DRN-2377072

The complaint

Mr W complained to Oakam Ltd (Oakam) that it irresponsibly provided him with a number of loans. Mr W also said, that he didn't understand why he had an outstanding balance because Oakam had stopped taking payments from his account.

What happened

Our adjudicator upheld Mr W's complaint, in part. Oakam disagreed with the adjudicator's opinion. The complaint was then passed to me.

I issued my provisional decision explaining why Mr W's complaint should be partly upheld. A copy of the background to the complaint and my provisional findings follow this and form part of this final decision:

What I said in my provisional decision:

Oakam investigated Mr W's complaint and issued its final response letter in September 2019. A table of Mr W's lending based on the information given to us by Oakham can be found below.

loan number	*loan amount*	*received date*	*actual repayment date*	*term of loan (months)*
1	*£240.00*	*02/09/2010*	*28/03/2011*	*6*
2	*£335.00*	*07/06/2012*	*15/12/2012*	*6*
3	*£240.00*	*19/07/2014*	*15/11/2014*	*3*
4	*£300.00*	*19/02/2015*	*06/04/2015*	*3*
5	*£300.00*	*08/07/2015*	*19/10/2015*	*3*
6	*£400.00*	*26/10/2015*	*26/01/2016*	*3*
7	*£1,945.00*	*26/01/2016*	*02/06/2016*	*24*
8	*£2,822.10*	*02/06/2016*	*debt sold*	*30*

Loans 7 and 8 were refinanced loans. This meant some of the loan amount went towards repaying the previous loan.

As part of its response, Oakam stated that it didn't look at Mr W's first two loans because they were approved more than six years ago, so it considered Mr W had complained about these loans too late.

Oakam went on to say it made an error when loans 3, 5 and 6 were granted. It refunded the interest and charges applied and then added 8%. It said it would use this refund to offset the outstanding balance due for loan 8. After doing this, Mr W would've still been left with a small balance but Oakam took the decision to write this off – so Mr W would have no further obligations to Oakam. However, Oakam didn't think it had made an error when it approved any of the other loans.

Mr W brought his complaint to our service where one of our adjudicators looked into what happened. He didn't think Mr W's complaint about his first two loans was made too late so he thought this service could consider all of Mr W's loan. But due to Oakam making an offer on loans 3, 5 and 6 he think he needed to look at those loans further.

But having looked at Mr W's complaint he thought that it was reasonable for Oakam to have granted loan one. But he didn't think any of the remaining loans should've been provided. The adjudicator explained his reasons but in detail, but in summary, he concluded that the credit check results that Oakam provided indicated that Mr W wasn't in a position to take on any of the further loans.

The adjudicator also looked at what happened with the outstanding balance on loan 8. He concluded that Oakam stopped collecting the repayments from Mr W because it had sold the balance to a third party. And based on the amount that was outstanding when the account was sold, he thought the outstanding balance that Oakam wanted to offset was correct.

Mr W appears to have accepted the adjudicator's view.

Oakam didn't agree with the adjudicator's view. In response it sent a detailed document which was split into two parts. The first part was about the affordability checks that it carried out and details about the type of credit that was provided. The second section provided specific comments about each loan that the adjudicator had upheld. But in summary it said;

- *The loans appeared to have been repaid without undue difficulty.*
- *Oakam was aware of the defaults, but due to the time that had passed and it wasn't connected to a priority debt it didn't have any further concerns.*
- *The repayments appeared affordable based on the income and expenditure information Oakam was provided.*

The adjudicator considered what Oakam had said, but its comments didn't change his mind about which loans should be upheld.

As no agreement could be reached the case has now been passed to me for a decision.

What I've provisionally 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 this type of lending - including all of the relevant rules, guidance and good industry practice as well as our approach to dealing with similar cases which can be found on our website. And having done so, I'm intending to conclude that Mr W's complaint should be upheld in part.

Oakam didn't raise any objections to this service considering all of the loans, so I no longer intend to revisit whether Mr W made his complaint on time.

Firstly, I will address the regulations in place at the time the loans were provided;

<u>the legal and regulatory framework regulation by the Office of Fair Trading (up to 31 March 2014)</u>

Up to the end of March 2014 Oakham was subject to the OFT . During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)-

> *(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
> *(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
> *(c) practices and procedures that the applicant proposes to implement in connection with any such business;*
> *(d) evidence of the kind mentioned in subsection (2A)*

(2A) That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has –

(a) committed any offence involving fraud or other dishonesty or violence; (b) contravened any provision made by or under –

> *(i) this Act;*
> *(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;(iii) any other enactment regulating the provision of credit to individuals or*
> *other transactions with individuals;*

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) [my emphasis].

Section 25(2B) set out a direct example of the type of practice referred to in Section25(2A) (e) and said: For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending [my emphasis].

In March 2010, as required by s.25A, the OFT produced guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974 and so it issued its guidance on irresponsible lending ("ILG").

So, I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Mr W's case. The foreword to the guidance sets out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the OFT considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*
- *Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.*

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

> *'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.*

Section 4.2 of the OFT guidance says:

> *Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.*
>
> *We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.*

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
- *the borrower's financial situation at the time the credit is sought;*
- *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
- *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.15 concerns the verification of income and expenditure for the purposes of making an appropriate assessment of affordability. It states:

> *In our view, creditors who do not require documentary evidence of income and/or expenditure as part of their assessment of affordability, but rather accept information provided by the borrower without any supporting evidence or, in the alternative, do not seek any information on income and/or expenditure at all as part of their assessment, should ensure that whatever means and sources of information they employ are sufficient to make an appropriate assessment. We do not consider that -certification of income would generally be sufficient in respect of significant longterm credit agreements, particularly those secured on property.*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

> *Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation.*

Sections 4.18 to 4.33 of the ILG set out some examples of "*specific irresponsible lending practices*" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:
Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement).This could (but not necessarily) include for example:

Where applicable, appropriate and proportionate, failing to verify details of current income and/or expenditure by, for example, checking hard copies of payslip/contract of employment
(when a borrower is in employment), accountant's letters (where a borrower is self-employed) or benefit statements (where a borrower is not in employment).

And Section 4.26 says a business would be acting irresponsibly if:

> *Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be*

unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.
And section 4.31 says it would be unsatisfactory for a lender to:

> *[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability.*

Section 6 of the ILG sets out other "*specific irresponsible lending practices*" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:
Failing to monitor a borrower's repayment record

Section 6.2 goes on to say: *The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.*

Section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an "Assessment of creditworthiness" was set out in section 55B of the Consumer Credit Act.

It's important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:
"Assessment of creditworthiness

> *55B (1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*
> *(2) Before significantly increasing—*
> *(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or*
> *(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.*
> *(3) A creditworthiness assessment must be based on sufficient information obtained from—*
> *(a) the debtor, where appropriate, and*
> *(b) a credit reference agency, where necessary.*
>
> *(4) For the purposes of this section an agreement is an excluded agreement if it is—*
> *(a) an agreement secured on land, or*
> *(b) an agreement under which a person takes an article in pawn.".*

From the time of loan 3 (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority. Regulation by the Financial Conduct Authority (from 1 April 2014) Oakham gave Mr W loans 3 - 8 after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014.

The FCA Principles for Business ("PRIN")

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with. PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

The Consumer Credit sourcebook ("CONC")

This sets out the rules which apply to providers. CONC also replaced the requirements set out in Section 55B. CONC 5 sets out a firm's obligations in relation to responsible lending. But I've not listed all the requirements under CONC 5.2 here, but they are similar to those that can be found in the ILG.

And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement. It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6 when they were introduced in April 2014. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's Irresponsible Lending Guidance on many occasions. Section 5.2.1 of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and
[Note: paragraph 4.1 of ILG]

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.[Note: paragraph 4.11 and part of 4.16 of ILG].

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the

credit. [Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.
[Note: paragraph 4.1 (box) and 4.2 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

Section 140A of the Consumer Credit Act 1974

All of Mr W's loans were given to him after Section 140A of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;
(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

(5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships
(2) An order under this section in connection with a credit agreement may do one or more of the following—

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made,
between any persons.

I have included some of the regulations that were in place at the time Oakham started to lend to Mr W (when regulation lay with the Office of Fair Trading) and then the regulations from April 2014. As Oakham will see, the regulations that were in place from the OFT and the FCA are similar. Indeed, the FCA's regulations in part reference the OFT regulations.

<u>Consideration of Mr W's complaint</u>

So, thinking about the regulations that were applicable at the time of each application, Oakam needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks in order to reasonably conclude Mr W could repay the loans in a sustainable manner.

These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, 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:

- *the lower a customer'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 of time*

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).

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 Mr W could sustainably repay his 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 Mr W could sustainably make his repayments. But it doesn't automatically follow that this is the case.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr W's complaint.

As neither Oakam nor Mr W appear to dispute the adjudicator's findings that loan 1 shouldn't be upheld, I don't think there is a need for me to consider this loan further. Equally, Oakam has already accepted that something may have gone wrong when it gave loans 3, 5 and 6. So again, I don't intend to make a finding on these loans. Instead, this decision will focus on loans 2, 4, 7 and 8.

Generally, Oakam has told this Service it carried out detailed and extensive checks before agreeing to lend to Mr W. It says it asked Mr W about his income and monthly expenses. It also said it carried out a check of his credit file. All of this, Oakam says was sufficient for each lending decision and based on the checks it carried out it believed that Mr W would be in a position to afford the repayments he was committed to making.

Loan 2

The adjudicator upheld this loan because he thought, that when taking into account the repayments Mr W had to make (£98) that the disposable income wasn't sufficient to cover this payment and any other expected living costs.

For this loan, Oakam says that Mr W's position appeared to have improved because his income was around £260 higher than it had been for loan one. It also said, when looking at expenditure, it provided Mr W with £400 a month for entertainment costs which it feels – given the disposable income left with was more than sufficient to afford the repayment of around £98 per month.

To start with, Mr W declared an income of £1,777 per month. Mr W also seem to have declared outgoings of £1,558 per month – leaving a disposable income of £219. Oakam also said it saw a bank statement, wage slip and a copy of his passport. Which, given the monthly repayments that Mr W was committed to making I think Oakam thought Mr W could afford the repayments he was committed to making.

However, and I think more importantly Mr W also declared that he had other credit and some of that credit was also in arrears. And this is supported by the information Oakam obtained from the credit checks. It knew that Mr W had 12 credit accounts with a credit balance of around £14,500. But, more worryingly Oakam was aware that 8 of these 12 accounts were in arrears with a balance of £11,734.

I do have to consider, whether given the significant amount of arrears that Oakam was aware of, whether he was in a position to repay this loan in a sustainable manner. As I've said above, "in a sustainable manner" is defined in Section 4.3 of the OFT guidance. In particular, and in relation to Mr W being able to repay the credit, he should be able to repay

the credit without undue difficulty – without incurring or increasing problem indebtedness. And Oakam was aware that the majority of Mr W's credit debt was in arrears – so I can't see how putting Mr W further into debt was sustainable or reasonable.

So, I intend to uphold Mr W's complaint about this loan. And I've set out redress that Oakam must pay towards the end of this provisional decision.

Loan 4

As I've explained above, Oakam has already agreed to put things right for loan 3, so I no longer intend to make a finding about his loan.

There was also a significant gap in lending between loans 2 and 3. I my view, this gap was large enough for Oakam to have believed that Mr W's financial situation may have improved. This means, I think it was reasonable for Oakam to treat loan 3 as Mr W's first loan in a new chain in lending so they could treat loan 3 as a fresh application.

There was also a smaller gap between repaying loan 3 and taking loan 4. But in my view, I don't think this break in lending was long enough to treat loan 4 as part of a new chain of lending.

The adjudicator felt this loan should be upheld, taking into account what Oakam saw in the results it received from its credit checks. I've thought about this but I don't think, for the reasons I'll go into that this is enough to uphold this loan.

Firstly, when this loan as approved, Oakam asked Mr W for details about his income and expenditure. And I think Oakam was entitled to rely on the information Mr W provided because it hadn't yet reached the stage where Oakam needed to verify the information he had provided. And Mr W declared sufficient disposable income for Oakam to be confident that he'd be able to meet the commitments he was contracted to repay.

So, it would seem, based purely on the income and expenses information gathered that it wasn't unreasonable for the loan to be granted. But, as the adjudication explained, he considered the credit report information ought to have suggested the loan shouldn't have been provided. I've therefore considered whether the credit file information was enough for the loan to have been declined.

Based on the results that Oakam received for this loan, it was aware that Mr W had outstanding credit of around £1,110 but importantly around 50% of this outstanding amount were in arrears. And this on its own, may have indicated that there was a problem. However, compared to loan 2, Oakam would've thought that Mr W's position had improved as his debt was significantly smaller along with a smaller sum of arrears – this didn't suggest that Mr W was having or likely to be having financial difficulties. Indeed, I think it was a reasonable assessment that Mr W's financial position had improved, as he was able to reduce these arrears.

Equally, loan 3, taken in July 2014 Mr W had around £3,400 of credit of which £2,800 was in arrears. So between July 2014 and February 2015 Mr W had been able to halve the amount of credit he had, and decrease his arrears by a significant amount.

This information was available to Oakam, so I think that a fuller review would've led it to conclude – based on the credit results, that Mr W's situation was not the same as it had been when loan 2 was granted. Indeed, Oakam would've seen that Mr W was repaying what he'd previously borrowed from creditors. Given those circumstances, and what was apparent to Oakam I don't think the credit report supports that Mr W was having, or likely having,

financial difficulties.

And the credit checks for loan 4 also showed no defaults within the last 12 months or any active County Court Judgments (CCJs) – so this, together with the information above, leads me to conclude that Oakam would've thought Mr W's finances were actually improving given the decreasing debt and no other adverse credit file data being visible. So unlike, the adjudicator, I think it was reasonable, based on what Oakam had to hand, to approve this loan.

So overall, taking into account what Oakam was told by Mr W about his income and expenditure, and the results of the credit checks, I think proportionate checks were carried out, and these checks suggested Mr W would be able to repay this loan. So, I am not planning to uphold Loan 4 of Mr W's complaint.

Loan 7

Oakam has already accepted something may have gone wrong with loans 5 and 6, so I don't intend to make any findings about those loans here.

Unlike the other loans that Mr W was granted, this loan was used to repay and close loan 6. So, although Mr W's loan agreement says he was borrowing £1,945.80 he only received £1,800 'new' money because the remainder of the funds went towards loan 6.

For this loan, Oakam once again carried out income and expenditure checks. This time Mr W declared his income to be £2,511 and expenditure to be £1,872 and Oakam would've thought that the bi-weekly payment would've been affordable.

Oakam was aware that Mr W was working two jobs at this time. The adjudicator seems to have taken his to be a sign of financial difficulties – but without any further information I can't say that this was the case.

There is of course other reason why Mr W may have taken a second job but I don't think I need to speculate on these. Oakam was aware of the second job, and was entitled to think, based on the information that the loan may have appeared affordable.

It also carried out credit checks, I've looked at these and at the time Oakam was aware that Mr W had outstanding credit of £636. There was also no indication of CCJs or anything else that may have led Oakam to conclude that it should decline the application.

But, I don't think this on its own ought to have led Oakam to have declined the application because I don't think the checks it carried out went far enough. This was Mr W's largest loan to date and it was due to be repaid over the longest period of time – 24 months. This meant Mr W was committed to indebting himself to Oakam for a further two years after being in a relationship with it for 19 months for this current chain of lending.

These factors have led me to conclude that Oakam's checks needed to go further, I no longer think it was reasonable for it to have relied on the information that Mr W was providing. Instead, Oakam should've sought to have verified the information that Mr W had provided. It could've done this a number of ways. It could've asked for copy of his credit file, wage slip and evidence of his regular bills. Or, it could've asked for copies of his bank statements from around the time this loan was approved. And as far as I can see Oakam didn't do that.

But that doesn't mean this loan should be upheld. Mr W hasn't been able to provide us with is actual credit file or evidence of what his financial position was at the time (such as bank

statements). So, I don't know, based on what I currently have, whether had Oakam carried out further checks it would've likely seen this loan wasn't affordable. So, as it stands, I'm not planning to uphold this loan. But if Mr W can provide further evidence then I will consider this in the final decision.

Loan 8

Around five months after taking out loan 7, loan 8 was approved. Mr W was given a total of £2,822.10. £1,962.10 went towards repaying loan 7 and £860 was new money given to Mr W. This loan was to be repaid over 30 months. Mr W was again committing to repayments over a significant period of time.

Oakam gathered similar information from Mr W as it had done for the previous loans and the information Mr W declared about his income and expenditure was also broadly similar to what he declared for loan 7.

The credit report again, showed an increase in outstanding credit, but this could be down to the fact Mr W had an outstanding loan with Oakam. And at this time, Oakam was aware that he didn't have any arrears with any other creditors. So like loan 7, I don't think the credit report on its own would've been enough to make it think that Mr W couldn't afford the repayments he was committed to making.

And for the same reasons as I gave for loan 7, Oakam's checks needed to go further and it ought to have been verifying the information that Mr W had provided. And Oakam could've gone about doing that a number of different ways. And like loan 7, it didn't carry out what I consider to be proportionate checks.

But, based on what I've got to hand, I am not planning to uphold this loan because I don't have any information from Mr W to show me what Oakam would've likely discovered had it carried out sufficient checks. So as it stands, I'm not recommending that Oakam was wrong to have approved this loan.

I would like to draw attention to what Oakam said in response to the adjudicator's assessment about not rolling over interest from loan 7 into loan 8. Based on the statement of account for loan 7, Mr W had paid it a total of £930.21 before loan 8 was approved. And of this, around £253.70 had been attributed towards paying down the interest.

The result of this meant Mr W's balance for loan 7 had decreased to £1,962.10. And I agree with Oakam that it didn't appear to have rolled over any interest into the new loan. I can see that interest was only charged while the loan account was open.

Other considerations

Like the adjudicator I've considered the statement of account for loan 8, and it seems that Mr W's final repayment towards this loan was made on 3 September 2019. Which seems to coincide with Oakam taking the decision to sell the outstanding debt to a third party. So, I don't think the outstanding balance that Oakam had at the time was incorrect. Although, it seems Oakam has (or will) end Mr W's liability for this loan.

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.

Both Oakam and Mr W have agreed with my provisional decision, and neither party had any further information it wished for me to consider.

I therefore see no reason to depart from what I said in the provisional decision. So for the reasons outlined above I think Oakam was wrong to have provided some of the loans to Mr W. I've set out below what Oakam needs to do to put things right.

Putting things right

If Oakam hasn't already carried out the actions that it has agreed to do in relation to loans 3, 5 and 6 and then reducing Mr W's balance to zero for loan 8 then it should do this as part of the redress in the decision.

In addition to this, Oakam should also do the following;

- Oakam should refund all interest, fees and charges Mr W paid on loans 2.
- Add 8% simple interest*, calculated from the date Mr W originally made the payments, to the date the complaint is settled.
- Oakam should remove any adverse information it has recorded on Mr W's credit file in relation to loans 2, 3, 5, and 6.

*HM Revenue & Customs requires Oakam to deduct tax from this interest. Oakam should give Mr W a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision, I partly uphold Mr W's complaint.

Oakam Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 December 2020.

Robert Walker
Ombudsman