

The complaint

Mr G has said that Oplo HL Ltd didn't carry out sufficient checks when it granted him a secured loan in 2020. He says he was gambling heavily and the lending was based on his non-guaranteed overtime, which he feels was irresponsible on the part of the lender.

What happened

In September 2020 Mr G applied for a secured loan through a mortgage broker to consolidate some debts. Mr G borrowed £10,000 over four years on a repayment basis. The interest rate was fixed at 12.50% for the full term of the loan.

The direct debit failed in November and December 2020, with Mr G explaining that it was an oversight on his part in transferring money into the funding account in time. Both payments were made by card the day after the direct debits had failed. The direct debit then resumed as normal from January 2021.

Mr G complained to Oplo in June 2021. He said that Oplo should have requested bank statements to establish affordability, and that he'd taken multiple lines of credit and was gambling at the time.

Oplo didn't uphold the complaint. It said the loan had been recommended by an independent broker, and so any complaint about the suitability of the loan should be directed to that business. In terms of the affordability, it said a full income and expenditure assessment was carried out, and Mr G's income was verified through his payslips. It said the loan was stress tested and was shown to be affordable, Mr G gave reasonable explanations for the recent credit, made no mention of his gambling, and it didn't need to see his bank statements.

Unhappy with Oplo's response, Mr G referred the complaint to our service. Our investigator didn't think Oplo had done anything wrong. He said it assessed Mr G's income and expenditure (including a stress test), was satisfied with his credit history, and that it had no regulatory requirement to request bank statements.

Mr G didn't agree, saying the recent borrowing was to fund a gambling problem and the lending shouldn't have been based on his overtime income as that could stop at any time. As an agreement couldn't be reached the case was passed 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.

When an application is made to borrow money, the lender must assess whether the borrower can afford the repayments. This secured loan is a regulated mortgage contract which means the provisions in the Mortgages and Home Finance: Conduct of Business Sourcebook ("MCOB") apply.

Chapter 11 of that is entitled 'Responsible lending, and responsible financing of home purchase plans'. It says a lender must treat customers fairly by assessing whether the customer will be able to repay the sums borrowed and interest. To do that the lender must take account of the income of the customer, and the customer's committed and basic essential expenditure.

This means that before agreeing to lend, a lender must carry out reasonable and proportionate checks to assess whether a borrower can afford the loan repayments alongside the borrower's other expenditure.

I've kept all these things in mind, and I've thought carefully about the information Oplo relied on when it decided to lend to Mr G.

Mr G was asked about his income and expenditure. Oplo verified Mr G's income by requesting payslips. It looked at Mr G's average earnings over the period covered by the payslips, as well as his year to date figure from the most recent. It took the lower of the two figures for the affordability check.

Mr G has said that if his overtime stopped he wouldn't be able to afford this loan, and so it was irresponsible for Oplo to take his overtime into account. Whilst I can understand the point Mr G is making, it isn't unusual for lenders to include other income, such as overtime and bonuses, if it can be shown to be consistent over a period of time. Here Mr G was asked whether he was aware of any negative impact on his employment, and he said no. Oplo then took the lower of the two figures it calculated – that is the average income on the payslips provided, versus the year to date figure.

One of the payslips showed Mr G had taken a week's leave, and on that there was an additional line entitled "Additional Holiday Pay Amount". That extra amount is because if a person regularly gets paid overtime, commission and/or bonuses, their employer must reflect those payments in the first four weeks of any paid holiday. That's because holiday pay must reflect an employee's normal remuneration – that is, the money they earn when not on leave.

The figure is based on the previous 52 weeks, and so the fact £208.50 was included when Mr G was on leave (that is, £208.50 was calculated to be the average weekly overtime/bonus/commission he'd been paid over the last 12 months) shows his overtime had been consistent and sustainable. According to the application form Mr G had been employed by the company for six years, so if he felt that level of income wasn't sustainable then I would have expected him to have raised that at the time.

Oplo also carried out a credit check and carried out an affordability check based on Mr G's declared outgoings. Having reviewed everything, I can see those checks suggested Mr G had enough disposable income each month to afford the loan repayments.

Mr G was entering into a new credit commitment with Oplo - he was agreeing to make monthly repayments of £309.55 for a period of four years. So, I think it is right that Oplo wanted to gather information about Mr G's financial circumstances before it agreed to lend to him. I think that Oplo's checks were proportionate to achieve that aim.

But simply performing proportionate checks isn't always enough. A lender also needs to react appropriately to the information those checks show. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. So, I've looked at what Oplo gathered to see whether it needed to ask for more or whether it made a fair lending decision.

Oplo's credit check showed that Mr G was making use of other credit at the time he applied for the loan. Mr G's open accounts appeared to be well maintained with no issues reported. The credit check showed around £12,000 in loans, and around £4,500 on credit cards. He had no CCJs, and no missed payments in the last two years. Whilst Mr G had taken out some recent credit, he provided reasonable explanations for that.

The Oplo loan was used to consolidate unsecured loans and Mr G's overdraft debt. It left just part of one loan outstanding along with Mr G's credit cards. These were all high interest rate loans, with the new Oplo loan having a lower interest rate; the loan saved him money each month compared to his previous outgoings.

Oplo discounted the monthly loan repayment figures for the loans that were being fully repaid when it assessed affordability, and I think that was a fair thing to do as those were to be repaid. The amount that Oplo had calculated Mr G to have in disposable income after all his declared outgoings were taken into account (including the new Oplo loan) was around £815.

Mr G has said that Oplo should have asked for copies of his bank statements, and if it had done so it would have shown he was gambling heavily. In an email to Oplo nine months after he took out the loan he said that his gambling days were, by then, behind him. I would like to thank Mr G for being so open with us about his previous difficulties, and wish him the best going forward. I've reviewed Oplo's lending policy for the time and, based on that, it didn't need to see copies of Mr G's bank statements. There's also nothing in the rules that state these must be requested.

Whilst Mr G had taken out various items of credit in the year before the application, he provided plausible explanations for each of those and all his credit commitments had been maintained. Putting everything together I don't think there was anything here that should have alerted Oplo to a problem such that I think it did something wrong in not requesting bank statements.

I appreciate what Mr G has said about a gambler hiding it as they want access to further funds, but I can't hold Oplo liable for not realising when Mr G didn't disclose it. Based on everything Mr G declared, and the information Oplo obtained, this loan was affordable. For the period in question (which runs up until the end of June 2021 when this complaint was raised) Mr G made all his monthly payments in full. He had two direct debits returned as unpaid in that time, but both times he provided plausible explanations for that (an oversight in moving money around) and he made the payments by debit card the following day on both occasions. There's nothing in the transaction history to indicate this loan was unaffordable at the time it was taken out.

In conclusion, I think Oplo made proportionate checks when it agreed to this secured loan and on balance didn't do anything wrong when it agreed to lend.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 October 2022.

Julia Meadows

Ombudsman