DRN-2981698

Complaint

Mrs W has complained about loans which Oplo PL Ltd (previously known as "1st Stop" Personal Loans Limited) provided to her. She's said that the loans were unaffordable as she was in a hopeless and serious financial situation at the time.

Background

In February 2017, 1st Stop provided Mrs W with a loan for £4,000.00. The loan had a 24-month term and an APR of 29.83%, which meant the total amount of £5,190.40, including interest of £1,190.48 was due to be repaid in monthly instalments of around £216. The loan was settled in full in October 2017. In March 2018, 1st Stop provided Mrs W with a second loan. This loan was for £5,500.00, had a 60-month term and an APR of 25.71%, which meant the total amount of £9,328.20, including interest of £3,828.20 was due to be repaid in monthly instalments of around £155.

Mrs W's complaint was considered by one of our investigators. She didn't think the checks carried out before the loans were provided were reasonable and proportionate. She also thought such checks would more likely than not have shown Mrs W couldn't afford the required monthly payments and so upheld the complaint. 1st Stop didn't agree, so the complaint was passed to an ombudsman for a final decision.

My findings

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 unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mrs W's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mrs W's complaint. These two questions are:

- Did 1st Stop complete reasonable and proportionate checks to satisfy itself that Mrs W would be able to repay her loans in a sustainable way?
    - If so, was a fair lending decision made?
    - If not, would those checks have shown that Mrs W would've been able to do so?
- Did 1st Stop act unfairly or unreasonably towards Mrs W in some other way?

If I determine that 1st Stop did not act fairly and reasonably in its dealings with Mrs W and that she has lost out as a result, I'll go on to consider what's fair compensation.

I'll proceed to consider the first of the overarching questions.

Did 1st Stop complete reasonable and proportionate checks to satisfy itself that Mrs W would be able to repay the credit in a sustainable way?

The regulations in place when 1st Stop lent to Mrs W required it to carry out a reasonable and proportionate assessment of whether Mrs W could afford to make her repayments in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

Any affordability checks should have been “borrower-focused” – so 1st Stop had to think about whether making the payments would cause difficulties or severe adverse consequences *for Mrs W*. In other words, it wasn’t enough for 1st Stop’s lending decision to only consider the likelihood that it would get its money back, or that it had the ability to repossess the vehicle, without considering the impact making these payments would have on Mrs W.

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 borrower (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 loan applications.

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

- the *lower* a customer’s income (reflecting that it could be more difficult to repay 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 agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for a longer period).

There may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I’ve thought about all the relevant factors in this case.

1st Stop’s checks

1st stop says that it cross-checked Mrs W’s declaration of her monthly income against information held by credit reference agencies. It then added Miss W’s credit commitments to her living costs and then deducted this from her income. This left Mrs W with enough to make her payments at the time of each application.

I’ve carefully thought about what 1st Stop has said. But simply obtaining information about a borrower doesn’t, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower’s ability to sustainably repay a loan.

I’m concerned that 1st Stop appears to have ignored that Mrs W had had previous difficulty repaying credit, was using significant amount of her revolving credit facilities and had a significant history of payday and other high-cost lending. Furthermore, 1st Stop's records appear to suggest that Mrs W's existing debt to income was at 47% for loan 1 and 41% for loan 2. I'm not saying that any of these things on their own meant that 1st Stop should have lent. But I do think that it needed to find out more about Mrs W's circumstances to ensure that these loans were affordable.

So as well as asking Mrs W about the details of her income and carrying out credit checks, I think that 1st Stop needed to do more to verify Mrs W's 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 Mrs W did have enough funds to be able to make the payments to these loans.

As I can't see that 1st Stop did do anything further to verify Mrs W's expenditure, I find that it didn't complete fair, reasonable and proportionate affordability checks before entering into these loans with her.

Would reasonable and proportionate checks more likely than not have shown that Mrs W was able to sustainably make the repayments to her loans?

As proportionate checks weren't carried out before this agreement 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 it was unfair to enter into this agreement with Mrs W.

Mrs W has provided us with evidence of her financial circumstances at the time she applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Mrs W has provided, it doesn't mean it would've shown up in any checks 1st Stop might've carried out.

But in the absence of anything else from 1st Stop showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mrs W's financial circumstances were more likely than not to have been at the time. To be clear, I've not looked at Mrs W's bank statements because I think that 1st Stop ought to have obtained them before lending to her. I've consulted Mrs W's bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check 1st Stop should have but failed to carry out.

As I've already explained, 1st Stop was required to establish whether Mrs W could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. So I don't think the fact that the loan payments were made on time for a period are in themselves indicative that the loans were affordable.

Furthermore, 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 Mrs W has provided in light of all of this.

Mrs W's bank statements show that she was receiving the salary she'd declared. However, it was clear that she was in a cycle where she was continually borrowing to repay existing creditors. Equally, she'd fallen into difficulty with creditors and owed money to at least five debt collectors and was living in her overdraft.

Mrs W did manage to repay loan 1 early. But this was as a result of a successful Payment Protection Insurance complaint rather than because she came into a sustainable source of funds she could reasonably rely upon to repay her later loan. By the time of loan two Mrs W's position wasn't much better. She still owed money to the same debt collectors, was still continually refinancing debts in an attempt to delay dealing with her unsustainable debt position and still reliant on her overdraft to make ends meet.

I've seen what 1st Stop has said about Mrs W's change of circumstances some 18 months into the term of loan two. But in truth any change here merely exacerbated the situation and brought matters to a head. And it doesn't alter the fact that Mrs W was already in an impecunious position before she was provided with these loans.

In these circumstances, I'm satisfied that Mrs W simply didn't have the funds necessary to make the monthly payments to these loans, without her borrowing further or it having a significant adverse impact on her financial position.

So overall and having carefully considered everything, I think that reasonable and proportionate checks would have alerted 1st Stop to the fact that Mrs W simply wasn't able to sustainably make the payments to these loans. And so it follows that she wasn't in a position to take on these commitments.

Did 1st Stop act unfairly or unreasonably towards Mrs W 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 1st Stop acted unfairly or unreasonably towards Mrs W in some other way.

So I find that 1st Stop didn't act unfairly or unreasonably towards Mrs W in some other way.

Conclusions

Overall and having thought about the two overarching questions, set out on page 1 of this decision, I find that:

- 1st Stop *didn't* complete reasonable and proportionate checks on Mrs W to satisfy itself that she was able to make the payments to these loans;

- reasonable and proportionate checks *would* more likely than not have shown Mrs W was not in a financial position to make the repayments on these loans without it having a significant adverse impact on her financial position or her borrowing further;

- 1st Stop *didn't* act unfairly or unreasonably in some other way towards Mrs W;

The above findings leave me reaching the overall conclusion that 1st Stop unfairly and unreasonably entered into this hire-purchase agreement with Mrs W.

Did Mrs W lose out as a result of 1st Stop's shortcomings?

As Mrs W was required to pay a significant amount of interest fees and charges on loans she shouldn't have been provided with, I'm satisfied she lost out because of what 1st Stop did wrong. So 1st Stop needs to put things right.

Fair compensation – what 1st Stop needs to do to put things right for Mrs W

Having considered everything, I think it is fair and reasonable for 1st Stop to put things right for Mrs W in the following way:

- refund all the interest, fees and charges Mrs W paid on loan 1;

- removing all interest, fees and charges applied to loan 2 from the outset. The payments made should be deducted from the new starting balance – the £5,500.00 originally lent. 1st Stop should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Mrs W. If an outstanding balance remains on loan 2 after these adjustments, 1st Stop can use the compensation due for loan 1 to reduce and clear this balance.

- add interest at 8% per year simple on any interest, fees, charges and overpayments from the date they were paid by Mrs W to the date of settlement†;

- remove any adverse information recorded on Mrs W's credit file as a result of loan 1. Any adverse information recorded about loan 2 should also be removed in the event Mrs W no longer has an outstanding balance with 1st Stop, once all adjustments have been made.

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

If after all of the above adjustments have been made (including offsetting the compensation for loan 1) an outstanding balance remains on loan 2, 1st Stop should set up an affordable payment plan for Mrs W. I'd also remind 1st Stop of its obligation to exercise forbearance and due consideration if it intends to collect on an outstanding balance, should one remain after all adjustments have been made to the account, and it's the case Mrs W is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mrs W's complaint. Oplo PL Ltd should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 28 March 2022.

Jeshen Narayanan
Ombudsman