DRN-2305447

The complaint

Miss P complains that Oakam Ltd lent to her irresponsibly.

What happened

I issued a provisional decision on 29 September 2020. Both parties have responded and neither has anything further to add. So, the reply date having passed, and having received responses from both Miss A and Oakam, I am proceeding to the final decision.

Using information from both parties I have drawn up a table to show the lending. This table is not as accurate as I would have liked it to be as the first few cheque style loans have been pieced together from a bit of information from Oakam and more detailed information from Miss A. She sent to us a copy of the 17 September 2009 credit agreement, some of the clauses of which I refer to later.

In relation to the Bonus Loans (Loan 4 onwards) the credit agreements, repayment schedules and statements of account each have different figures for each loan. This means that the figures do not correlate and have been difficult to match up. So, I have chosen to use the credit agreement figures and the repayment schedules to create the table.

loan	date taken	last scheduled repay date	actually repaid	total to pay repayment schedule (rounded)	principal amount according to credit agreement (rounded)
1	17/09/2009		20/07/2010		£200.00
1a	30/04/2010		20/07/2010		£200.00
1b	12/07/2010		20/07/2010		£400.00
4	20/07/2010	20 July 2011	05/12/2010	£1,668	£890.00
5	05/12/2010	7 December 2011	13/05/2011	£2,198	£ 1,180 (£702 from loan 4 and top-up of £413
6	13/05/2011	November 2012	20/09/2011	£3,066	£1,396 being £865 from Loan 5 plus £466.00
7	20/09/2011	1 October 2013	13/03/2012	£4,180	£1,892, being £1,285 from Loan 6 plus £532
8	12/03/2012	15 March 2014	19/09/2012	£5,544	£2,528 being £1,708 Loan 7 and £750.00
9	14/09/2012	13 March 2015	Open	£7,150	£2,747 being £2,287 from Loan 8 and £400.00

Loans 1, 1a and 1b were 'cheque style' advances of cash whereby Miss A would write a cheque for the amount she wished to borrow, hand over the cheque in return for which she would receive cash. Oakam has described these as 'payday loans'.
The 17 September 2009 credit agreement gives some detail - the credit limit for Miss A was set at £200 and Miss A was entitled to receive advances '…*if the total value outstanding to*

us is less than the credit limit above.' – this is clause 4. This is a clause I refer to later in my decision.

Miss A was given the option each month to extend her payment date or for Oakam to bank the cheque. Miss A has explained to us that she never had enough in her account for a £100 cheque (or two £100 pound cheques) to be banked and so each month a fresh charge was applied. The charges were usually £22 and are shown in this statement of account provided by Oakam. There was an initial registration fee for new customers*.

Date	Credit (£)	Repayment (£)	Fees (£)	Balance (£)
17/09/2009	£200			£200
17/09/2009			£26	£200
17/09/2009			£2.50*	£200
19/10/2009			£22	£200
19/11/2009			£22	£200
22/12/2009			£22	£200
20/01/2010			£22	£200
19/02/2010			£22	£200
19/03/2010			£22	£200
20/04/2010			£22	£200
30/04/2010			£22	£200
30/04/2010	£200			£400
19/05/2010			£22	£400
03/06/2010			£22	£400
21/06/2010			£22	£400
01/07/2010			£22	£400
12/07/2010			£44	£400
12/07/2010	£400			£800
20/07/2010		£800		£0.00

Miss A disputed Oakam's records of these earlier cheque style loans and had documentary evidence which suggested she did write out additional cheques on 22 December 2009 and 20 April 2010 and that these were also 'renewed' or 'rolled'. Miss A suggested she received additional capital. Oakam did not accept this but equally cannot furnish us with any further details about those earlier loans.

So, there's a dispute between the parties about exactly what and when Miss A borrowed between September 2009 and 12 July 2010. I come to some findings about these earlier loans in the main body of the decision.

According to Oakam's records (duplicated above), on 12 July 2010 Miss A received a further £400 cash advanced against the security of further cheques. She still owed £400 from the earlier 'payday loans' and so the total was £800 principal money owed to Oakam.

On 20 July 2010 Oakam seems to have had a new system and from the information I have been given, Miss A appears to have agreed for the £800 'payday loans' to be 'repaid' by restructuring that debt into a new twelve month credit agreement, repayable in weekly instalments. The 20 July 2010 date – shown above as the date the cheque style loans were all repaid - was the date that Miss A was approved for Loan 4.

One of our adjudicators looked at the complaint in April 2020 and thought that Oakam should put things right for Miss A from the fourth renewing or 'rollover' of Loan 1 which I take to mean 20 January 2010 although the adjudicator did not cite the date. That uphold opinion by our adjudicator included all the loans that followed. And from Loan 6 the adjudicator thought that Miss A was reliant on the credit and so all lending ought to have ceased. So Oakam should put things right for her from that date too.

I have decided to keep to the original numbering of the loans and I am unclear why they were altered by the adjudicator after issuing a letter of opinion in April 2020.

Miss A responded but only in relation to the misunderstanding of the earlier loans. And Oakam has made many submissions and asked that the complaint be passed to an ombudsman.

Oakam's submissions after the adjudicator's view are summarised and paraphrased (in places) here:

- loans 4 to 6 were amortising instalment loans;
- Oakam would have assessed Miss A's ability to meet the instalments;
- refinancing took place when the customer was a good payer and the balances of an existing loan had been suitably paid down;
- individualised affordability checks were carried out for each loan including interviews;
- loans were approved having checked that they were affordable and sustainable;
- Oakam cited several sections of the Office of Fair Trading Irresponsible Lending
- Guide (OFT ILG);
- Miss A's payment history demonstrated to it that she could pay without undue difficulty – she did have 8 late payments in one year which Oakam says did not cause it concern;
- partial credit searches were carried out before each of the loans from 20 July 2010;
- Oakam got some of Miss A's bank statements to validate her income and expenditure (I&E) – these were for 20 July 2010 and 13 May 2011;
- her debt to income ratio was 12 to 14%;
- Oakam's core mission is to provide reasonable access to affordable credit;
- Oakam did borrower-focussed assessments;
- after doing an I&E then 'a haircut of at least 50% was applied';
- *'…our "low-and-grow" product proposition where we typically grant customers low amounts over a short term and then graduate good paying customers to larger lines at cheaper rates.';*
- Individual Voluntary Arrangement, bankruptcy and Debt Relief Order checks done.

Oakam concluded:

> *Based on the above, our assessment is that our underwriting practices were compliant in that we adhered to the relevant rules and guidelines specified by the regulator at the time these loans were provided. Further to this, we believe we provided borrower-focussed assessments that were designed to place* [Miss A] *on affordable and sustainable loan products.*

Later Oakam has also asked for lots of information from us to 'better understand' the decision and has invited the ombudsman to go into detail.

The complaint remained unresolved and was passed to me for a decision. And I said earlier, this final decision follows the provisional decision.

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 have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website. No additional evidence or points from either party has led me to issue a final decision in the same terms as the provisional decision and for the same reasons which I set out here.

Preliminary point

In Oakam's final response letter (FRL) it addressed the loans from 20 July 2010 onwards (nothing before that) and it said that it was not able to uphold Miss A's complaint. Its reasons were because it considered that the complaint had been raised outside what it described as the '*eligibility rules'* stemming from the Financial Conduct Authority (FCA) DISP rules and particularly DISP 2.8.2. Oakam's submissions to this service in September 2019, after Miss A had referred her complaint to us, repeated this line of argument.

When I issued my provisional decision on 29 September 2020, I said that it was unclear whether this had been addressed for Oakam prior to the adjudicator's view in April 2020. This complaint had been referred to me to address the merits of the complaint, not the jurisdiction element. I did point out in my provisional decision that since September 2019 Oakam never repeated the line of argument and had responded positively to all the requests for additional information our adjudicator had asked over the year. And after the adjudicator's view was received, its extensive set of submissions made no reference to the jurisdiction DISP 2.8.2 element. And since it has received my provisional decision, this has not been raised. So, I deduce that Oakam has no issue with this point. I am proceeding on the merits of the complaint.

Main complaint issues

Oakam said (and this is not the first time) that it wished to '*better understand'* our approach to these loans and this lending. On that point I refer Oakam to our website where several lead decisions detailing the regulations culminating in our approach have been published. In relation to any specific points made by Oakam about the complaint brought by Miss A, then I address them in my decision.

Oakam needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss A could repay the loans in a sustainable manner.

These checks could consider several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that Oakam should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors include: where a customer's income is particularly low; where the repayments are particularly high; and/or where the frequency of the loans and the length of time over which a customer has been given loans need to be looked at: repeated refinancing could signal that the borrowing had become, or was becoming, unsustainable. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Oakam was required to establish whether Miss A could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case.

This is because the Office of Fair Trading Irresponsible Lending Guide (OFT ILG) defined 'sustainable' as being the ability to repay without undue difficulties. The precursor was the 2008 document by the OFT labelled 'OFT969', which was similar. The customer should be able to make repayments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss A's complaint. Oakam has cited many parts of the ILG to us and so I appreciate that it is familiar with the Guide.

Cheque advances or payday loans

I am proceeding on the basis that the combined capital sum taken with these types of loans was £800. I appreciate that Miss A disputed the amount but I must move this complaint along – for the interests of both parties – and Oakam has no more to give us and Miss A has sent to me what she has. And no additional points have been raised since I issued my provisional decision on 29 September 2020.

It is feasible that Miss A had more loans in 2009 and 2010 but it's not clear based on the evidence that has been provided to me.

A term in the 17 September 2009 credit agreement does say that '*updated replacement cheques must…be provided every three months.'* So, this may go towards explaining the multiple cheque numbers which Miss A has been explaining to us. And it may also explain why she has some of the original cheques in her possession – they may have been returned once replacements were sent.

During this cheque loan period, the charges Miss A paid to Oakam added up to be £204.50 for a £200 loan from September 2009 to April 2010. Oakam would have been aware that she had rolled over the loan many times. No principal had been paid down during that time.

Oakam's records showed that Miss A was advanced another £200 on 30 April 2010 despite this continuous rollover which took place for many months.

And I have thought about whether this advance was in breach of clause 4 of the 17 September 2009 credit agreement to which I referred earlier. That credit agreement, clause 4, said that the credit limit for Miss A was set at £200 and Miss A was entitled to receive advances '*…if the total value outstanding to us is less than the credit limit above.*'. And having thought about it I do find that was likely a breach of clause 4.

A further £132 was paid by Miss A in fees and yet still no capital was paid down. In July 2010 Oakam advanced to Miss A double the amount which was outstanding. So, her balance became £800. Again, I think that this may have been a breach of clause 4. But in any event, I think this is contrary to good practice at the time. The ILG at paragraph 6:25 stated this could be viewed as unfair practice: '*Repeatedly refinancing (or 'rolling over') a*

borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.' I see that the 17 September 2009 agreement allowed for up to 11 rollovers on a loan (clause 5).

Oakam has said it does not have much information relating to the application process and what was done or presented by the parties before these loans were approved. But it has provided copies of bank statements for August 2009 (before Loan 1), February and April 2010 (before Loan 1a). These are not complete sets of bank statements – they are the first pages only.

Oakam seems to be saying that it had carried out satisfactory checks and as such considered that Miss A was able to be advanced the money secured against these cheques for these dates. But I disagree. What these limited copies of bank statements show is that Miss A's monthly salary was low at £620, that she had at least one dependant in that she received child benefit and tax credits, that she already had a regular payment to a debt recovery company and had several other credit commitments as well.

So, I think Oakam was on notice from the beginning that Miss A had credit issues and other credit commitments and had a low salary. And by the time the first set of payday (cheque) loans had been rolled four times then it ought to have been gathering more in-depth information about Miss A's finances. I have not seen evidence of anything further than another partial bank statement for February and April 2010. So, I do not think that Oakam should have continued to lend from that fourth rollover which was 20 January 2010, and I think that Oakam should put things right for Miss A from that date.

Bonus rewards loans

All this debt (£800) was restructured into a loan agreement on 20 July 2010 for twelve months to be repaid by weekly cash payments from that date.

The application for Loan 4 reveals that it was to cover the existing debt and is badged on the Underwriter's Justification Notes as a '*payday loan conversion'*. So, this seems to have been carried out to move Miss A from the cheque loan type loans to this new Bonus Loan agreement. And it includes information which simply does not dovetail with the information Oakam already had on its files being the front pages of three sets of bank statements (referred to earlier).

That application suggests that Miss A had no arrears and no credit card whereas her bank statements show she had other credit to repay and had a debt recovery commitment as well, which suggests she was in arrears with another account. Added to which she had been rolling her payday loans with Oakam for ten months by that stage of the lending relationship, which certainly suggests difficulty to pay. And Miss A had not been making any inroads into the debt.

The underwriter's notes say, '*no call credit necessary'*. I can see that there were no results for the credit check, so I do not think that a credit search was done. Miss A was charged a combined administration fee of £90 which was added to the credit (the formal signed credit agreement was for £890) and so interest was charged on the administration fees.

The '*disbursement made in store'* to Miss A was ostensibly £800, but as her previous payday loan balance reduced to *'£0'* on 20 July 2010 then I do not think that Miss A received any further cash that day. Especially as she has told us that she received £400 against the four fresh cheques she had just written out a week earlier on 12 July 2020.

If I am wrong on this aspect, and I do not think I am, then to lend to Miss A a further £800 on

this new agreement after lending £400 to her just a few days earlier, and knowing Miss A's repayment history (many months of rolling the cheque style payday loans over) then I would have expected at least a full financial review to have been carried out before lending. And yet Oakam's own notes state '*no call credit necessary'*. And so, I do not think one was carried out.

The total due to be repaid on the new loan was £1,668 (using the repayment schedule for these figures as I outlined in the 'background' section of this decision). Her indebtedness was extended for a further 12 months until July 2011. The 'income and expenditure' calculation on that form resulted in Miss A's 'net disposable income' as being £1,106. And I think that a proper creditworthiness assessment from the borrower's perspective, which is what the OFT ILG required, would have led an underwriter to question whether those figures were correct.

I say this because it seems a high disposable income figure and I have been given Miss A's bank statements for May 2010. Those show me that by this time Miss A had the same debt recovery regular payment she had before, plus she was paying £1 to a utility company and was paying money to a separate business which related to a 'Debt Management Plan (DMP). She was paying for a credit card and her income was being supplemented with tax credits and child benefit payments.

All these factors lead me to think that the assessment was not carried out in a comprehensive manner and Oakam ought to have done more. Because if it had it would have realised that it was irresponsible to lend these sorts of sums to Miss A at that time.

Miss A went from having paid about £330 in charges over ten months for the payday loan advances without any reduction in the principal amount owed, and then was charged additional interest going forward to cover that debt for a further 12 months. My view is that a repayment plan ought to have been put in place in July 2010 and not a fresh set of lending.

Five months into this loan, in December 2010, a further loan was approved for her, absorbing the outstanding amount on Loan 4 into the new Loan 5. The statement of account for Loan 4 shows that the £702 (rounded figure) outstanding which was absorbed into Loan 5 included interest as well as capital. This meant that Miss A was being charged interest on sums already containing an interest element.

Loan 5 also gave Miss A additional cash of £413 described as a top-up. The amount to pay over the year was calculated to be £2,198 including the new administration fee.

The application form for Loan 5 had the same information and income and expenditure figures on it as I have outlined for Loan 4.

Oakam has provided for us a copy of a low level call credit check from December 2010 which looks more like a verification check than any sort of serious credit search. I appreciate that credit searches are not required before a lending decision was made but in view of the length of time that Oakam had been lending to Miss A by this point and that her amounts were increasing, the indebtedness was extending and interest was being charged on top of interest, then I would have expected a full financial review to have taken place. I don't this took place.

Oakam needs to put things right for Miss A from the 20 January 2010 to the Loan 5 approval.

I have also looked at the overall pattern of Oakam's lending history with Miss A, with a view to seeing if there was a point at which Oakam should reasonably have seen that further

lending was unsustainable, or otherwise harmful. And so Oakam should have realised that it shouldn't have provided any further loans.

Given the circumstances of Miss A's case, I think that this point was reached by Loan 6.

I say this because:

- Loan 6 was approved in May 2011. Miss A had not been paying down Loan 5 for very long and the new loan was for £1,396 being £865 from Loan 5 plus new cash of £466.00. This was 17 months into the overall lending relationship. Already Loan 6 would have been the third refinancing and charging of interest on top of interest, which followed 14 rollovers of the cheque style loans in 2009 and 2010;

- From Loan 6 onwards Miss A was provided with a new loan at the same time she settled a previous one. Each loan was refinanced into the next around 5 or 6 months into the agreement. So Oakam ought to have realised it was more likely than not Miss A was having to borrow further to cover the hole repaying her previous loan was leaving in her finances and that Miss A's indebtedness was increasing unsustainably;

- Miss A wasn't making any real inroads to the amount she owed Oakam. Loan 9 was taken out three years after Miss A's first. And it was for a larger amount. Miss A had paid large amounts of interest to, in effect, service a debt to Oakam over an extended period.

I think that Miss A lost out because Oakam continued to provide borrowing from Loan 6 onwards because:

- these loans had the effect of unfairly prolonging Miss A's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period and
- the sheer number of loans and deferrals was likely to have had negative implications on Miss A's ability to access mainstream credit and so kept her in the market for these high-cost loans.

As well concluding that Oakam needs to put things right for Miss A from the 20 January 2010 through to (and including) the Loan 5 approval, I uphold Miss A's complaint about Loans 6 to 9 and I direct that Oakam should put things right for these loans as well.

Putting things right

Oakam should

- refund all interest and charges Miss A paid from 20 January 2010 in relation to the cheque loans and all interest and charges for Loans 4 to 9;
- Oakam should pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- the number of loans taken from loan 6 onwards means any information recorded about them is adverse. So, all entries about loans 6 to 9 should be removed from Miss A's credit file.

If Miss A still owes Oakam the principal balance she borrowed on her final loan (Loan 9), instead of the above directions for this loan, Oakam should remove all the interest and charges applied to the outstanding balance. Oakam should then re-work the account as if all payments made by Miss A went to towards the principal. But importantly, Oakam needs to make sure that Miss A doesn't repay more than the principal amount borrowed.

If after doing this Miss A hasn't repaid the principal she borrowed, Oakam can deduct this from the remainder of the redress figure. If, Miss A has already paid enough to repay the principal then any overpayment should be refunded to her with 8% simple* interest from the date of payment to the date of settlement.

And if Oakam no longer owns this debt, and it wants to make a deduction due to the amount owed, then it should buy it back. If it doesn't then it isn't entitled to make any deductions for it from the amount it needs to pay Miss A.

*HM Revenue & Customs requires Oakam to take off tax from this interest. Oakam must give Miss A a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Miss A's complaint in part and direct that Oakam Ltd does as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 30 November 2020.

Rachael Williams
Ombudsman