

The complaint

Mr S complains that Oplo PL Ltd provided him with a loan that he was unable to afford to repay.

What happened

Mr S was provided with a loan for £8,000 by Oplo on 5 July 2018, for a period of 18 months at a monthly instalment of around £266. Mr S kept up the payments for nine months but he fell into arrears because of a change in his circumstances. He complained to Oplo that the loan was unaffordable, as he already had substantial debts. He'd also had a gambling problem since 2016 and had spent considerable sums on gambling, evidenced by transfers from his bank account.

Oplo explained that it assessed his application for a loan by considering a credit report, verifying his income, and checking one page of his recent bank account to verify his address and his salary payment. It didn't consider it necessary to ask for further bank statements. It saw nothing untoward in the information obtained, and assessed that he was able to afford the loan. It assessed that he would have a disposable income of over £1,045 taking into account the new loan instalments. It further said that as the loan was intended to consolidate two other loans, this would have increased his disposable income to over £1,700.

Mr S has provided bank statements for three accounts for the period up to and after the loan. Our adjudicator said that the information Oplo obtained from its checks was concerning and should have prompted it to carry out further checks. In particular Mr S's main bank account showed numerous transfers of money to other accounts, which Mr S advised were used for gambling. Had Oplo investigated those transactions further it would have shown this, so it shouldn't have lent the money.

Oplo said it didn't require bank statements, save for one page of his main account. It said:

- Mr S had monthly free cash of £1,700 following consolidation of the intended debts and after consideration of its loan repayment – it was therefore reasonable to conclude that the loan was affordable.
- He had no defaults or CCJs (County Court Judgements).
- There were no missed repayments or arrears on any of his active credit accounts.
- It obtained details of recent credit taken and plausible explanations were provided.
- It had no cause to suspect Mr S had an undisclosed gambling problem and although he had the opportunity to declare this to it, he chose not to do so.

It also pointed out that although Mr S had subsequently provided bank statements, none of those statements showed gambling transactions.

I issued a provisional decision. In it I said that Oplo had carried out proportionate checks and that those checks wouldn't have alerted it to carry out further checks. So I said it was unlikely that it would have discovered his gambling problem.

Oplo said it had no further comment to make.

Mr S didn't accept my provisional findings. He said, in summary:

- For the size and duration of the loan more checks should have been undertaken. Although the ingoing funds from his salary were relatively healthy this was not fully reflective of his financial position, and the credit report should've shown that at the time.
- He had a number of overdrafts as well as outstanding loans, this would've highlighted his financial behaviours that required more in depth review, i.e. bank statements. For a loan provider not to request bank statements for a substantial loan when a customer already has overdrafts and pre-existing loans is unacceptable and irresponsible.
- I said in my provisional findings that Oplo should have directed funds to pay off outstanding loans – this was not the case and as such was irresponsible lending.
- When Oplo asked to see a bank statement at the time of the application, he provided a print screen of a preferred page of his statement showing his address and minimal transactions. The fact that Oplo requested a bank statement and he was reluctant to send a bank statement and rather a snippet of a page should have prompted Oplo to question why, and what was there to hide.
- With regard to comments around his bank statements and only providing Oplo with 3 of the accounts when requested, the reason for this was because his bank was unable to send him the fourth account (with all the gambling transactions on) for 25 business days from request – this is why these statements were provided at a later date.
- Notwithstanding, the other accounts had very frequent 'XFER' transactions showing the transfer of funds to various accounts – this would've triggered questioning where and why money was being transferred and for what activity. The frequent transfers would have highlighted erratic financial activity and further shown the use of funds was for gambling/ unsustainable purposes.

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 following were my provisional findings:

"We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- *Did Oplo complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the loan in a sustainable way?*

- *If not, would those checks have shown that Mr S would have been able to do so?*

The rules and regulations in place required Oplo to carry out a reasonable and proportionate assessment of Mr S's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Oplo had to think about whether repaying the loan would be sustainable. In practice this meant that it had to ensure that making the repayments on the loan wouldn't cause Mr S undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Oplo to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr S. 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 consumer (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 applications.

I think that a reasonable and proportionate check ought generally to have been more thorough:

- *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 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).*

The loan amount was for a considerable sum, payable over a long period. This represented a substantial monthly commitment for Mr S. So Oplo should have carried out a thorough assessment of Mr S's financial circumstances.

I think the checks carried out by Oplo were proportionate, taking into account the amount of the loan and Mr S's income, which was relatively high (about £3,478 net a month). The credit check revealed that Mr S had, in April 2018 taken out a loan for around £4,700 and in May 2018 for around £6,600. Mr S had explained to Oplo that those loans were respectively for a holiday and for the purchase of an engagement ring. The loan application noted that those loans were to be paid off by the new loan.

Mr S had no less than 5 current accounts showing in his credit records. Two didn't appear to have been used recently. One had had an overdraft of £1,143 in April 2018 which had been paid off, another with an overdraft of £1,000 again in April 2018 which had been paid off. A

third account had a current overdraft of £1,057, which had been reducing. The one page of a bank statement which Oplo saw at the time of the application didn't show any overdraft nor any transactions out of the ordinary.

No other debts or credit, and no defaults showed on Mr S's record.

Given that Mr S hadn't told Oplo about his gambling problem, the question to ask is whether the information disclosed by the credit report should have led Oplo to carry out further checks. And whether those checks should have led it to conclude the loan wasn't affordable. Its income and expenditure check (I & E) showed Mr S to have a disposable income, including the new loan instalment, of around £1,045, increasing to £1,700 if the old loans were paid off, as intended.

Although Mr S had taken out recent loans and from time to time used his bank account overdraft, I don't think that the checks Oplo carried out should have alerted it to carry out further checks. Mr S appeared to quite able to meet the new loan commitment. I don't think, looking at his accounts that he did in fact pay off the two loans, and Oplo should have arranged to pay those off before releasing funds to him if it was concerned about affordability. But I have noted that he obtained a new loan from the company that provided the smaller loan, in November 2018. However even without paying off those loans he would still have had sufficient disposable income to afford the repayments for the new loan.

If Oplo had carried out further checks, I've noted that the statements Mr S sent to it when he made his complaint, and those he initially sent to us, don't show any gambling transactions, nor do they show heavy use of an overdraft. It was only in response to Oplo requesting an ombudsman's decision, that he sent through a statement from a third account which does indeed show substantial gambling transactions. If a business does ask for bank statements this would usually be from the consumer's main account (to show regular income and outgoings), so it doesn't appear to me that Oplo would have seen any gambling transactions. As he didn't disclose any gambling problem to Oplo, I would doubt that it would have seen that from his bank statements. A further point to note is that he obtained the loans in April and November 2018, presumably without those companies noticing any gambling transactions.

So, I think Oplo carried out proportionate I & E checks on Mr S, and that those checks wouldn't have alerted it to carry out further checks. I think it made a fair lending decision."

Taking Mr S's points:

There is no requirement under the rules I've referred to for a business to obtain bank statements from a prospective customer. I've set out in my provisional findings exactly what the credit check report revealed about Mr S's financial circumstances, which I believe was fairly accurate. Oplo accepted Mr S's reasons for taking out the two loans in April and May 2018, and the loan monies would have been sufficient to pay those off.

He had one overdraft at the time of his application. Previous overdrafts had been paid off fairly quickly so would not have been a concern. He had a mortgage but otherwise only had two loans, no credit cards or previous loans. I still think that, given his income, his credit record, and the amount of disposable income he would have left after paying the new loan, Oplo's checks were proportionate. And by that I mean that it wasn't obliged to carry out a forensic assessment of Mr S's financial circumstances. It believed Mr S when he told it what the loans were for and there was nothing in the checks it did that should have alerted it to carry out more in depth checks. If a business suspects a customer isn't telling the truth then of course it should carry out further enquiries. But I can't see in this case that it had any reason to doubt Mr S.

Oplo wasn't obliged to pay off outstanding loans even if those loans were due to be paid off as part of the application. But if it doesn't it takes the risk that the loans won't be paid off and the new loan instalment on top of those for the old loans will be unaffordable. But in this case, even with the new loan instalment Oplo assessed that Mr S had a disposable monthly income of over £1,000, so I don't think it was irresponsible of it not to pay off those loans.

I understand that Oplo wanted to see a bank statement to confirm Mr S's address and payment of salary. It had already decided it didn't need to see a full bank statement. I note Mr S admits he chose a statement which didn't show any transactions which might be queried.

With regard to the provision of a statement for the account with the gambling transactions on it, Oplo's final response to Mr S was dated 15 March. It pointed out that it hadn't seen any gambling transactions in the statements Mr S supplied. He complained to the Financial Ombudsman in May 2022, but didn't alert us to any further statements. Notwithstanding this, the other statements do show transfers between accounts. I don't think the checks Oplo had done should have alerted it to obtain bank statements or carry out further checks. Nevertheless if it had seen the statements with financial transfers between accounts it would likely have asked Mr S about them. And from what he's said it's unlikely that he would have revealed that they were for gambling transactions.

I am sorry that Mr S's gambling addiction has caused him mental health difficulties. But based on the information Oplo saw at the time of his application, he seemed to have a relatively good credit record, and a high income. So I think it made a fair lending decision.

My provisional findings, as set out above, are now final, and form part of this final decision.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 July 2022.

Ray Lawley
Ombudsman