DRN-4256610

The complaint

Mr D complains that the loan he had from Oplo PL Ltd was unaffordable to him.

What happened

Mr D had one loan from Oplo in July 2022 as follows:

Loan	Date	Amount	Term	Monthly Repayment	Due	Repaid
1	12 Jul 2022	£15,000	60m	£425.93	1 July 2027	Sold

Mr D says Oplo didn't carry out appropriate checks and the lending caused him to be in further financial difficulty. He says Oplo didn't even request bank statements and he is now behind with priority bills.

Oplo says it checked Mr D's credit file and conducted an income and expenditure assessment using Mr D's declared income, which it had verified. It says he had sufficient disposable income and there was nothing to suggest the loan was unsustainable, especially as some of the money was being used to repay existing credit commitments. Oplo adds that all repayments were initially made on time, and it had not been informed that Mr D was in financial difficulties until his complaint.

Our investigator recommended the complaint should be upheld. She was not satisfied that Oplo had carried out proportionate checks and said that, had it done so, it would have found that Mr D already had a negative monthly disposable income so further lending was unaffordable. Our investigator recommended that interest should be refunded on the loan and any negative information should be removed from Mr D's credit file once the outstanding balance had been repaid.

Mr D responded to say that Oplo had now applied a default to his account and that it was unfair for this to stay on there until the capital had been repaid.

Oplo responded to say, in summary, that:

- It did not agree that Mr D had an unusual level of credit commitments and three new accounts in six months did not suggest he was in a cycle of borrowing;
- Its calculations showed a monthly disposable income of £935, and Mr D had no adverse information on his credit file;
- It was unsure why using Office for National Statistics (ONS) data to estimate household expenditure was inappropriate;

- The calculated level of disposable income was above the level that this service considered acceptable in another case;
- Mr D's income was verified via a third-party verification check and, even taking the slightly lower figure found in his bank statements, the loan remained affordable;
- It was entitled to rely on the information provided by Mr D, including his testimony during the calls prior to lending;

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.

I need to take into account the relevant rules, guidance and good industry practice.

Bearing this in mind, in coming to a decision on Mr D's case, I have considered the following:

- Did Oplo complete reasonable and proportionate checks when assessing Mr D's loan application to satisfy itself that he'd be able to repay the loan in a sustainable way?
    - If not, what would reasonable and proportionate checks have shown?
- Did Oplo make a fair lending decision?
- Did Oplo act unfairly or unreasonably in some other way?

When Mr D applied for the loan, Oplo verified his declared income, checked his credit file and asked about the purpose of the loan. These checks showed:

- Mr D said the purpose of the loan was partly debt consolidation and partly to invest in a work incentive scheme;
    - Oplo agreed to directly consolidate one loan with a balance of £2,835 and repayments of £123;
    - Mr D agreed to also pay off two further loans with a combined balance of £5,097 and repayments of £222;
    - Mr D said he'd use further funds to reduce the balances on his credit cards;
- His declared income of £4,407 monthly was verified;
- Mortgage payments of £1,334 monthly;
- 11 other active credit accounts:
    - Seven loans with a total balance of £58,753 and combined payments of £1,340 – this included a £7,500 loan that was taken out just a month earlier;
    - Three credit cards with a balance of £7,423 and an £8,440 combined limit;
    - An overdraft of £1,895 with a limit of £2,000;
- Mr D's credit record showed no arrears, defaults or County Court Judgements;
- The ONS estimate for other monthly expenditure was £659.

However, I'm not satisfied that these checks went far enough in the circumstances. I say that because:

- The loan was for a term of 60 months and Oplo needed to be satisfied the repayments were sustainable for that period;

- Mr D was already committed to spending almost 37% of his declared income on credit repayments and this increased following the new loan:
    - To almost 44% only taking into account the loan that was directly consolidated;
    - To over 38% assuming Mr D used some of the money to repay the additional two loans;
- Given the large proportion of his declared income that was committed to credit repayments each month (up to 74% including his mortgage), I consider Oplo needed to fully understand his other regular expenditure, rather than using ONS data.

Although I've calculated that Mr D had almost £800 of disposable income before the lending, using Oplo's ONS expenditure estimate, this reduced to less than £500 with the new loan (taking into account the direct loan consolidation only). So, I've had a look at Mr D's bank statements from the time as a reasonable proxy for what proportionate checks may have shown. I can see that:

- Mr D's income was actually £3,877 per month in the lead up to the loan;
- Mr D took out an additional loan at the end of April 2022 which was not reflected in his credit file – the repayments on that were £87 per month;
- Mobile phone and television costs were around £460 per month;
- Mr D was making regular £350 payments to the council;
- Utilities, including water, cost Mr D about £300 per month;
- Insurances totalled about £90;
- There were other regular payments of over £100, excluding food and travel;

As Mr D's income was £500 less than he'd declared, his credit costs were £87 higher than calculated, and his other regular expenditure was significantly more than the £659 estimate, it is clear that Mr D could not afford the new lending, even with the debt consolidation. Indeed, Mr D has also forwarded later credit files that show he did not use any of the loan money to repay the two further loans and, instead, he took out another loan with the same company just three months after repaying the directly consolidated loan.

In summary, I find that, including his mortgage, Mr D needed to pay over 86% of his income towards his borrowing – a situation that was clearly not sustainable for the 60-month term of the loan.

Finally, I note that Mr D has said it is unfair that the default will stay on his account until the balance of the loan has been repaid as he feels it was unfairly applied. He has now raised a separate complaint about that so I will not address that here.

In conclusion, I'm satisfied that proportionate checks would have shown Mr D was already struggling financially. So, I find it was irresponsible to have approved the loan, given what Oplo should have known about Mr D's financial circumstances, although I can't see Oplo acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint. Oplo PL Ltd should buy the loan back if it is able to do so and then take the following steps. If it is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below:

- Add up the total amount of money Mr D received as a result of having been given the loan. The repayments Mr D made should be deducted from this amount.
    - If this results in Mr D having paid more than he received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement);*
    - If any capital balance remains outstanding, then Oplo should attempt to arrange an affordable and suitable payment plan with Mr D;
- Remove any adverse information recorded on Mr D's credit file in relation to the loan once any outstanding balance has been repaid.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 September 2023.

Amanda Williams
Ombudsman