DRN-3484966

The complaint

Ms M complains through her representative that Oplo PL Ltd lent her money on a high cost loan which she was unable to afford to repay.

What happened

Oplo provided Ms M with a loan of £7,500 on 24 January 2018, repayable over 42 months at the rate of £258 a month. She settled the loan in full in October 2018.

Ms M complained that the loan was unaffordable and that Oplo didn't ask to see her bank statements and other information in its affordability assessment.

Oplo said it had reviewed her information, noting that she split the household bills and mortgage with her partner. It said the loan was partly for consolidation and it paid off a loan and a credit card from the new loan before releasing the balance to her. With the new loan it assessed that she had a monthly disposable income of £268. It further pointed out that Ms M had kept all her payments up to date (apart from one which was due to an issue with her wages and was paid before any arrears had accrued). It said that with the new loan payment her new credit commitments amounted to about 46% of her income.

Our adjudicator said that the ratio of her income to credit commitments could have amounted to about 52% and that the loan was unaffordable. So Oplo should repay all the interest and other charges on the loan.

Oplo disagreed and the matter has been passed to me for further consideration.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Oplo complete reasonable and proportionate checks to satisfy itself that Ms M would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Ms M would have been able to do so?

The rules and regulations in place required Oplo to carry out a reasonable and proportionate assessment of Ms M's ability to make the repayments under the agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Oplo had to think about whether repaying the loan would be sustainable. In practice this meant that Oplo had to ensure that making the repayments on the loan wouldn't cause Ms M undue difficulty or significant adverse consequences. That means she should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her financial situation.

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 Ms M**.** Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes 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/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications. I think that such a check ought generally to have been *more* thorough:

- The *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).

- The *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).

- The *greater* the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

Considering Ms M's income, the loan required a considerable commitment from her. So Oplo should have carried out a thorough assessment of Ms M's financial circumstances at the time of the application.

Looking at the credit report obtained at the time of the application, Ms M did have substantial credit commitments. She had three credit cards, two of which were at just about their limit and one on which she had a balance of £1,521, £21 over the limit. Her bank account was overdrawn by £2,984, with a limit of £3,000. So although she wasn't in arrears and had no missed payments she was still in a position where taking out more credit could have been problematic for her.

Oplo's loan was partly for consolidation of existing debts and it paid off the £1,521 credit card balance and a mail order account for £2,044. The balance was paid to Ms M and was for home improvements. However the debt consolidation freed up about £107 a month, but with the new loan her credit commitments had increased by about £150 a month. And as Oplo has itself assessed, her new credit commitments amounted to about 46% of her income. This in my view is very high and is a factor the FCA (Financial Conduct Authority) consumer credit rules say should be taken into account. The rules don't specify a percentage but I think the 46% assessed by Oplo itself is very high.
The rules don't require businesses to obtain bank statements and, as I haven't seen any of Ms M's bank statements, I can't say what they would have shown. Although we do know from the credit report that she was substantially overdrawn. So Oplo's lending decision had to be based on the information it had obtained.

I've noted Oplo's assessment of Ms M's monthly disposable income, but it's not just the pounds and pence figure we take into account. Bearing in mind the other issues concerning

Ms M's credit record, I think that with the information it had, Oplo shouldn't have lent Ms M the money and that it didn't therefore make a fair lending decision.

On Oplo's point about Ms M's record with keeping up the payments, bearing in mind that she only kept the loan for nine months I don't think very much could be read into this. She presumably got another loan to pay it off. In any event I have to look at the lending decision at the time of the application.

Putting things right

Ms M has had the capital payment in respect of the loan, so it's fair that she should repay this. So far as the loan is concerned, I think Oplo should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Ms M as payments towards the capital amount of £7,500.
- If Ms M has paid more than the capital, refund any overpayments to her with 8%* simple interest from the date they were paid to the date of settlement.
- Remove any adverse information where appropriate about the loan from Ms M's credit file.

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

My final decision

I uphold the complaint and require Oplo PL Ltd to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 7 July 2022.

Ray Lawley
Ombudsman