

## The complaint

Miss J complains about three loans that she took out with Oakam Limited, which she said were unaffordable. The complaint has been brought to this service on Miss J's behalf by her partner. But for ease, I shall refer below to all actions being taken by Miss J.

## What happened

Miss J was given three instalment loans by Oakam from April 2016 to November 2016. Loan 3 hasn't been repaid and has been sold to a third party, ("T"). A summary of the loans taken out by Miss J is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Number of fortnightly repayments
1.	21/4/16	12/7/16	£200	7
2.	12/7/16	31/10/16	£400	7
3.	4/11/16	Unpaid	£500	13

Miss J complains that Oakam gave her consecutive loans which were unaffordable. This caused her to default on her third loan with Oakam. In addition, she was experiencing financial difficulty at the time. She had several payday loans at the same time. She didn't believe Oakam had carried out proper credit checks before making the decision to lend to her. She wanted interest and charges on the loans repaid and the outstanding balance on Loan 3 written off.

In its final response letter, Oakam said that Loans 1 and 2 were provided responsibly because:

- Miss J was able to repay the loans without difficulty as was evidenced by her positive repayment history
- The credit files it obtained showed no signs of arrears or defaulted accounts registered in over 15 months prior to the application.
- It obtained details about Miss J's income and expenditure on each application and obtained Miss J's bank statement on 21 April 2016.
- Based on Miss J's confirmed income, the value of the instalments was never more than 15% of Miss J's confirmed monthly income showing they were manageable.

But Oakam offered to uphold Miss J's complaint about Loan 3 and offered to waive all interest applied to the loan. It said that Miss J had repaid part of the capital, but a balance of the capital lent still remained.

Miss J rejected Oakam's offer.

## *Our adjudicator's view*

The adjudicator didn't recommend that Miss J's complaint should be upheld.

Miss J disagreed with the adjudicator's view. She said that at the time these loans were taken out, she was in financial difficulty and this could be seen in her credit files. She was heavily reliant on her overdraft and the credit limits on four credit cards were almost fully utilised. She had a defaulted loan account (in January 2015) and a defaulted payday loan (in October 2013). Miss J also had a log book loan. She also had other complaints with this Service which had been decided differently to this one.

Oakam said that the offer in its final response letter was still open.

As this complaint hadn't been resolved informally, it has been passed to me, an ombudsman, to investigate.

### *my provisional conclusions*

After considering all the evidence, I issued my provisional decision on this complaint to Miss J and to Oakam on 9 December 2020. I summarise my findings:

I'd noted that Miss J had referred to other decisions of this Service. However, I said that we assess each case on its own merits and it wasn't appropriate to compare the outcomes of complaints as the circumstances might be very different.

I'd also noted that Oakam had offered to settle Loan 3. It said in its final response letter that based on the review of Miss J's application, it had found sufficient grounds to uphold Miss J's complaint about Loan 3. So, I said that I didn't propose to investigate Loan 3 but would include this Service's usual redress for unpaid loans in my redress.

I'd noted that for all of Miss J's loans the regulator was the Financial Conduct Authority ("FCA") and relevant regulations and guidance included its Consumer Credit Sourcebook ("CONC"). The CONC contained guidance for lenders about responsible lending.

Oakam needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Miss J 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 thought 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 included:

- 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 might signal that the borrowing had become, or was becoming, unsustainable).

There might even come a point where the lending history and pattern of lending itself clearly demonstrated that the lending was unsustainable.

I said that Oakam was required to establish whether Miss J could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it didn't automatically follow this was the case. This was because the CONC defines sustainable as being without undue difficulties and in particular the consumer should be able to make repayments on time, while meeting other reasonable commitments; as well as 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 wouldn't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Miss J's complaint.

Oakam had told us about the checks it did before lending to Miss J. I'd noted from Oakam's records that it had details of Miss J's income as well as details about her expenses including other credit commitments.

I'd also noted that Oakam had carried out credit checks. I'd seen a summary of its credit checks which I'd referred to in my provisional decision. I'd noted that these showed that Miss J didn't have a debt management plan, or a county court judgement registered against her and she wasn't bankrupt or in an individual voluntary arrangement.

We'd also received a credit report from Miss J. This showed that Miss J had taken out numerous loans and I'd referred to these in my provisional decision. It also showed that Miss J had two defaulted accounts in October 2013 and January 2015. But I didn't think it was unreasonable for Oakam to be more interested in Miss J's recent credit history for the purposes of assessing whether the loans were affordable.

I'd thought about whether Oakam's checks were proportionate for the loans. I'd noted that for Loan 1, Miss J needed to make a highest equivalent monthly repayment of around £96 to repay the loan over 14 weeks. It seemed on the face of it that the repayments would have looked relatively modest compared to Miss J's declared income. However, I thought the information Oakam gathered should have raised concerns and prompted further checks.

Oakam had told us about the checks it did before lending Loan 1 to Miss J. It had asked for her income which she'd declared as £3,236. Oakam had obtained Miss J's bank statements for two months for proof of her income. I'd asked the adjudicator to ask Oakam to provide us with copies of those statements. But these hadn't been received. Oakam had also asked Miss J for her regular outgoings and repayments on other loans. Oakam's application form showed Miss J's expenses as around £2,475. It appeared that Miss J didn't declare any amount for credit commitments. But Oakam showed on its loan application that the credit checks showed loan repayments of £170.

I had seen a summary of Oakam's credit checks. These showed that Miss J had 12 active accounts with around £8,870 outstanding. It also referred to five lines of credit being in arrears with around £4,680 in arrears. As Oakam was aware that Miss J had 12 active accounts, I thought it ought to have reasonably expected Miss J's expenditure on credit commitments to be somewhat higher than the amount of £170 it had referred to and the zero

amount declared by Miss J. Miss J might not have disclosed the extent of her existing credit to Oakam but the information the lender had available to it clearly showed this. I'd also thought the results of Oakam's credit checks ought to have given it concerns that Miss J already had five accounts in arrears, that her finances might be under pressure and there was a real risk that Miss J wasn't going to be able to sustainably repay Loan 1. Altogether I thought Oakam ought to have been looking to build a clearer picture about Miss J's finances before lending to her. So, I didn't think it was reasonable for Oakam to agree to lend Loan 1 to Miss J without further checks. I couldn't see that it had done this.

I'd carefully looked at Miss J's credit report and her other complaints with this Service to see what better checks would have shown Oakam. Miss J wasn't able to provide this Service with her bank statements from the time. I could see that Miss J had two other payday loans which would have been repayable at the same time as Loan 1. In particular, I'd noted that Miss J had taken out a payday loan for £500 three weeks earlier which was due to be repaid after Loan 1 had been taken out for which a repayment of around £612 was required. This payment alone exceeded Miss J's disposable income of around £590 shown on Oakam's loan application. So, I thought better checks would have likely suggested to Oakam that Miss J wasn't in a position to sustainably repay further credit. So, I didn't think Oakam should have agreed to lend Loan 1 to Miss J.

Miss J had taken out Loan 2 on the day she'd repaid Loan 1. The loan amount had doubled, and her monthly equivalent repayments had roughly doubled. I thought all this might have given Oakam concerns.

Miss J had declared her income as £3,236, and her regular outgoings as around £2,180. It didn't appear that Oakam had obtained bank statements from Miss J on this occasion. It again appeared that Miss J didn't declare any amount for credit commitments. But Oakam showed on its loan application that the credit checks showed loan repayments of £293.

I'd also noted that Oakam had carried out a credit check before Loan 2 and had seen a summary of that check. This showed that Miss J had 13 active accounts with around £10,970 outstanding. So, her borrowing had increased by more than £2,000 since taking out Loan 1. The credit check also referred to three lines of credit being in arrears with around £4,080 in arrears. The checks also showed that there had been 17 credit searches in the previous three months. I'd thought Miss J's worsening credit situation might have concerned Oakam.

As Oakam was aware that Miss J had 13 active accounts and increased borrowing, I'd again thought it ought to have reasonably expected Miss J's expenditure on credit commitments to be somewhat higher than the amount of £293 it had referred to. And Oakam was again aware that Miss J was spending far more than she'd declared to the lender on repaying existing credit. I'd also thought the results of Oakam's credit checks ought to have given it concerns that Miss J's finances might still be under pressure. So, I didn't think it was reasonable for Oakam to have agreed to lend Loan 2 to Miss J without further checks. And I thought Oakam ought to have taken steps at that time to independently verify Miss J's true financial position. I couldn't see that it had done this.

I'd carefully looked at Miss J's credit report and her other complaints with this Service to see what better checks would have shown Oakam. I could see from the credit report that Miss J's credit card balances were around the credit limit on four credit cards. In addition, she'd taken out three payday loans in the previous month totalling around £1,700 which were to be repaid at the same time as Loan 2. And Miss J had borrowed a further £1,100 the previous month on a log book loan from a high cost credit provider. I thought all this was likely to suggest that Miss J was having difficulties managing her money and that she wasn't in a position to sustainably repay further credit. So, I didn't think Oakam should have agreed to lend Loan 2 to Miss J.

Subject to any further representations by Miss J or Oakam my provisional decision was that I intended to uphold this complaint in part in respect of Loans 1 and 2. I intended to order Oakam Limited to put things right for Miss J in addition to what it had already offered to do in respect of Loan 3 as I've set out below.

I'd noted that Miss J would have liked the balance on Loan 3 to be written off. But I didn't think that was reasonable here as Miss J had the use of the capital lent to her. I'd also not seen anything else to make me think that would be appropriate.

In deciding what redress Oakam should fairly pay in this case I'd thought about what might have happened had it not lent to Miss J, as I was satisfied it ought not to have lent to her. Clearly there were a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Miss J might have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, she might have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she might have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if she had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which might or might not have been the same was impossible to now accurately reconstruct. From what I'd seen in this case, I certainly didn't think I could fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Miss J in a compliant way at that time.

Having thought about all of these possibilities, I was not persuaded it would be fair or reasonable to conclude that Miss J would more likely than not have taken up any one of these options. So, it wouldn't be fair to reduce Oakam's liability in this case for what I was satisfied it had done wrong and should put right.

### **Putting things right – what Oakam needs to do**

Oakam should:

- a) refund the interest and fees Miss J paid for Loans 1 and 2;
- b) pay interest on these refunds at 8% simple\* per year from the dates of payment to the dates of settlement;
- c) remove any adverse information about these loans from Miss J's credit file.

I understood that Loan 3 hadn't been fully repaid. In order to put Miss J back into the position she would have been had Loan 3 not been agreed for her, Oakam needs to ensure that Miss J only repays the principal borrowed on this loan. In other words, she should not pay any interest or charges for Loan 3. So, Oakam needs to:

- d) remove any interest and charges applied to Loan 3;

- e) treat all payments that Miss J has made towards Loan 3 as payments towards the principal borrowed;
- f) remove any adverse information about Loan 3 from Miss J's credit file, once it has been settled

If there is a capital balance outstanding on Loan 3 after steps d) and e) have been taken, Oakam can use the refunds from steps a) and b) above to reduce this balance and any remaining refund should be paid to Miss J. If after applying the refunds, there is still an outstanding capital balance then Oakam needs to treat Miss J fairly and sympathetically in this matter. This may mean agreeing a mutually agreeable repayment plan with her.

As Loan 3 has been sold to T, then Oakam needs to buy this debt back before deducting any refunds. If it doesn't do this, or can't do this, then it needs to work with T to bring about steps d) to f) above.

\*HM Revenue & Customs requires Oakam to take off tax from this interest. Oakam must give Miss J a certificate showing how much tax it has taken off if she asks for one. If Oakam intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Oakam responded to my provisional decision to say that it agreed with it.

Miss J responded to my provisional decision to say that she agreed with it.

### **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 short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Given that Miss J and Oakam have both agreed with my provisional decision and given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require Oakam to take the steps and pay Miss J some compensation as set out above under the heading "Putting things right – what Oakam needs to do".

### **My final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order Oakam Limited to take the steps and pay Miss J some compensation as set out above under the heading "Putting things right – what Oakam needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 10 February 2021.

Roslyn Rawson  
**Ombudsman**