

The complaint

Mr N complains that Oplo PL Ltd, trading as Honeycomb Finance Ltd at the time, lent to him irresponsibly and without carrying out proper affordability checks.

What happened

In August 2018 Oplo approved a loan of £7,500 for Mr N, which was scheduled to be repaid at approximately £184 per month over a term of 48 months. The purpose of the loan is the subject of some dispute, but it may have been to consolidate some debt and meet the cost of some home repairs. When assessing the application, Oplo asked Mr N about his financial circumstances and carried out a credit check before approving the lending.

Aside from one returned direct debit, Mr N maintained the account well, and it was settled in full.

The investigator looked at the evidence and thought Oplo shouldn't have approved the lending for Mr N. 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 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 N 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 his 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 investigator thought that Oplo didn't do enough checks when assessing this application, as there were several indicators of potential concern around Mr N's level of indebtedness in

the information Oplo did gather. So she thought that proportionate checks in this instance would have involved Oplo gaining a more detailed understanding of Mr N's expenditure.

Given what Oplo knew about Mr N's financial circumstances from the information it did gather (namely the size of his overdraft), I think there could easily be an argument to say that it ought to have simply declined the application. However, it would also not have been wrong for Oplo to have carried out additional checks in an attempt to establish more definitively whether this borrowing could have been deemed to be affordable and sustainable for Mr N.

Oplo doesn't accept that, saying that, "*...there was no reasonable cause for us to have requested additional information from Mr [N] in support of his application.*" I don't agree. As a minimum, the extent of Mr N's overdraft, which was clear to Oplo, ought to have raised a definite flag around his ability to take on further borrowing which was compliant with the relevant rules in place at the time. Additionally, the fact that Mr N had defaulted on an account three years earlier should also have increased Oplo's curiosity about his full financial circumstances.

What would further checks have shown?

When considering this second question, our service has had the benefit of several of Mr N's bank statements from 2018 to review. I accept that there was and is no requirement on a lender to obtain any particular type of information: they are permitted to source and rely on a range of evidence when assessing affordability, and so Oplo could have opted to gather more information about Mr N's financial position in a range of ways. However, it didn't, and, in the absence of anything else provided, I'm happy to rely on the bank statements to demonstrate what Oplo would most likely have discovered if it had completed proportionate checks.

During the course of this investigation, there has been some disagreement between Oplo and the investigator as to the pounds and pence income and expenditure assessment completed and the amount of disposable income Mr N had to meet these repayments. Oplo says that Mr N, "*...should have been able to meet repayments out of his normal income without having to borrow to meet the repayments...*" However, this assertion entirely ignores the extent of Mr N's overdraft.

It is unnecessary for me to engage in a pounds and pence analysis of Mr N's circumstances because it is abundantly clear that he had no disposable income, and was entirely reliant on a large overdraft – the limit of which was some 60% higher than his monthly income. The bank statements show several key things, including that:

- he was never anywhere near being in credit, even on the day he received his monthly salary
- he usually struggled to stay within the agreed overdraft limit
- he was making payments to at least one debt management company
- he was apparently transacting with a pawnbroking firm

In summary, Mr N was very clearly dependent on borrowing simply to exist. Proportionate checks would have shown Oplo that there was frankly no prospect of him being able to meet the repayments, "*...out of his normal income...*", as he was already too indebted for that to be possible. It therefore follows that I uphold this complaint.

Putting things right

When he initially complained to us, Mr N said that he wanted the entire loan amount to be

refunded to him; along with compensation for distress and inconvenience; and the value of the overdraft mentioned above. He does not appear to have pursued that following the investigator's recommendation that Oplo put things right by refunding the interest and charges on the loan. However, for absolute clarity, I will explain what I am directing Oplo to do, and why.

Our well-established approach to such cases is to direct the business to refund the interest and charges to Mr N, as the best way of putting him back in the position he would have been in if the loan had never been granted. This is because Mr N has had and spent the £7,500 he borrowed, so the fairest approach in cases such as this is to ensure that the business who made a mistake doesn't profit from that mistake.

There could be circumstances under which I would direct the full balance of the debt to be written off to restore fairness. And potentially a further sum in recognition of distress and inconvenience. But those circumstances would be rare and exceptional. Mr N has offered no reason as to why that would be fair, and it is clear to me that his undoubted financial difficulties, and the impact they have had on him, were in no way limited to this loan. So the evidence in this case quite simply leads me to conclude that there is no reason to depart from our usual approach to redress in this instance.

The loan was settled in 2022. 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 N as though they had been repayments of the principal on the outstanding loan.

B) If this results in Mr N 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) Whilst I'm not aware that there is any, it must remove any adverse information recorded on Mr N's credit file in relation to this loan.

*HM Revenue & Customs requires Oplo to deduct tax from this interest. It should give Mr N 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 N to accept or reject my decision before 15 September 2023.

Siobhan McBride
Ombudsman