DRN-3386104

The complaint

Mr and Mrs M complain that Oplo HL Ltd (then trading as 1st Stop Home Loans Limited) was irresponsible to lend to them.

What happened

Mr and Mrs M took out a loan of £10,000 with Oplo in early 2015. They told Oplo they intended to use the loan to repay mortgage arrears and unsecured debts and for repairs and updates to their home. The loan was secured by a third-ranking charge on their house.

Mr and Mrs M say Oplo didn't value their property before offering the loan. They say it didn't verify their expenditure before lending. Mr M says Oplo should have been alerted to a problem by their poor credit score, credit commitments, arrears and gambling payments in his bank statement. Mr and Mrs M say the loan wasn't affordable and fell into arrears almost immediately.

I sent provisional decisions to the parties saying Oplo should have been alerted to the risk that further borrowing wasn't affordable and sustainable and could be harmful to Mr and Mrs M. They'd had financial problems over many years and continued to struggle with their debts. Mr and Mrs M had mortgage arrears, defaults and made use of short-term debt. While Oplo said its affordability calculation showed Mr and Mrs M had disposable income, I didn't think it had done enough to establish that the loan was actually affordable and sustainable. The bank statements provided to Oplo showed evidence of gambling. Mr M's bank statements were incomplete, so didn't provide a full picture of Mr and Mrs M's outgoings and credit commitments.

I said Oplo should refund all interest and charges applied to the loan, with 8% interest, and adjust Mr and Mrs M's credit file.

Oplo didn't agree. It sent detailed comments, which I've taken into account when reaching my decision. Oplo said it doesn't agree that it lent irresponsibly to Mr and Mrs M. It said as a gesture of goodwill and in recognition of the discrepancies with Mr M's bank statement which it should have noticed, it offered to write off the remaining balance of about £4,600. Mr and Mrs M didn't accept the offer.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr and Mrs M were in a difficult financial position when they applied for a loan with Oplo. They told Oplo they intended to use the loan funds to clear their mortgage arrears, repay payday loans, bring a credit card balance within its limit, repair their boiler and update their bathroom.

Mr and Mrs M told Oplo they'd fallen into financial hardship while helping a family member whose child died. This must have been an extremely difficult and upsetting time, and I'm very sorry for what Mr and Mrs M and their family had to deal with.

One the concerns Mr and Mrs M raised was that Oplo didn't value the property. They said that with the mortgage and their second charge loan there was no equity left to secure the Oplo loan. Oplo did value the property. It was for Oplo to assess whether the property (with the existing charges) was good security for its loan.

Mr and Mrs M also said that the loan wasn't affordable. They said Oplo should have known this from their poor credit score, credit commitments, arrears and the gambling payments in Mr M's bank statement. I agree – and I've explained why below.

What did Oplo need to do before lending?

Regulations in place at that time said that before offering the loan to Mr and Mrs M, Oplo had to assess the potential for loan repayments to adversely impact their financial situation, taking into account the information it was aware of. It had to consider sufficient information to make a reasonable assessment of this. The scope of its checks had to be proportionate, depending on a number of factors including the amount, type and cost of the loan, the customers financial position, their existing credit commitments and their credit history, including any indications they are or have experienced financial difficulties.

The regulations said the types and sources of information could include evidence of income and expenditure, credit scores and reports, and information provided by the customer. The regulations said a high level of scrutiny is expected where a loan will be secured by a second or subsequent charge on a customer's home.

The affordability assessment

Oplo carried out affordability checks, which included verifying Mr and Mrs M's income and (to an extent) their expenditure and carrying out a credit check. The results of its affordability checks appeared to show that the loan repayments were affordable, in that Mr and Mrs M could meet the repayments, their existing credit commitments and their living expenses from their income.

I don't think Oplo did enough to verify Mr and Mrs M's expenditure, in particular their credit commitments.

Oplo says it asks customers for bank statements for 30 days prior to lending. It provided the copies of Mr and Mrs M's bank statements for January 2015 which it says it used in its lending decision. Mr M's statement isn't complete. The statement says there are 151 transactions for the period 02.01.2015 to 19.01.2015. The statement provided by Oplo shows about 30 transactions for this period. Mr M provided his bank statement (for the same account) and this shows many more transactions in January 2015 than the copies provided by Oplo.

I think Oplo should have noticed at the time that there were a significant number of transactions missing from Mr M's bank statement. Had it asked for the complete bank statement, Oplo would have seen debt repayments that it hadn't included in its affordability assessment, as well as payments to gambling businesses.

Oplo carried out credit checks and provided copies of the credit reports it received. These state the numbers of active, delinquent and defaulted accounts as set out below:

Mrs M's credit report says:
- 17 active loans, two opened in the previous six months.
- 12 delinquent accounts in the last 12 months.
- four defaults, one recorded within the last 12 months and three more within the last 36 months.
- two county court judgements (CCJ), one in mid-2014, and one in late 2012.

Mr M's credit report says:
- 11 active loans.
- eight delinquent accounts in the last 12 months.
- two defaults recorded within the last 36 months.

Oplo says it distinguished between defaulted accounts and active accounts, meaning the number of accounts it deemed relevant was lower than I've set out above. Oplo says it excludes accounts with defaults more than two years ago, and includes 1% of the balance of more recently defaulted accounts and CCJs. I appreciate this is was its policy approach to affordability at that time. However, I think in some cases it might be reasonable to assume the lender or debt collection agency would have tried to collect the debt – for instance one of Mrs M's accounts had defaulted in August 2014 and been transferred to a debt collection agency. I'm not persuaded it was responsible to assume that only 1% of recently defaulted accounts would be collected. In fact, Oplo didn't even include this in the affordability assessment here.

Oplo says it didn't rely on the credit report to verify Mr and Mrs M's credit commitments. It says it also looked at bank statements and commitments declared by Mr and Mrs M. As I've said though Mr M's bank statements weren't complete.

Oplo was aware that Mr and Mrs M had a second charge loan that didn't appear in their credit reports. Had it asked for complete bank statements it would have been aware of further debts. Mr and Mrs M's bank statements for January 2015 show payments for a loan, catalogue debt and direct debit payments to a bank (which could be for a loan or credit card), which weren't included in Oplo's affordability assessment. The statements also show payments to individuals, which could have been repayments for loans. And cash (about £600) was withdrawn, which Oplo says could have been to repay loans from a doorstep lender. I think Oplo should have asked for further information about these payments.

In response to my provisional decision, Oplo said its affordability calculation did reflect Mr and Mrs M's expenditure as evidenced by their bank statements. I assume it means the incomplete bank statements. As I've said, the complete bank statements (which I think Oplo should have asked for) show expenditure which wasn't included in the affordability calculation.

I don't think it was reasonable for Oplo to rely on the credit report (which it knew didn't fully reflect Mr and Mrs M's true position) or bank statements which it should have known were incomplete. Oplo says Mr M provided incomplete bank statements in an attempt to hide the extent of his gambling. Nonetheless, I think Oplo should have asked for complete bank statements.

Mr and Mrs M's pattern of borrowing

I don't think Oplo did enough to ensure its affordability calculation was right. But I also think that Mr and Mrs M's pattern of taking out debt that they struggled to repay should have alerted Oplo to a problem. It's clear from the credit report that Mr and Mrs M had delinquent accounts, defaults and a CCJ.

Oplo says the number of delinquent accounts had reduced. While that could be a sign that Mr and Mrs M's overall financial position was improving, I think Oplo needed to look at the overall picture. For instance, Mrs M opened a credit card account in April 2014 and immediately borrowed close to the £1,000 limit. This account was over its credit limit and had missed payments by the time Mr and Mrs M took out the Oplo loan. Mrs M took out a home credit loan of about £1,700 in October 2014. I said in my provisional decision that Oplo should have considered whether Mrs M was taking out new debt in order to settle existing debts, or to fill the gap in her finances left by settling debts. Oplo said the home credit loans were rollovers with additional borrowing – I think this suggests that Mr and Mrs M were indeed unable to repay the original debt when it was due.

While Oplo noted that Mr M didn't exceed his overdraft limit, Mrs M says the bank prevented this due to Mr M's poor money management. Oplo was of course aware of Mr and Mrs M's mortgage arrears. Mrs M's bank statements show direct debits and standing orders returned unpaid.

While Oplo says Mr and Mrs M only had two payday loans and five home credit loans outstanding, both of the payday loans and one of the home credit loans were delinquent.

The information Oplo had showed Mr and Mrs M had significant financial problems over some years and continued to do so. Mrs M's credit report shows defaults recorded in 2010, 2011, 2012, 2013 and 2014. I think Oplo should have questioned why Mr and Mrs M continued to be in financial difficulties when, according to its calculations, they appeared to have disposable income.

I don't think it's reasonable for Oplo to say the evidence suggested Mr and Mrs M's position had improved. I don't agree that having "only one" default and a CCJ recorded within the last 12 months is a sign of improving finances – I think it suggests Mr and Mrs M were continuing to struggle with their debts.

Evidence of gambling

The bank statements Oplo provided showed nine payments to gambling businesses from Mr M's account, totalling £215. Of course, this bank statement was incomplete. Nonetheless Oplo was aware of the gambling transactions, and noted this on the bank statement. There's no evidence it asked Mr and Mrs M about this. In fact, while most of the requirements on its affordability checklist are ticked off, the entry for "*Gambling entries discussed and documented*" wasn't ticked. Similarly, in its credit worthiness checklist, Oplo hasn't ticked "*Reasons for defaults/CCJs discussed and documented*" or "*Reason for pay day loans investigated and documented*".

Oplo says its policy is to ask for bank statements for 30 days prior to lending. As I've said already, it should have known the bank statements it had weren't complete. Mr M's complete bank statement shows many more gambling transactions, with transfers to gambling business of about £1,500 during January 2015. Mr M withdrew cash of about £600. This could have been for gambling. Oplo says this might have been to repay a doorstep lender – it ought to have asked about this at the time. Mr M's bank statements show payments to gambling businesses of more than £1,000 in the last week of December 2014. While there were also payments into the account from gambling businesses of significant sums, winnings (if that's what they were) are unpredictable. Spending patterns are more predictable. I think the number of transactions and the amounts involved here suggest a pattern of spending which is likely to repeat and make the loan repayments unsustainable.

Oplo said its calculations showed Mr and Mrs M had disposable monthly income of £1,600, which would make gambling losses of £1,500 affordable. As I've said, Oplo's calculation didn't include all of Mr and Mrs M's outgoings as it was based on incomplete information.

Oplo says Mr and Mrs M's income could sustain this level of gambling transactions, and it didn't think this was having a detrimental effect on their finances. I don't think that's reasonable. Mr and Mrs M had been struggling with their debts for some years. There was a pattern here of spending on gambling and of borrowing, which is likely to repeat. I think it was foreseeable that Mr and Mrs M would have further problems meeting loan repayments.

How did the loan affect Mr and Mrs M?

A secured loan could, in some circumstances, put borrowers in a better position. For instance, if it reduced their overall outgoings by repaying expensive short-term finance. That seems unlikely here as only £3,200 of this loan was used to repay existing debt.

Based on the credit reports provided by Oplo, in addition to their mortgage and second charge loan, Mr and Mrs M had unsecured debts of about £24,800 (this included current defaults of about £11,200). And Mr and Mrs M's bank statements show further debts. As only about £1,200 of the Oplo loan was used to repay unsecured debts, most of this remained outstanding.

About £2,000 of the loan funds was used to clear Mr and Mrs M's mortgage arrears. While a priority debt, it seems likely the interest applied to the mortgage arrears was lower than the 34.8% interest rate for the Oplo loan – and the overall cost of this loan was significantly increased by the fees of £1,500 which were added to the loan. Oplo says the loan meant Mr and Mrs M's mortgage payments were up to date which (it says) reduced their monthly outgoings. It says they were aware of the fees and interest rate before deciding to take out the loan.

By offering this loan Oplo increased Mr and Mrs M's overall indebtedness by £8,300 (including fees of £1,500 which were added to the loan). This was in circumstances where they were already struggling to manage their debts. By the end of 2015, Mr and Mrs M were in a three months repayment arrangement to repay arrears after a missed payment. They agreed a further repayment arrangement in mid-2016, again to clear arrears. I think these repayment problems were foreseeable.

Should Oplo have offered this loan?

I think the combination of factors here meant it wasn't reasonable or fair for Oplo to offer this loan to Mr and Mrs M. Oplo says it takes what it's told by customers in good faith, and accepted the explanation Mr and Mrs M gave for their financial circumstances. But I'd remind Oplo that regulations required *a high level of scrutiny* where a loan will be secured by a second or subsequent charge on a customer's home, as was the case here.

I don't think Oplo collected sufficient information to make a reasonable assessment of Mr and Mrs M's circumstances. The bank statements it used in the affordability assessment were incomplete and it was aware that the credit report didn't reflect all of Mr and Mrs M's credit commitments. I don't think Oplo's checks were proportionate. It was aware of Mr and Mrs M's levels of debt, use of credit, arrears, missed payments and defaults, and evidence of gambling but didn't probe into these issues.

I think Oplo should have questioned why Mr and Mrs M had struggled with their debt repayments for some years, and continued to do so, despite appearing to have relatively high amounts of disposable income. I think together all this shows previous and current financial difficulties unlikely to be caused only by the explanation given by Mr and Mrs M.

I think Oplo ought to have known that further borrowing wasn't affordable and sustainable, and, especially given the pattern of spending on gambling, could be harmful to Mr and Mrs M.

Putting things right

I don't think it's fair and reasonable to require Oplo to write off the loan entirely – Mr and Mrs M borrowed this money and I think it's fair that they repay it. But I don't think it's fair for Oplo to apply interest and charges to a loan it shouldn't have offered.

To put matters right Oplo should:

- remove all interest and charges applied to the loan.
- treat all payments made by Mr and Mrs M as payments towards the capital amount of the loan.
- if this results in an overpayment, pay interest of 8% simple a year on any overpayments from the date they were paid (if they were) to the date of settlement†.
- if there's still a balance outstanding, Oplo should agree a suitable repayment plan with Mr and Mrs M.
- remove any negative information about the loan from Mr and Mrs M's credit file.

† HM Revenue & Customs requires Oplo to take off tax from this interest. Oplo must give Mr and Mrs M a certificate showing how much tax it's taken off if they ask for one.

My final decision

My decision is that I uphold this complaint and order Oplo HL Ltd to take the steps and pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 28 April 2022.

Ruth Stevenson
Ombudsman