

The complaint

Ms D says Oplo PL Ltd, trading as 1st Stop Personal Loans, irresponsibly lent to her.

What happened

Ms D took out a 30-month instalment loan from Oplo on 14 February 2018. It was for £3,000 and the monthly repayments were £137.20. The total repayable was £4,116.

Ms D says Oplo did not complete adequate checks before lending to her. She had a gambling addiction and relied on payday loans – proper checks would have shown this. She had problems making her repayments within a few months and this lending has impacted her mental health. Ms D asks for the interest and charges she has paid to be refunded, with statutory interest, and for any negative information to be removed from her credit file.

Our investigator said Oplo was wrong to lend to Ms D. He concluded the lender's checks were not proportionate and had Oplo had completed better checks it would have realised it was most likely the loan would not be sustainably affordable for Ms D. He set out what Oplo should do to put things right.

Oplo disagreed and asked for an ombudsman's review. In summary, it said the results of its initial checks did not show anything that should have triggered further checks or give it reason to doubt Ms D's explanation for recent borrowing. It maintains it made a fair lending decision based on the information it gathered.

I reached the same conclusion as the investigator, but planned to change how things must be put right. I therefore issued a provisional decision, an extract follows and forms part of this final decision. I asked both parties to send any comment by 14 February 2023.

An extract from my provisional decision

I can see Oplo asked for certain information from Ms D before it approved the loan. It asked for details of her income and employment. It used a third-party income verification service to check her salary and an extract from a bank statement to check her benefits. It estimated her likely living costs. It also checked her credit file to understand her existing monthly credit commitments, including her mortgage contribution, and credit history. It asked about the purpose of the loan which was home improvements. From these checks combined Oplo concluded the loan was affordable for Ms D and would leave her with £312.51 of monthly disposable income.

I'm not persuaded Oplo's checks were proportionate given the initial results. I say this as they showed Ms D was already spending around 30% of her income on unsecured consumer credit and was at her limit on her two credit cards. Whilst Ms D's active accounts were up-to-date Oplo could see she had struggled financially in the past as there was adverse information on her file and many payday loans. Oplo argues the defaults were historic; the credit cards were barely over their limit with no missed payments; and the payday loans were all settled at that time. This is accurate, but I am not saying these factors in isolation were a reason to decline Ms D's application. However I do think they should have

prompted Oplo to do more to get the assurances it needed that Ms D's financial pressures were firmly in the past. Ms D would need to be able to make her repayments sustainably for 30 months, so in the circumstances I think it ought to have completed a fuller financial review.

I have reviewed Ms D's bank statements from the months prior to this application. I am not saying Oplo had to do this, but it is a way for me to recreate what better checks would most likely have shown. Her statements show, consistent with her testimony, that she was spending a significant amount of her income on gambling (over £1,200 in December 2017 and £500 in January 2018). Had Oplo seen this in its checks I think it, as a responsible lender, would have concluded there was a risk Ms D would be unable to repay this loan without suffering financial harm.

What further persuades me that Oplo's lending decision was wrong is the amount of her income Ms D would need to spend ongoing to manage her unsecured credit commitments as this would rise to 37%. Oplo argues the FLA does not set an acceptable percentage, and this figure should not be looked at in isolation. Its affordability assessment showed Ms D would have over £300 disposable income. But had Oplo completed proportionate checks I think it would have had the context needed to see that in this case Ms D's finances were already under duress and that it was most likely this level of spend on credit would cause further detriment. And to meet its regulatory obligations Oplo had to consider this, not just the pounds and pence affordability. I note Ms D only managed to make the first four payments before falling into arrears.

It follows I think Oplo was wrong to give the loan to Ms D.

I haven't seen any evidence Oplo acted unfairly or unreasonably in some other way towards Ms D.

I then set out what Oplo would need to do to put things right if I went on to uphold Ms D's complaint.

Ms D replied saying she had no further information to add and was happy with the provisional decision.

Oplo replied maintaining its decision was fair. It said, in summary, Ms D's credit file showed her financial pressures were in the past and its checks (automated confirmation of income, national statistics for living costs and a credit check) were proportionate and showed the loan to be sustainably affordable. Ms D had also explained that a one-off unexpected cost was why she struggled after four payments. Finally, it said as Ms D had only repaid £2,408.80 of the £3,000 borrowed prior to the debt sale there would be no refund due if the complaint went on to be upheld.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

I have considered Oplo's additional comments carefully but they do not change my conclusion. I will explain why.

Oplo argues that its checks showed Ms D's financial instability was historic. But as I said I

think there were sufficient 'red flags' for it have done further checks so it could know with certainty this was the case. These flags were the proportion of her income she already needed to use to meet her unsecured credit commitments, the fact she was at her limit on her two credit cards and her history of using payday loans. Had the additional checks not shown any financial pressure I would have found Oplo's lending decision to be fair. Oplo argues my findings are subjective, but as it knows there is no set list of checks a lender has to complete. In assessing whether or not a lender's checks are proportionate, in addition to considering the nature of the borrowing and the circumstances of the applicant, we look at how the lender reacted to the information it gathered. And here I remain of the view that the initial checks revealed certain data that should have prompted Oplo to do more. And for the reasons set out above I find this would have led it, as a responsible lender, to make a different lending decision.

Finally, as Oplo itself concurs it cannot know definitively why Ms D struggled to maintain the loan repayments. I cannot therefore see that Oplo's point that Ms D said it was due to a one-off unplanned expense - whilst also accepting this may have been to mask the gambling - should have any bearing on the outcome here.

In the round, I think Oplo was wrong to give the loan to Ms D.

Putting things right

In my provisional decision I set out what Oplo would need to do. I said:

It's reasonable for Ms D to have repaid the capital amount that she borrowed as she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been given to her.

I understand Oplo has sold the outstanding balance of the loan to a third party, and it is now subject to a County Court Judgment (CCJ) after the new owner took court action. Ms D has asked that the County Court Judgment be set aside if we find the loan was given irresponsibly. I would make two comments in this regard. Firstly, the court action was not taken by Oplo, but by the new owner of the debt - Oplo sold the debt on 17 August 2022.

Secondly, irrespective of this, we do not have the powers to set aside a CCJ or to change the amount outstanding under a CCJ, or the reporting of it to the credit reference agencies. The court decided the judgment was appropriate and Ms D would need to have challenged that with the court.

So, taking into account these circumstances, to put things right Oplo should:

- *Calculate the total value of all interest and charges applied to the loan that Ms D paid to Oplo*
- *Refund this amount to Ms D with 8% simple interest calculated from the date of payment to the date of settlement**

Ms D can then use the refund to repay any debt still outstanding under the CCJ.

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

Oplo responded to say that if it followed my provisional decision, then Ms D wouldn't be due any refund. But, in the individual circumstances here, my decision is intended to ensure that Ms D is put in a situation where she's not unduly disadvantaged by Oplo's decision to lend when it was unaffordable. As a part of this, I don't think she should have to repay any

interest and charges applied to the loan and that these should be refunded to her directly. Ms D can then use those to reduce the outstanding balance, if she wishes.

In making this decision I've considered what's happened to the loan since Ms D took it out and the current position of the loan and the debt. In light of this, I think that Oplo should refund Ms D any interest and charges she paid whilst it was administering the loan to her directly, rather than using this amount to reduce the debt which is now subject to a CCJ - meaning we cannot order any change to the amount outstanding under it.

It follows I am not changing my instructions as to how Oplo must put things right.

My final decision

I am upholding Ms D's complaint. Oplo PL Ltd, trading as 1st Stop Personal Loans, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 22 March 2023.

Rebecca Connelley
Ombudsman