DRN-4293740

The complaint

Mr H, through a representative, says Oplo PL Ltd irresponsibly lent to him.

What happened

Mr H took out a loan for £10,000 over 54 months on 5 July 2019. The monthly repayments were £323.19 and the total repayable was £17,452.26.

Mr H says proper checks were not completed and his already poor financial situation has been made worse. Oplo says its checks were thorough and showed Mr H could sustainably afford the loan. He has made all his repayments on time.

Our investigator upheld Mr H's complaint. He said Oplo did not carry out proportionate checks and had it done so it would have realised Mr H could not afford this loan.

Oplo disagreed and asked for an ombudsman's review. It said, in summary, the loan was for debt consolidation would leave Mr H in a better position each month. Nothing in its checks suggested more information was needed. A default on his credit file was historic. He has not contacted it to say he is struggling to repay the loan at any time. It also referenced two other similar, and therefore it says relevant, decisions where we have not upheld the complaints.

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.

The rules and regulations when Oplo lent to Mr H required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check. The checks also had to be borrower-focused. So Oplo had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr H. In other words, it wasn't enough for Oplo to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr H.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for. 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 repayments to credit from a lower level of income);

- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);

- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

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 kept all of this in mind when thinking about whether Oplo did what it needed to before agreeing to lend to Mr H.

So to reach my conclusion I have considered the following questions:

- did Oplo complete reasonable and proportionate checks when assessing Mr H's loan application to satisfy itself that he would 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?

I can see Oplo asked for certain information from Mr H before it approved the loan. It asked for details of his income and a copy of a payslip to check his declaration. It checked his employer. It estimated his living costs using national statistics. It also checked his credit file to understand his existing monthly credit commitments and credit history. It asked about the purpose of the loan which Mr H said was to repay all his existing cards and one loan, as well as some of his partner's debts. From these checks combined Oplo concluded the loan was affordable for Mr H and would leave him with £286.31 of monthly disposable income.

Given the value and term of the loan, and the initial results, I don't think these checks were proportionate. It could see he had opened five new credit accounts in the last six months and made 24 minimum payments in the last 12 months. He was over his card limits with his total credit utilisation at 109%. So there was evidence of financial pressure. I note the loan was for debt consolidation but even taking that into account Mr H would need to spend around 34% of his income each month on his credit commitments – and he was on a relatively low income.

Oplo counters this concern with two main arguments. It says its affordability assessment showed Mr H would still have around £286 disposable income each month which was a reasonable amount. But it was required to do more than check the pounds and pence affordability for Mr H. It needed to be sure he would be able to make his repayments sustainably over the term of the loan – so without borrowing to repay, or suffering any other adverse financial consequences. And I can't see it got those reassurances from its checks. Oplo's second defence is that Mr H would in fact have had more disposable income each month as he was using this loan to settle other debts. But again it needed to consider the full impact of its lending on Mr H. He was taking on £17,452.26 of debt to settle £7,547 of existing debt. Looking at the credit card providers I don't think it was fair for Oplo to assume this would be financially beneficially to Mr H. They were mainstream providers and likely to be charging a lower or comparable interest rate. So in the round I think Oplo needed to carry out a fuller financial review to ensure its loan would not cause any adverse financial consequences for Mr H.

I have therefore looked at Mr H's bank statements from the months prior to his application. I am not saying Oplo had to do exactly this but it is a reliable way for me to understand what better checks would most likely have shown Oplo. They show that Mr H did not have the disposable income it had calculated, nor would he after his debt consolidation. And they show he was already reliant on significant transfers in from another account he held to manage his outgoings. It follows had Oplo carried out proportionate checks I think it would not, as a responsible lender, have decided to lend.

Oplo has referenced findings from other decisions but I can only comment here on the merits of this case. Every irresponsible lending decision will vary based on the individual circumstances of each case.

I have seen no evidence Oplo treated Mr H unfairly in some other way.

Putting things right

It is fair that Mr H repay the capital he borrowed as he has had the benefit of that money. But he should not be charged interest and fees on a loan that was lent irresponsibly.

So Oplo should:

1. Refund all the interest and charges Mr H has paid to date.

2. If the borrowing is still in place, Oplo should reduce the outstanding capital balance by the amount calculated at step 1.

3. If, after step 2, there remains an outstanding capital balance, Oplo should ensure that it isn't subject to any historic or future interest and/or charges. If Mr H is struggling to make his repayments Oplo should work with him to agree an affordable repayment plan.

4. But if step 2 leads to a positive balance, the amount in question should be given back to Mr H and 8% simple interest* should be added to the surplus.

5. Remove any adverse information recorded on Mr H credit file once he has repaid any outstanding capital balance.

*HM Revenue & Customs may require Oplo to take off tax from this interest. If it does, Oplo must give Mr H a certificate showing how much tax it's taken off if he asks for one.

My final decision

I am upholding Mr H's complaint. Oplo PL Ltd must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 November 2023.

Rebecca Connelley
Ombudsman