DRN-4222194

Complaint

Mr W has complained that Oplo PL Ltd ("Oplo") irresponsibly lent to him. He says he was struggling financially and the payments to this loan were unaffordable.

Background

Oplo provided Mr W with a loan in April 2018. The loan was for £8,000.00, had an APR of 27.45% and was due to be repaid in 60 monthly instalments of just over £230.

Mr W's complaint was reviewed by one of our adjudicators. He thought that proportionate checks would have shown Oplo that Mr W wasn't in a position to repay this loan at the time it lent to him. So he upheld Mr W's complaint. Oplo disagreed with our adjudicator's view. As Oplo disagreed, the complaint was passed to an ombudsman for a final decision.

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 set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr W's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr W's complaint. These two questions are:

- Did Oplo complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay his loan in a sustainable way?
    - If so, did it make a fair decision?
    - If not, would those checks have shown that Mr W would've been able to do so?
- Did Oplo act unfairly or unreasonably in some other way?

If I determine that Oplo didn't act fairly and reasonably in its dealing with Mr W and that he has lost out as a result, I will go on to consider what is fair compensation.

Did Oplo complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay his loan in a sustainable way?

The rules, regulations and good industry practice in place when Oplo lent to Mr W required it to carry out a proportionate assessment of whether he could afford to make his repayments. 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 sustainably would cause difficulties or adverse consequences *for Mr W*. In practice this meant that Oplo had to ensure that making the payments to the loan wouldn't cause Mr W undue difficulty or adverse consequences. In other words, it wasn't enough for Oplo to simply think about the likelihood of Mr W making payments, it had to consider the impact of any loan repayments on Mr W.

Checks also had to be "proportionate" to the specific circumstances of the 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.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer'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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time 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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Oplo's checks reasonable and proportionate?

Oplo has said that it completed an income and expenditure assessment with Mr W before lending to him. It also carried out a credit check to work out what Mr W's existing credit commitments were too.

I'm mindful that the credit check carried out showed that Mr W already had a significant amount of existing debt. It also showed that Mr W had had difficulties keeping within the limits of his revolving credit accounts. Oplo says that Mr W was only ever over his limit by small amounts. But given the amount of times this had happened and it was across more than one account, I think that Oplo ought to have been concerned by this.

Oplo may also argue that this assessment fails to take into account that the recorded purpose of this loan was debt consolidation and therefore it was reasonably entitled to believe that Mr W's monthly repayments to credit would reduce. But Mr W wasn't going to be able to clear all of his balances with this loan.

And while this in itself doesn't mean that it was unreasonable to proceed with a consolidation loan, it's unclear to me how or what was going to be consolidated and more crucially how this loan was going to improve Mr W's outgoings going forward. So I don't think that it was reasonable for Oplo to accept the recorded loan purpose at face value in these circumstances.

Given what the information obtained showed, I would have expected Oplo to have taken further steps to verify Mr W's expenditure to ensure he had the necessary funds to repay the loan it was providing. After all Mr W's indebtedness and apparent inability to keep within his credit limits did suggest that there was a realistic possibility Mr W was having difficulty managing his money.

In reaching this conclusion, I've kept in mind that this was the first and only loan Oplo provided to Mr W. But bearing in mind the amount being lent, the loan term and the total cost, as well as what I've highlighted about the information gathered, I do think that it would have been fair, reasonable and proportionate to have carried out further checks before proceeding in this instance.

As Oplo proceeded with providing this loan without taking further steps to verify Mr W's expenditure, I'm satisfied that the checks Oplo carried out before lending weren't reasonable and proportionate in this instance.

Would reasonable and proportionate checks have indicated to Oplo that Mr W would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told Oplo that Mr W would've been unable to sustainably repay this loan.

Mr W has now provided us with evidence of his financial circumstances at the time he applied for this loan. I know that Oplo has questioned our us of this information. Of course, I accept different checks might show different things. And just because something shows up in the information Mr W has provided, it doesn't mean it would have shown up in any checks Oplo might have carried out.

But in the absence of anything else from Oplo showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on what this information says as an indication of what Mr W's financial circumstances were more likely than not to have been at the time.

It's also important to note that Oplo was required to establish whether Mr W could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on a strict pounds and pence basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information available in light of all of this.

The information provided shows that the reason for Mr W's indebtedness and apparent inability to manage his money was because he was spending significant amounts of money gambling. And Mr W's ability to make the repayments to this loan would in large part be dependent on his success as a gambler. Given this, it is apparent to me that Mr W was unlikely to have been able to repay this loan without borrowing further or experiencing financial difficulty.

As this is the case, I think that reasonable and proportionate checks would more likely than not have demonstrated that Mr W was unlikely to have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Oplo to the fact that Mr W would not be able to sustainably make the repayments to this loan.

So I'm satisfied that Oplo's failure to carry out reasonable and proportionate checks in this instance resulted in it failing to act fairly and reasonably towards Mr W.

Did Oplo act unfairly or unreasonably towards Mr W in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Oplo acted unfairly or unreasonably towards Mr W in some other way.

So I find that Oplo didn't act unfairly or unreasonably towards Mr W in some other way.

Did Mr W lose out as a result of Oplo unfairly lending to him?

Mr W ended up paying interest, fees and charges on a loan he shouldn't have been provided with. So I'm satisfied that Mr W lost out because of what Oplo did wrong and that it should put things right.

Fair compensation – what Oplo needs to do to put things right for Mr W

Having considered everything, I think it is fair and reasonable for Oplo to put things right for Mr W in the following way:

- refund all the interest, fees and charges Mr W paid on his loan;
- add interest at 8% per year simple on any refunded interest, fees, and charges from the date they were paid by Mr W to the date the complaint is settled†;
- remove any adverse information recorded on Mr W's credit file as a result of this loan.

† HM Revenue & Customs requires Oplo to take off tax from this interest. Oplo must give Mr W a certificate showing how much tax it has taken off if he asks for one.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 August 2023.

Jeshen Narayanan
Ombudsman