

The complaint

Miss U complains that Tandem Motor Finance Limited trading as Oplo didn't do enough before agreeing to lend to her as the loan wasn't affordable.

What happened

In March 2018, Miss U acquired a car when she entered into a Hire Purchase agreement with Oplo. The cash price of the car was £10,916. Miss U paid a £100 deposit, after interest and charges were added the total repayable amount was £20,139.80. Repayable in instalments of £332.75 over 60 months.

Miss U said Oplo didn't do enough to check she could afford the loan given her existing commitments and financial situation. She complained to Oplo.

Oplo said they used an automated process to make sure they lent responsibly based on personal circumstances, employment status, salary, credit score, credit history, insolvency, overall active credit, County Court Judgments (CCJs) and debt collection searches. If the process showed no concerns the application was automatically approved. They said the searches raised some concerns, so a manual review was done on Miss U's application. They said they'd verified Miss U's income and her credit file showed a stable financial position. They said their checks showed that Miss U would be able to sustain the repayments. They also said Miss U hadn't raised any concerns about difficulties in meeting the monthly repayment and had returned the car as she no longer needed it for work. The agreement ended in November 2020. Miss U wasn't happy with Oplo's response and referred her complaint to us.

Our investigator said the checks carried out by Oplo were reasonable and proportionate. But that they hadn't made a fair lending decision as Miss U's disposable income was insufficient for her to sustain the repayments. He said Oplo should:

- Refund the deposit, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Calculate how much Miss U has paid in total and deduct £5,682.61 for fair usage. If Miss U has paid more than the fair usage figure, Oplo should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Remove any adverse information recorded on Miss U's credit file regarding the agreement.

Oplo didn't agree they said the lending decision was fair. They asked for an ombudsman to decide.

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 I'm upholding this complaint as I don't think Oplo made a fair lending decision. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Oplo complete reasonable and proportionate checks to satisfy themselves that Miss U would be able to repay the credit in a sustainable way?

a. if so, did Oplo make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Miss U could sustainably repay the borrowing?

2. Did Oplo act unfairly or unreasonably in some other way?

The Consumer Credit Conduct of Business sourcebook (CONC) requires Oplo to carry out a reasonable assessment of whether Miss U could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused", meaning Oplo need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss U. Basically it's not enough for Oplo to only think about the likelihood of Miss U being able to pay them back (credit risk) they must also consider the impact of repayment on Miss U herself (affordability risk).

Oplo says they carried out a manual review of Miss U's financial situation rather than basing their decision on their automated process. They reviewed Miss U's credit report which they said showed that Miss U had a good credit record with no defaults or adverse marking on her credit file or CCJ's. I've also seen that Oplo obtained confirmation about Miss U's pay by way of a payslip. So, I agree with our investigator that Oplo carried out reasonable and proportionate checks.

I've now considered based on the information Oplo saw whether they made a fair lending decision.

Oplo assessed Miss U as having an income of £2,268 inclusive of salary and benefits. They assessed her monthly outgoings for day to day living costs and credit commitments to be £1,898. This meant after the new repayment of £332.75 was taken into account Miss U had a disposable income of around £37. I can see a note was added to the assessment that read: "*customer has free cash but in red zone*". But Oplo decided that this was sufficient for Miss U after all commitments and living expenses were taken into account for her to sustain her repayments.

But I don't consider that given her circumstances and having a dependent child that a disposable income of £37 was sufficient. It's clear from the note that this amount was considered low by Oplo as it was in the "*red zone*". And it's below the amount we'd consider to be a fair and reasonable disposable income amount for a consumer to be able to sustain their repayments.

I've also considered the credit report seen by Oplo at the time of the lending. While Miss U was maintaining her repayments, I can see that in the previous six months she'd opened seven new accounts, some of which appear to be short term lending borrowed against her income. I can also see Miss U was over the credit limit for her credit card and had made two cash advances from her credit card account within a couple of months of her agreement with Oplo. I think the credit report showed Miss U was maintaining her commitments through further borrowing, and that she was showing signs that she was struggling financially. And by Oplo agreeing to the lending this had increased her indebtedness further.

So taking all of the above into account I don't consider Oplo made a fair decision in lending to Miss U based on the information they had.

Putting things right

As I don't think Oplo ought to have approved the lending, they should therefore refund all the payments Miss U has made, including any deposit. But based on the information we have, Miss U did have use of the car for around 31 months before she returned it so I think it's fair she pays for that use. But I'm not persuaded the monthly repayments of £332.75 to be a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Miss U's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. I agree with our investigator that Miss U should pay £183.31 for each month she'd use of the car. This means Oplo can only ask her to repay a total of £5,682.61. Anything Miss U has paid over this amount should be treated as an overpayment.

My final decision

I uphold this complaint. And ask Tandem Motor Finance Limited trading as Oplo to:

- Refund all the payments Miss U has made, less £5,682.61 for fair usage.
- If Miss U has paid more than the fair usage figure, they should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss U's credit file regarding the agreement.

*HM Revenue & Customs requires Tandem Motor Finance Limited trading as Oplo to take off tax from this interest. Tandem Motor Finance Limited trading as Oplo must give Miss U a certificate showing how much tax it's taken off if Miss U asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss U to accept or reject my decision before 8 February 2024.

Anne Scarr
Ombudsman