term of the loan. I say this because, even though 1st Stop had reduced the monthly repayment amount that Mr T was due to repay, the amount Mr T was indebted by overall had remained the same, and he had to repay this amount over a longer period. I think 1st Stop ought to have been concerned about the amount he was paying towards debt on a monthly basis compared to his income. After his consolidation of debt, it would still have left around 35% of his monthly income being used to service his debt. I think this ought to have alerted 1st Stop to have concerns as to whether Mr T could sustainably repay this loan, especially as the loan was over a 40-month term. At the very least I think 1st Stop on seeing the debt to income ratio being so high for Mr T, even after the debt consolidation, should have been looking to verify the expenditure amounts that Mr T had disclosed to satisfy itself that he could sustain the repayments.

In conclusion and for the reasons given above, I don't think that the checks 1st Stop carried out before providing Mr T with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to 1st Stop that Mr T would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was 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 a proportionate check would have told 1st Stop that Mr T would have been unable to sustainably repay this loan.

1st Stop was required to establish whether Mr T could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Mr T has provided our service with bank statements from the period of time before this loan was granted. I've carefully considered the information provided within these statements. Having done so, it's clear Mr T was gambling a significant amount of times at the time he asked for this loan. His statements show in particular in the month before this loan was granted that he was gambling several times on most days. In these circumstances, it is apparent to me that further checks would have shown 1st Stop that Mr T was unlikely to have been able to repay this loan without borrowing further or experiencing financial difficulty.

1st Stop has told our service it provided a loan, so that Mr T could consolidate his debts and pay less on his credit commitments each month. I acknowledge what it has said here. But as I have just concluded he was still paying a third of his income on debt after this consolidation, so this should have prompted further checks. If it had carried out further checks it would have seen that Mr T had significant spend on gambling transactions that would have shown it that he was having problems managing his finances that a partial consolidation wouldn't have solved.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would have shown 1st Stop that Mr T would not have been able to sustainably repay this loan. So, I'm satisfied that UK Credit's failure to carry out proportionate checks resulted in it unfairly providing this loan to Mr T.

So, it follows that I currently think that 1st Stop needs to put things right."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision.

Mr T responded and says he has no further comments to make.

1st Stop has provided a detailed response and although I have not included every point that it has made below, I have considered everything it has said carefully. I will summarise what I believe the most relevant points that it has made:

- It says the purpose of the loan was to reduce Mr T's monthly outgoings and free up disposable income.
- After his consolidation, it says the amount of him income that he spent on debt reduced from 54% to 35% of it every month.
- The checks it carried out showed Mr T was managing his finances with no missed payments or arrears. It says there was no justifiable reason to suspect the new loan repayments could also not be sustainable.

- It believed the checks it carried out were reasonable and proportionate.

- It did not require sight of Mr T's bank statements and had no reason to suspect there may have been a gambling problem. It does not believe it could have reasonably been expected to be aware of this, based on what it had in front of it.

- Overall it didn't think it did anything wrong when it agreed to lend to Mr T.

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.

The submission from 1st Stop hasn't persuaded me that I should change my provisional decision.

I have already explained this in my provisional decision, but I think it is worth reiterating again that the lender was required to establish whether the borrowers could *sustainably* meet their loan repayments –not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

1st Stop says the purpose of the loan was to reduce Mr T's monthly outgoings and free up disposable income. It says the amount Mr T was spending overall on credit reduced because he had consolidated his debts. It also felt there was no justifiable reason for it to suspect the new loan repayments were not sustainable and it felt it had carried out reasonable and proportionate checks. So, I revisited this and looked through the documentation.

I've taken into account that the purpose of the loan was partly to consolidate other credit – in other words, to pay off other debt in order to help reduce Mr T's monthly outgoings. But after using a proportion of this loan to settle other debt, Mr T was still going to have a proportion of other credit outstanding.

It's fair to say the repayment for this new loan was less than the combined repayments he had been making on the loans he would clear, and so his monthly outgoings would be reduced as a result. But Mr T was signing up to pay his new 1st Stop loan for 40 months. The total amount that Mr T would have to pay back, if the loan ran for the full term, was going to be £7202.80. Looking at the loan amount and the term over which he had committed to repay it, in real terms taking out this loan put Mr T into a worse position overall.

1st Stop's loan meant Mr T had to repay expensive credit over the next 40 months – longer than it's likely he might reasonably have expected to repay the loans he would repay using this money still to be running. And taking out this loan put him in the position of borrowing high cost credit to pay other high cost credit.

So, in summary, and for the reasons I have just given, I think 1st Stop ought reasonably to have been aware that this partial consolidation was unlikely to help Mr T make sufficient inroad into his debt. So on balance, I think 1st Stop ought to have been looking to carry out further checks in order to demonstrate that he could sustainably make the payments over the 40-month term that he was agreeing to. So, as I don't think it carried out reasonable and proportionate checks, I need to consider what it would have seen if it had done this.

In my provisional decision, I concluded that after seeing Mr T's bank statements, I could see that he had made many gambling transactions shortly before the loan was agreed. I went on to conclude that if 1st Stop had uncovered this from carrying out further checks, it more likely wouldn't have agreed to lend to him.

1st Stop has said it did not require sight of Mr T's bank statements and had no reason to suspect he had a gambling problem at the time. But as I have concluded that it didn't carry out proportionate checks and I am saying it should have done more, I am looking into what it would have more likely than not found out if it had done so. And reviewing Mr T's bank statements from around the time it granted the loan, allow me to see what 1st Stop would most likely have seen if it had carried out a complete review of Mr T's finances and in turn carried out proportionate checks.

In conclusion, I think 1st Stop should have carried out further checks for the reasons that I have already given. And if it had done this, it would have seen that Mr T had gambling problems at the time it granted the loan. With this information, I think 1st Stop wouldn't have granted the loan. So, I uphold Mr T's complaint and conclude on this occasion that 1st stop irresponsibly lent to him.

As I am upholding Mr T's complaint, I need to think about what 1st Stop would need to do to put Mr T in a position he would have been in if it hadn't agreed to lend to him. He would still need to pay back the money that he had use of, but I would need consider amongst other things that interest and charges be taken off.

I have considered all of the points 1st Stop has made in its submission, and I do thank it for engaging with and responding to the findings of my provisional decision. But my findings and decision hasn't changed. So, it now needs to put things right.

Putting things right

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Mr T's complaint for 1st Stop to put things right by:

- Removing all interest, fees and charges applied to the loan from the outset. The payments Mr T made, direct to 1st Stop, should be deducted from the new starting balance – the £5,000.00 originally lent.

- If Mr T has already repaid more than £5,000.00 then 1st Stop should treat any extra as overpayments. And any overpayments should be refunded to Mr T; adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr T to the date of settlement†

- If the amount repaid is less than £5000.00 then both parties should look to agree a payment plan. I would like to remind 1st Stop of its obligation to exercise forbearance when it does this.

† HM Revenue & Customs requires 1st Stop to take off tax from this interest. 1st Stop must give Mr T a certificate showing how much tax it has taken off if he asks for one.

My final decision

My final decision is that I uphold Mr T's complaint and direct Oplo PL Ltd to pay compensation as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 October 2021.

Mark Richardson
Ombudsman