DRN-3591885

The complaint

Mr J complains that Oplo PL Ltd, trading as Oplo lent to him irresponsibly and without carrying out proper affordability checks. He would like all the fees and charges associated with the loan refunded.

What happened

In October 2019 Oplo approved a loan of £14,000 for Mr J, which was scheduled to be repaid at approximately £367 per month over a term of 72 months. The purpose of the loan was primarily to consolidate debt. When assessing the application, Oplo asked Mr J about his financial circumstances and carried out a credit check before approving the lending.

Aside from a brief period of difficulties as a result of the Covid-19 pandemic, it would appear that Mr J has maintained the account well, although a balance remains at this point, due to the term of the loan.

The adjudicator looked at the evidence and thought Oplo shouldn't have approved the lending for Mr J. Oplo disagreed and asked an ombudsman to look at the complaint.

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.

Having done so, and considered the valid points made by Oplo, I'm upholding it, and I'll explain why.

Oplo is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mr J would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that he could manage the repayments,

> "…*without…incurring financial difficulties or experiencing significant adverse consequences"*

Essentially, he needed to be able to meet him financial commitments and not have to borrow elsewhere to repay Oplo for the loan to be considered affordable and sustainable.

There are two questions I need to consider when deciding this case, which I will deal with separately below.

Did Oplo carry out proportionate checks before granting this loan?

The adjudicator thought that Oplo did enough checks when assessing this application, but that the information it gathered very strongly suggested the borrowing was neither affordable nor sustainable for Mr J. So, it should have declined the application based on what it had. Of primary concern was the amount of Mr J's monthly income that was needed to service all his debts, including this one, at around 40%.

Given the term of the loan, and the size of the repayment relative to Mr J's income, I think there could easily be an argument to say that Oplo ought to have gathered more information. However, as, ultimately, I agree with the adjudicator that Oplo had enough to suggest it shouldn't have approved the lending, this question makes no difference in this case.

Was Oplo right to conclude that the lending was affordable and sustainable for Mr J?

As mentioned above, our adjudicators' concerns when upholding this complaint were focused around the fact that almost 40% of Mr J's income was needed for him to make repayments on his unsecured debt.

Oplo felt this focus was unfair, saying that this fact, *"…should not be viewed in isolation but in the wider context of his overall financial position and the information available to us at the time…"* In particular, Oplo has highlighted Mr J's disposable income, after the repayment for the loan in question was factored in, which it calculated via an income and expenditure (I&E) assessment to be around £315 per month. It says that indicated that the repayment was affordable and so the lending sustainable for Mr J.

I entirely agree that one issue should not be viewed in isolation, and have thought carefully about these submissions. I accept that the disposable income Oplo calculated is an important factor in this case.

However, there are several other elements I've considered which essentially serve to undermine the I&E; flag financial risks for him; and cast doubt on the true extent of Mr J's disposable income.

Firstly, there is the question of Mr J's mortgage repayments. Oplo halved what he was actually liable to pay on the basis that half of the mortgage was paid by Mr J's partner, whose earnings it factored in, but only to this expense. There are several issues with this. Ultimately, his was a sole mortgage for which his partner had no responsibility. In the event that she had lost her job, or that their relationship broke down, Mr J would have been liable for the full amount. Not half. And indeed it is possible he already was paying all of it.

I note that nobody except Mr J was on the electoral register at his address at the time of the application. So that potentially calls into question the longevity and/or permanence of their cohabitation. I also have some concerns that none of the other household expenses appear to have been halved on the I&E, or an explanation for that provided in the application paperwork. Of course it's entirely possible that Mr J's partner only contributed to the mortgage and none of the other standard household bills. It appears she earned less than him. But I can't ignore the *possibility* that there was an element of expedience for Oplo in this. I.e. that simply halving the mortgage repayment shown on the credit file was a quick and easy way to make this repayment seem affordable for Mr J. What is clear is that there was no thorough understanding of the impact of Mr J's partner's earnings on his housing and other expenses when he made this application.

The issue of Mr J's partner's income could theoretically have meant that this loan was actually *more* affordable for him than it seemed. If, for example, she was also paying half the household bills. But that hypothesis doesn't mitigate the multiple missing considerations from the "ONS Data" section of Oplo's I&E. I'm unclear whether this section contains any amounts disclosed by Mr J, or whether they are simply drawn from standard data produced by the Office for National Statistics. Regardless, they do not include several crucial expenses that would inevitably have arisen during the 6-year term of this loan. For example, there is no consideration of the need to buy clothes and shoes, or normal household goods. It is clear from Oplo's file that Mr J and his partner had a child, as was set out in 2017 when Mr J applied for a loan not under consideration in this decision. And it is a reasonable assumption that that child lived with them by October 2019, given the adjustments made to the mortgage repayment set out above. There is no allowance made for dependents in this I&E, and any child would have placed an additional financial burden on Mr J. The age of the child is unknown, but there appears to have been no discussion about childcare costs, despite the fact that Mr J's partner was working and earning.

All of these issues serve, in the round, to flag multiple important unanswered questions about Mr J's financial situation at the time. And ultimately undermine the I&E and cast significant doubt on the plausibility of the disposable income calculated by Oplo. If he had needed to make the mortgage repayment himself, or if he or his child had needed a new coat or shoes, I think it's likely that any disposable income would have been essentially wiped out.

Therefore, in addition to the fact that a comparatively large proportion of Mr J's monthly income was needed to service debt, I conclude that there were other grounds for concern about the sustainability of this repayment for him over the term of the loan. On balance, I don't think this borrowing could have been described as affordable and sustainable for him.

Oplo has pointed out that, apart from the reduced payments he made as a result of the Covid-19 pandemic, Mr J has successfully maintained the account. Which demonstrates that the borrowing was affordable and sustainable. In addition to that being a point made with the benefit of hindsight, I don't accept that conclusion, as I cannot know *how* Mr J has successfully maintained the account. As set out at the start of this decision, to be affordable and sustainable under the relevant regulations, Mr J must be able to repay the debt whilst meeting all his other financial commitments, and without borrowing elsewhere. So the mere fact that he has managed to make his repayments to Oplo does not necessarily mean that the borrowing could reasonably be described as affordable and sustainable. It therefore follows that I uphold this complaint.

Putting things right

As I understand it, the loan is still running and being serviced by Mr J. On that basis, I direct Oplo to do the following:

A) Oplo must restructure the account to remove all interest, fees and charges from the loan, and treat any repayments made by Mr J as though they had been repayments of the principal on the outstanding loan.

B) If this results in Mr J having made overpayments then it must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the payments were made, to the date the complaint is settled.

C) If there is still an outstanding balance following the actions set out in "A", then Oplo should agree a suitable repayment plan with Mr J. I remind it of its obligation to treat him fairly in so doing.

D) It must remove any adverse information recorded on Mr J's credit file in relation to this loan, once it has been repaid.

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

My final decision

For the reasons I've explained, I uphold this complaint and direct Oplo PL Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 August 2022.
Siobhan McBride
Ombudsman