DRN-3590512

The complaint

Miss S complains that Oplo PL Ltd lent her money on a high cost loan irresponsibly, such that she couldn't afford to repay it.

What happened

Oplo provided Miss S with a loan of £3,000 on 28 January 2015 repayable at the rate of around £127 a month over a period of 48 months. The total amount payable at the start of the loan was £6,105. She paid the instalments until November 2015. Thereafter she entered into a debt management plan, and paid reduced payments of £40 a month. So far as I know those payments have continued and as at October 2021, about £2,600 remained outstanding.

Miss S complained to Oplo after contacting the Financial Ombudsman Service in October 2021. Oplo said in its response that it went through a thorough credit worthiness assessment with Miss S and said that the loan was affordable. It has since been told by Miss S that she under-reported her outgoings but has pointed out that it couldn't have known that at the time. It also pointed out that Miss S had made her complaint more than six years after the loan was issued, and objected to the complaint being considered as it was out of time.

An ombudsman decided that the complaint was in time, and our adjudicator then reviewed the merits of the complaint. He thought Miss S's combined regular consumer credit repayments, including the monthly repayments for the new loan, represented a significant proportion of her income. In those circumstances, there was a significant risk that she wouldn't have been able to meet her existing commitments without having to borrow again.

So, he thought it was unlikely Miss S would've been able to sustainably meet her repayments for the loan.

Oplo disagreed, saying it had taken into account Miss S's credit record, and the reasons for her default of a credit card, and for recently having taken out credit. It believed the loan was affordable. It also raised the issue of the complaint being out of time again, citing evidence from its business file.

The matter has been passed to me for further consideration.

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 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 Miss S would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Miss 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 Miss S's ability to make the repayments under the 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 Oplo had to ensure that making the repayments on the loan wouldn't cause Miss S undue difficulty or significant adverse consequences. That means she 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 she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her 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 Miss 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 such a 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).

To address firstly the question of jurisdiction, I consider this was resolved by the previous ombudsman who considered that issue. I note that Oplo now wishes to cite evidence (specifically the loan agreement) in support of its view that Miss S was made aware of her ability to complain about irresponsible lending. I should point out that this evidence was available at the time the ombudsman made her decision, and it was up to Oplo to produce it then. In any event the information about responsible lending, which Oplo has pointed out, is on pages 8 and 9 of the loan agreement and was not otherwise drawn to Miss S's attention. It mentions responsible lending but doesn't specifically say that she would have had a right to complain about irresponsible lending. I think the complaint is still within our jurisdiction.

Turning to the merits of the complaint, I've assessed Miss S's credit commitments on the basis of a 5% monthly payment of the balance for her revolving credit (credit cards, mail order, bank overdraft). I accept that for the credit card in default she was paying £20 a month, and note that she had only one payment due of £15 for another loan, so I won't take that into account. I still calculate her credit commitments to be about £474 a month. As the stated purpose for this loan was for home improvements and a holiday, there were no loans to be consolidated. So with the addition of the new loan instalment, this increased her monthly credit commitments to around £601, about 44% of her monthly income of £1,364. this is a high figure and an indication that the loan may not have been affordable.

Miss S had three credit cards with balances on them totalling £1,680 out of a total limit of £1,750. She had taken one of those out a few months before to cover Christmas expenses. She had another card she hadn't used and while that may not have been relevant to her overall credit, she had used it, and gone over the limit in the previous few months. She had also in recent months taken out a loan which was again for Christmas. She'd also taken out a loan about one year before for over £3,900. I think that together with the ratio of her income to credit she was unlikely to be in a position to afford further credit.

As regards her likely disposable income, I calculate this to be in the region of £157 a month, after taking into account the loan instalment. I don't think, bearing in mind the other factors I've cited, that this was sufficient.

So, whilst I think Oplo did carry proportionate affordability checks, I think those checks should have led Oplo not to offer the loan. So I don't think it made a fair lending decision.

Putting things right

Miss S has had the capital payment in respect of the loan, so it's fair that she should repay this. So far as the loan is concerned, I think Oplo should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Miss S as payments towards the capital amount.
- If Miss S has paid more than the capital, refund any overpayments to her with 8% simple interest* from the date they were paid to the date of settlement.
- But if there's still an outstanding balance Oplo should come to a reasonable repayment plan with Miss S.
- Remove any adverse information where appropriate about the loan from Miss S's credit file.

*HM Revenue & Customs requires Oplo to deduct tax from this interest. It should give Miss S a certificate showing how much tax it's deducted if she asks for one.

My final decision

I uphold the complaint and require Oplo PL Ltd to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 9 August 2022.

Ray Lawley
Ombudsman