DRN-3904057

Complaint

Mrs J has complained that Oplo PL Ltd ("Oplo"), amongst other things, unfairly continued adding interest, fees and charges to her loan after she lost her job and went into a debt management plan.

Background

Oplo provided Mrs J with a loan for £10,000.00 in May 2017. The loan had an APR of 23.16% and a 60 month term. This meant that the total to be repaid of £16,240.20, which included interest, fees and charges of £6,240.20, was due to be repaid in 60 monthly instalments of £270.67.

Mrs J made the payments on her loan up until August 2017. However, Mrs J didn't have sufficient funds, in her account, when Oplo attempted to collect her September 2017 payment. Mrs J fell into arrears and she was never able to bring her account back up to date. She eventually started making reduced payments from a debt management plan from November 2017 onwards. Oplo accepted payments until August 2019 until it eventually sold the balance on to a third-party debt-purchaser.

In April 2022, Mrs J noticed that she still owed almost as much as the amount she was initially lent despite having made payments – albeit at just under half of the contractual monthly amount – for five years. Mrs J believed that her outstanding balance should have been lower than what she was being told. And as a result she made a complaint arguing that the outstanding balance on her loan was too high. Mrs J also complained that she shouldn't have been provided with the loan in the first place either as it was unaffordable.

Oplo didn't uphold Mrs J's complaint and as she remained unhappy she exercised her right to refer her complaint to our service. Mrs J's complaint was then looked at by one of our adjudicators. She didn't think that Oplo had irresponsibly lent to Mrs J. However, she didn't think that Oplo had treated Mrs J fairly and reasonably when she began having difficulty making her payments – in particular, she was concerned that Oplo expected all of the interest due on the loan to repaid even when Mrs J went into a debt management plan.

Mrs J didn't disagree with our adjudicator's view. But Oplo did. It said that all of the interest was added to the loan at the outset. So it didn't add any 'extra' interest when Mrs J went into a debt management plan and it therefore didn't agree that it acted unfairly. As a result, the complaint was passed to an ombudsman for a final decision.

As the parties are in agreement that the loan wasn't provided to Mrs J irresponsibly, I'm only looking at whether Oplo acted fairly and reasonably when Mrs J started missing payments on her loan.

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 explained how we handle complaints about financial difficulties on our website. And I've used this approach to help me decide Mrs J's complaint.

The industry regulator the Financial Conduct Authority ("FCA") has set out what it considers to be a list of indicators which could indicate that a customer is in financial difficulty in Section 1.3 of Consumer Credit Sourcebook ("CONC"). This section of CONC is entitled *'Guidance on financial difficulties'* and amongst this list of indicators – which is set out in CONC 1.3.1G - is where a customer is unable to meet their repayments out of disposable income, or at all, for example where there is evidence of non-payment of essential bills.

It isn't in dispute that Mrs J contacted Oplo in September 2017 to explain that she was struggling to make her payments as she lost her job in July and she had only been able to find temporary work after this. Oplo's notes also suggest that Mrs J also explained that she was behind on her priority bills.

Once a lender is told, or it realises, that a borrower is experiencing financial difficulties we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations.

The rules and guidance in relation to these matters is set out in section 7 of the CONC. This section is entitled *'Arrears, default and recovery (including repossessions)'.*

Some of the provisions in this section of CONC have been amended in the period since Mrs J contacted Oplo in September 2017. But in the sections below I refer to the rules and guidance that were in place at the time.

CONC 7.3.2G states:

When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.

*[**Note**: paragraphs 7.12 of ILG and 2.2 of DCG]*

Principle 6, which is set out in the PRIN section of the handbook at PRIN 2.1.1R, states:

A firm must pay due regard to the interests of its customers and treat them fairly.

CONC 7.3.4R states:

A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

*[**Note**: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]*

CONC 7.3.5G contains examples of forbearance and states:

Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

1. *considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in*

either case the level of debt would continue to rise if interest and charges continue to be applied);

*[**Note**: paragraph 7.4 (box) of ILG]*

2. *allowing deferment of payment of arrears:*

    (a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or
    (b) provided that doing so does not make the term for the repayments unreasonably excessive;

3. *accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).*

CONC 7.3.7AG provides further guidance and states:

1. *If a customer is in default or in arrears difficulties, the firm should, where appropriate:*

    (a) inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and
    (b) refer the customer to a not-for-profit debt advice body.

CONC 7.3.8G states:

An example of where a firm is likely to contravene Principle 6 and CONC 7.3.4 R is where the firm does not allow for alternative, affordable payment amounts to repay the debt due in full, where the customer is in default or arrears difficulties and the customer makes a reasonable proposal for repaying the debt or a debt counsellor or another person acting on the customer's behalf makes such a proposal.

*[**Note**: paragraphs 7.16 of ILG and 3.7j of DCG]*

Finally CONC 7.3.11R states:

A firm must suspend the active pursuit of recovery of a debt from a customer for a reasonable period where the customer informs the firm that a debt counsellor or another person acting on the customer's behalf or the customer is developing a repayment plan.

*[**Note**: paragraphs 7.12 of ILG and 3.7m of DCG]*

I've kept all of the above in mind when considering Oplo's actions in response to its conversation with Mrs J in September 2017.

Oplo's notes suggest that it carried out an income and expenditure assessment with Mrs J at this stage. The income and expenditure assessment showed that Mrs J committed expenditure exceeded her income by well over £600. Mrs J told Oplo that she was having difficulty getting an appointment with the Citizens Advice Bureau. In response to this Oplo placed a 30 day hold on Mrs J's account and referred her to a debt charity that might have

been able to help. I'm satisfied that this was a reasonable first step to what Mrs J had said about her circumstances in September 2017.

Mrs J then got in contact with Oplo in October 2017, before the 30 day hold on her account was due to end. At this point she notified Oplo that the debt charity she was referred to was in the process of putting together a debt management plan for her and provided the reference she'd been given. It's worth noting that evidence of discussions with a charity with a view to entering a debt management plan is also on the list of indicators of financial difficulty in CONC 1.3.1G.

In any event, Oplo confirmed that it would await the paperwork from the debt management charity. And I've not seen anything to indicate that it attempted to collect payment from Mrs J in October 2017. In November 2017, the debt charity contacted Oplo to offer a repayment of £128.47 and Oplo accepted this offer. I'm satisfied that this was also a fair and reasonable response to the debt management charity's contact and offer of repayments on Mrs J's behalf.

That said, while Oplo might have acted fairly and reasonably by placing an initial hold on Mrs J's account and then accepting her offer of reduced payments, I'm not persuaded that its actions in relation to Mrs J's ongoing balance were fair and reasonable. I say this because it took no steps to make any sort of interest refund or adjustment to account for the fact that Mrs J would be making substantially reduced payments going forwards as a result of her financial difficulty.

Oplo argues that it added all of the interest that was due to be paid on Mrs J's loan at the outset. And as no interest was added after it agreed to accept reduced payments, through the debt charity, from Mrs J, there was no further interest for it to consider suspending, reducing, waiving or cancelling in accordance with CONC 7.3.5G.

I've considered what Oplo has said and its arguments in relation to this matter.

In the first instance, I want to be clear in saying that how a lender chooses to structure a loan and whether it adds all of the interest at the start or on a daily basis, is a matter for the lender itself to decide. And I'm satisfied that Oplo was entitled to structure its loan in the way that it did. However, just because a lender adds all of the interest at the start of the loan it doesn't automatically follow that all of this interest is immediately due and payable.

I say this because there is a difference between what a consumer owes or may owe should a loan run to its full term and any interest that is actually due to a lender. The amount of interest that is actually due to a lender will depend on the capital amount outstanding at a particular time and how long the customer has had a loan balance with a lender. And just because Oplo decided to add all of the interest due on Mrs J's loan at the outset this doesn't mean that all of this interest was already due and payable at this time - the interest added was calculated on the basis that Oplo would be owed at least a portion of the amount advanced (depending on the amortisation schedule) for five years.

Indeed, if I take Oplo's argument that there was no interest to consider suspending, reducing, waiving or cancelling here because it had already been added to the balance to its logical conclusion, this would effectively mean that, on a loan where all of the interest was added at the outset, a customer would have to pay five years' worth of interest even if they decided to repay the loan after a few months. And it would be plainly absurd to suggest that a customer in this position would have to pay, or even should pay, all of the interest due over the five-year term in these circumstances.

Furthermore, Oplo's arguments here also suggest that it is only customers whose loans have interest added to the outstanding balance as it accrues (whether on a daily or monthly basis) are entitled to a lender's consideration of suspending, reducing, waiving or cancelling interest, as a forbearance measure, in the event that they fall into difficulty making repayments on a loan.

Given a customer would have no control over whether all of the interest due over the term is added at the start or as and when it accrues, I can't see how it is fair and reasonable to distinguish between loans in this way when considering forbearance measures. After all, a lender has the ability to reduce the outstanding balance to reflect a waiving or cancelling of the unpaid interest.

And I don't think that a lender automatically failing to consider such a reduction to the balance, in circumstances where it has concluded the monthly repayments are unaffordable and it is accepting a significantly reduced payment under a repayment plan, would be meeting its overarching obligation to pay due regard to the interests of its customer and treat them fairly in accordance with Principle 6. This is especially as it would mean some customers not being entitled to any interest relief, in the event of financial difficulty, simply because of the lender's decision to add all of the interest due on a loan at the outset, rather than as it accrues.

Equally, even if I were to agree with Oplo's interpretation of CONC 7.3.5G (for the avoidance of doubt, I wish to make it clear that for the reasons I've already explained, I don't), I think that the effect of adding interest in the way that it did and the impact it would have should forbearance become necessary, was a feature of Mrs J's agreement which would (if she fell into difficulty) have a significant adverse effect on her in a way which she was unlikely to foresee.

And, in these circumstances, the implications of adding interest in this way ought to have been adequately explained to Mrs J so that she was in a position to assess whether her agreement was adapted to her needs and financial situation – as per CONC 4.5.2R and make an informed decision whether to proceed. Having looked through the information Oplo has provided, I can't see that it even explained that all the interest would be added at the outset let alone the potential implications of this.

Oplo's actions here effectively saw the arrears, which were continuing to accrue as a result of the reduced payments, being deferred. Yet if Mrs J continued making repayments at the £129 a month or so initially agreed under the debt management plan, it would take 120 months to clear the £15,429.19 balance when the repayment plan started. Given this was double the length of the original term, I'm satisfied that this made the term for Mrs J's repayments unreasonably excessive.

So I'm satisfied that there are a number of reasons why Oplo's failure to consider a refund or reduction in the unpaid interest, given what it knew about Mrs J's circumstances by the time it started accepting reduced payments through her debt management plan, wasn't in accordance with the rules and guidance set out in CONC 7 and its overarching PRIN 6 obligations.

To be clear, I'm not making a finding that a lender doesn't have the right to charge any interest as part of any forbearance measure. My finding here is that I would expect a lender to take into account the borrower's particular circumstances at the time it agrees to accept reduced payments from a customer - such as Oplo did with Mrs J here – when determining how much of the unpaid interest, if any, on a loan should be paid. I don't think it was fair and reasonable for Oplo to adopt a blanket approach of not applying a reduction, simply because all the interest was added at the start and before it had accrued.

In my view, Oplo's failure to consider a balance reduction (reflecting a refund of some of the unpaid interest) in circumstances where Mrs J was only able to make reduced payments, of less than half the contractual monthly repayment, meaning it would take ten years to clear the balance, wasn't fair and reasonable.

As this is the case, I'm satisfied that Oplo failed to act fairly and reasonably towards Mrs J. And as this led to Mrs J paying interest and charges, which I think she shouldn't have had to pay at a time when she was making reduced payments because she was experiencing difficulty, I'm satisfied that she lost out as a result of Oplo failing to act fairly and reasonably towards her. So Oplo needs to put things right.

Fair compensation – what Oplo needs to do to put things right for Mrs J

I've given careful thought to what Oplo should do to put things right for Mrs J. As I've explained earlier in this decision, there isn't an automatic requirement for a lender to waive all unpaid interest as part of any forbearance measure it puts in place. Nonetheless, I think that it was unfair for Oplo not to reduce the balance at all in 2017 and as it is now a number of years since then I have to decide how much of the unpaid interest should have been credited back to Mrs J's balance.

Mrs J's statement of account shows what proportion of her payments were going towards interest and what proportion of the payments were going towards reducing the principal balance. Our adjudicator thought that it was fair and reasonable for Oplo to retain the total amount of the payments that were going towards interest from the payments Mrs J actually made.

She also thought it was fair and reasonable for Oplo to retain the amount of the payments that would have gone towards interest had Mrs J made her payments from September 2017 to December 2017, because this was the earliest Oplo would have been able to default Mrs J's account. She thought all of the remaining unpaid interest – i.e. the interest already added but only due to be paid with a proportion of the repayments from January 2018 onwards should be refunded and used to reduce Mrs J's outstanding balance.

Given Mrs J's circumstances and weighing this against the challenge of trying to come up with a fair and reasonable interest reduction a number years later and in circumstances where this isn't an exact science, I think that the solution put forward is fair and reasonable. In my view, it strikes a reasonable balance between allowing Oplo to keep the interest that was paid as well as some of the unpaid interest, while also reflecting Mrs J's change of circumstances and Oplo's obligation to have exercised forbearance when she entered a debt management plan as a result.

As this is the case, I'm satisfied that Oplo should put things right for Mrs J in the way I set out below.

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mrs J's complaint for Oplo to put things right by:

- Reworking Mrs J's balance so that the total amount of the monthly payments that would have gone towards interest from January 2018 onwards, according to the original amortisation schedule, if these payments had been made, are removed.

AND

- Backdating any default it has recorded or may wish to record on Mrs J's credit file to January 2018.

I understand that Oplo sold the outstanding balance on Mrs J's account to a third-party debt purchaser. So it will need to either buy the account back from the third-party concerned and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Mrs J an amount to ensure that it fully complies with this direction. It is for Oplo to decide which of these options to take.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 24 February 2023.

Jeshen Narayanan
Ombudsman