DRN-5433527

The complaint

Mr R complains that Tandem Home Loans Ltd trading as Oplo HL Ltd gave him two secured loans that were unaffordable.

What happened

In March 2021, Mr R took out a secured loan (loan 1) with Oplo for £25,000 repayable over ten years. The loan had a fixed interest rate of 12.5% for five years, with payments of £421.75 a month followed by the standard variable rate (SVR). The purpose of the borrowing was to repay both secured and unsecured debt and for home improvements.

In December 2021, Mr R took out another secured loan (loan 2) with Oplo for £34,500 repayable over twelve years. The loan had a fixed rate of 13.4% for five years with payments of £489.82 a month, followed by the SVR. The purpose of the borrowing was to repay the existing Oplo loan and for home improvements.

Mr R said he was in an "awful place financially" and he took the loans to consolidate debts and improve his position. But he found the interest rate on the new loans was very high and he was unable to afford the repayments. He considers Oplo did not carry out sufficiently thorough checks before lending to him.

I issued a provisional decision proposing to uphold the complaint in part. My provisional findings, which form part of this decision, were:

<u>*Rules*</u>

The relevant rules in this case are the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). I must take those rules, amongst other things, into account in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. MCOB 11.6 covers responsible lending. Its requirements for lenders include:

- *Before agreeing a mortgage, a lender must assess whether a customer will be able to pay the sums due under the mortgage and be able to demonstrate the mortgage is affordable.*

- *A lender must take full account of the net income of a customer, their committed expenditure, and the basic essential expenditure and basic quality-of-living costs of the customer's household.*

- *A lender may generally rely on any evidence of income or information on expenditure provided by a customer unless, taking a common-sense view, it has reason to doubt the evidence or information. A lender must have evidence of income and take reasonable steps to obtain details of a customer's committed expenditure. A lender can either obtain details of a customer's expenditure or use statistical data.*

- *If a lender is or should reasonably be aware from information obtained during the application process that there will, or are likely to, be future changes to the income and* *expenditure of the customer during the term of the mortgage, the lender must take them into account when assessing affordability.*

- *A lender must take account of the impact of likely future interest rate increases on affordability by applying a stress test. The lender must have regard to the prevailing Financial Policy Committee recommendation on interest rate stress-tests, which at the time was 3%. This applies to all regulated mortgage contracts, not just first charge mortgages. A second or subsequent charge lender must also apply any stress test to the first and any subsequent charge loans as well as its own lending.*

<u>Income</u>

For both loan 1 and 2 it was reasonable for Oplo to use the income figures it did to assess affordability. They were reasonable and supported by Mr R's payslips.

Loan 1

Oplo recorded Mr R's income as £2,392.84 a month.

Loan 2

Oplo recoded Mr R's income as £2,914.06 a month.

<u>Expenditure</u>

Loan 1

Oplo recorded expenditure for Mr R of £1,578.98 a month, including payments to secured debt. household and day-to-day expenditure. It said it used ONS figures for household expenditure and living costs, unless Mr R said they were higher. Mr R payments to debt that remained was £589 a month. So Oplo said his total expenditure was £2,167.98 a month – leaving £224.86 a month. After stress testing, Mr R was left with £170.47 a month.

Loan 2

Oplo recorded expenditure for Mr R of £1,637.57 a month, including payments to secured debt household and day-to-day expenditure. Again it used ONS figures for household expenditure and living costs, unless Mr R said they were higher. Mr R payments to debt that remained was £594.20. So Oplo said his total expenditure was £2,231.77 – leaving £682.29. I can't see that Oplo has shown that is stress tested the payment on Mr R's main mortgage. Oplo said after stress testing, Mr R would be left with £633.83.

<u>Credit file</u>

Loan 1

I don't consider the amount of unsecured debt that Mr R had or his payment history would have led any responsible lender to conclude that the borrowing was unsustainable. But Mr R had taken out another secured loan to consolidate debt in June 2020. He had also taken a number of other secured loans before that in April, June and November 2018 that had all been repaid.

Oplo was therefore aware that this was the fourth secured loan that Mr R had taken in under three years – and each time he'd increased the amount borrowed, from around £11,000 to

£25,000. Mr R's total secured debt would be £68,632 (£25,000 + £43,632 on mortgage) against a property value of £73,500. That is a loan-to-value (LTV) of 93%.

So not only did Mr R have a track record of taking out secured loans to repay unsecured debt, each time increasing the amount borrowed and paying the associated fees, it was reducing the amount of equity that he had. A responsible lender, acting reasonably would have reason to question whether that was sustainable. I consider it would have given a lender reason to doubt the information Mr R had given about his expenditure – to the extent that it should have verified his expenditure by obtaining bank statements.

Loan 2

The information on Mr R's credit file had not substantively changed since his application for loan 1. The debt he consolidated had been repaid and the balance of his mail order account had gone up slightly.

But Oplo knew that Mr R was taking out this loan only around nine months after loan 1 and increasing his debt further. The amount of secured debt went up to £74,669.71 (£34,500 + £40,169.71) against a property value of £76,500 – so a LTV of 98%. I consider Oplo ought to have verified his expenditure for the same reasons in loan 1.

<u>Summary</u>

Loan 1

I've found that Oplo had reason to doubt what Mr R had said about his expenditure and should have got his bank statements to verify his expenditure. The investigator said that the bank statements showed that Mr R's expenditure included outgoings not included in Oplo's expenditure calculations. I agree that Mr R's expenditure was higher than stated – for example the council tax was £34 a month higher and home insurance was around £30 a month higher. And it did not take into account tv packages of £47.50 and £7.99 a month or mobile phone costs of £130.

The spending on food and socialising is also higher than declared. I don't agree with the investigator regarding Mr R's travel costs. On average across three months he spent about £60 a month on fuel. It was reasonable to include motor insurance and AA in that figure – so his actual travel costs were around £40 a month more than declared.

Overall, I consider that if Oplo had checked Mr R's bank statements, it would have discovered that his expenditure was higher than stated – by at least £280. That meant that Mr R's outgoings were more than his income. And that does not take into account the additional spending on food and socialising.

On the other hand Mr R was saving £250 a month in a savings account and some of the spending was discretionary. But I consider a responsible lender acting reasonably would have had reason to doubt that was sustainable bearing in mind what it knew about Mr R's income and expenditure at the point it had granted the loan. So I agree that if Oplo had acted fairly and reasonably it would not have approved loan 1.

Loan 2

The investigator said Mr R's bank statements for the period before he took the loan showed that his expenditure was higher than the figures Oplo had used. She also said that it ought to have been apparent from Mr R's payslips that Mr R's outgoings for transport costs were higher than the figures Oplo used.

Looking at Mr R's bank statements, his council tax was £13.17 more than the figure used by Oplo, his home insurance was around £30 a month higher, his mobile phone costs were around £38 higher and his spending on tv packages was around £7 higher. I also accept that Mr R's spending on food and transport was higher than the figures used. But looking at the information we have about Mr R's income and expenditure, I consider that it would have been reasonable for Oplo to consider that loan 2 was affordable for Mr R had it considered his bank statements.

I accept that Mr R had increased his secured debt over a relatively short period. And that a responsible lender acting reasonably ought to have had concerns about the sustainability of that – and Oplo should have done more to verify Mr R's expenditure. But if it had done so it would have been reasonable to conclude that the loan was affordable. While there might come a point where a lender should not lend because of such concerns about sustainability, I don't think that threshold had been crossed in this case.

Financial difficulty

Looking at the evidence we have, I can't see that Oplo was on notice - or ought reasonably should have been – that Mr R was experiencing financial difficulty. So I can't see there was anything it should have done to help Mr R in the circumstances.

Putting things right

I've found that if Oplo had acted fairly and reasonably it would not have approved loan 1. Oplo should therefore remove all interest, fees and charges that were applied in respect of loan 1. It should then apply all of the payments that Mr R made to loan 1 to the remaining capital balance of the loan.

The proceeds of loan 2 were used to repay loan 1. Obviously the amount Mr R needed to borrow on loan 2 would have been lower had he not paid any interest, fees or charges and all payments had been made to the capital balance. And when Mr R refinanced loan 2, the amount needed to repay it would also have been lower.

I propose that Oplo should:

- *a) Add up the total amount it lent to Mr R in loan 1 – less any interest, fees and charges*
- *b) Deduct all of the payments Mr R made to loan 1 from the amount above.*
- *c) Work out the difference between the revised balance for loan 1 following the above recalculation in a) and the amount that was refinanced to loan 2.*
- *d) Rework loan 2 as if Mr R had only refinanced the lower amount in c) above.*
- *e) Repay Mr R the difference between the payments he made to loan 2 and the payments he would have paid had the loan been rescheduled as in d) .*
- *f) Pay interest at 8% simple per year on the amount in e) from the date Mr R made each payment to date of settlement.*
- *g) Work out what the balance of loan 2 would have been on the date it was repaid had it been rescheduled in line with d) above.*
- *h) Pay interest on the difference between the amount Mr R paid to redeem loan 2 and what he would have paid in g) at 4.8% calculated daily from the date loan 2 was repaid until date of settlement. Mr R has given us evidence that is the interest rate on the mortgage he used to repay loan 2.*

Mr R accepted my provisional conclusions. Oplo did not. It said it refereed back to the reasons it gave for not agreeing with the investigator. It also added:

- There is no evidence that Mr R had repeat borrowing for unsecured debt. He'd taken out another secured loan around six months prior to loan 1. But Oplo questioned that and Mr R said he settled two other loans and obtained abetter interest rate.

- For loan 1, the year to date pay it used was in fact £101. That increased the free cash to £324.

- Transport costs allow for petrol, insurance, maintenance etc. If Mr R was spending on average £60 a month that allows £86 for insurance/petrol. Additional costs were not disclosed to the broker.

- TV and mobile costs can be reduced. Mr R's credit file does not suggest multiple communication accounts and nothing suggests that it should have doubted the information on the credit file.

- It disputes any claim of irresponsible 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.

Oplo said it had no reason to consider that the previous secured loans were taken to repay unsecured debt. It knew that the proceeds of loan 1 were to be used in part to repay unsecured debt. Mr R told it that the previous secured loan taken out in June 2020 had been taken to repay car finance and a personal loan.

It does not appear that Oplo asked about the purpose of the secured loans taken out in April, June and November 2018. But Mr R's credit file shows that repaid other debt in June/July 2018 including a credit card with a balance of over £2,000. And that in November/December 2018 Mr R repaid at least two unsecured loans.

From the information on Mr R's credit file, it seems likely that Mr R used the proceeds of the secured loans in June and November 2018 to repay unsecured debt. It is not clear how else he could have raised the necessary funds to repay those debts at that time. A responsible lender would have asked about that. But without any explanation it seems more likely than not that at least some of the proceeds of the June and November 2018 secured loans to repay unsecured debt.

Even if that is not correct then, Oplo still knew that loan 1 was at least the second secured loan Mr R had applied for in around nine months where he was consolidating unsecured debt. And that each of the other times Mr R took out a secured loan he increased the loan-to-value and had to pay fees to do so – likely a broker and a lender fee. It is not unusual for such fees to be around the amount applied for loan 1 – so over £3,500.

Bearing in mind the conclusions, Oplo reached about Mr R's expenditure, it is not clear why he would need to resort to so many expensive debt consolidation exercises in such a short space of time. And taking into account the potential for harm to Mr R from both the loan-to-value increasing and repeated fees I consider a responsible lender acting reasonably would have taken additional steps to verify Mr R's income such as getting bank statements,

For loan 1 Oplo recorded Mr R's income as £2,392.84 a month. I think that was reasonable. While looking at Mr R's year-to-date figures produced an average income of £2,434.91, it's clear that was in part made up of overtime. I don't consider Oplo have shown that it was reasonable to take into account the higher figure when assessing whether loan 1 was affordable and sustainable.

I would clarify that the evidence showed that Mr R's travel costs including petrol, AA and motor insurance were around £40 more than the £145 that had been declared to Oplo.

I accept that Mr R *might* have been able to reduce some costs. But his bank statements from the time show that the level of spending across various categories was consistently more than the figures used by Oplo – enough to mean that Mr R's expenditure exceeded his income. There was no evidence that Mr R would change his pattern of spending That could account – at least in part – for his reliance on repeat debt consolidation exercises.

Overall, I see no reason to reach a different outcome than I did in my provisional decision. In view of all of the information available to Oplo for loan 1 it ought to have verified Mr R's income. If it had done so, taken that information into account and acted reasonably, then it would have declined the application for loan 1. There was sufficient doubt that it was affordable or sustainable. Therefore, in all the circumstances, I consider Oplo did not act fairly or reasonably when it gave Mr R loan 1.

Both parties have accepted my conclusions for loan 2, so I see no reason to reach a different conclusion than I did in my provisional decision.

I've found that if Oplo had acted fairly and reasonably it would not have approved loan 1. Oplo should therefore remove all interest, fees and charges that were applied in respect of loan 1. That would not include the broker fee. Mr R would need to bring a complaint against the broker if he considers the advice it gave him was wrong. It should then apply all of the payments that Mr R made to loan 1 to the remaining capital balance of the loan.

The proceeds of loan 2 were used to repay loan 1. The amount Mr R needed to borrow on loan 2 would have been lower had he not paid any interest, fees or charges and all payments had been made to the capital balance for loan 1. And when Mr R refinanced loan 2, the amount needed to repay it would also have been lower.

My final decision

My final decision is that Tandem Home Loans Ltd trading as Oplo HL Ltd should:

a) Add up the total amount it lent to Mr R in loan 1 – less any interest, fees and charges (apart from the broker fee).
b) Deduct all of the payments Mr R made to loan 1 from the amount above.
c) Work out the difference between what the revised balance for loan 1 would have been at the time it was repaid following the above recalculation in a) and the amount that was actually refinanced to loan 2.
d) Rework loan 2 as if Mr R had only refinanced the lower amount in c) above.
e) Repay Mr R the difference between the payments he made to loan 2 and the payments he would have paid had the loan been rescheduled as in d)
f) Pay interest at 8% simple per year * on the amount in e) from the date Mr R made each payment to date of settlement.
g) Work out what the balance of loan 2 would have been on the date it was repaid had it been rescheduled in line with d) above.
i) Pay interest on the difference between the amount Mr R paid to redeem loan 2 and what he would have paid in g) at 4.8% calculated daily from the date loan 2 was repaid until date of settlement. Mr R has given us evidence that is the interest rate on the mortgage he used to repay loan 2.

** Oplo may deduct income tax from the 8% interest element of my award, as required by*

HMRC.But it should tell Mr R what it has deducted so he can reclaim the tax if he's entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 April 2025.

Ken Rose
Ombudsman