

The complaint

Mrs B complained that OAKBROOK FINANCE LIMITED trading as Likely Loans acted irresponsibly when it gave her unaffordable loans.

What happened

Likely Loans provided two loans to Mrs B as follows:

Loan	Date taken	Amount	Term	Monthly repayment	Total Payable	Date repaid
1	11/5/2018	£1,000	12 months	£115.96	£1,391.52	5/6/2018
2	4/1/2021	£5,000	24 months	£379.64	£9,111.36	14/9/2021

Mrs B brought her complaint to us through her representative, but to keep things simpler, I'll just refer to Mrs B.

Our adjudicator assessed the complaint and whilst he didn't think that we could uphold Mrs B's complaint about loan 1 he did think that loan 2 shouldn't have been provided. He set out his findings in a letter explaining how he'd come to his view. Mrs B hasn't specifically commented on our adjudicator's suggested settlement. Likely Loans didn't agree with what our adjudicator said about upholding loan 2.

Our adjudicator wrote back to Likely Loans addressing the points it had raised in support of its viewpoint and we didn't hear anything further.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. I've looked at the complaint afresh and I've independently reached the same conclusions as our adjudicator. I'll explain why I say this.

There are some general principles I will keep in mind and questions I need to think about when deciding whether to uphold Mrs B's complaint. Before agreeing to lend, lenders must work out if a borrower can afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation. A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income)
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income)
- the *longer* the period of time a borrower will be indebted (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend.

For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I've kept all of this in mind when thinking about whether Likely Loans did what it needed to before agreeing to lend to Mrs B.

As far as I can see, Mrs B hasn't objected to what our adjudicator said with respect to not upholding her complaint about loan 1. So I don't think I need to say more about loan 1 except that I've reviewed this loan and independently reached the same conclusion as our adjudicator. I haven't seen enough to say that Likely Loans shouldn't have provided this loan – so I'm not planning on upholding this part of Mrs B's complaint.

But, like our adjudicator, I don't think Likely Loans should've provided loan 2. I'll explain why I say this.

Likely Loans asked Mrs B about her income and took steps to check this out. It worked out a figure of around £1,890 for Mrs B's monthly earnings. Likely Loans relied on statistical information to compare Mrs B's income and expenditure against national data showing typical spending for someone in the same situation. Likely Loans also carried out credit checks and saw that she had a number of other credit commitments already.

After allowing for everything Likely Loans thought Mrs B would need to spend each month (plus an extra £50 'buffer' as a safety margin) and taking into account the cost of the repayments she would have to make for this loan, Likely Loans worked out that Mrs B should still have surplus cash each month and so the loan was affordable for her.

I've thought carefully about what Likely Loans has said, including the comments it has made in response to our adjudicators view. I've taken into account that Likely Loans made allowance for Mrs B's other monthly outgoings being around 35% of her income, which it now says is probably an over-estimate of her actual spending, given her particular

circumstances by the time she applied for loan 2. But if Likely Loans is right about this and Mrs B had lower living costs than it allowed for, this would make it harder to understand why she would need this expensive loan. She hadn't stated any clear loan purpose.

So this doesn't affect my view overall and I don't think that Likely Loans made a fair lending decision when it provided loan 2.

I think Likely Loans should have been concerned when it noted in its affordability calculation that Mrs B was already committed to paying around £545 to service her outstanding debt. This meant that Mrs B was already paying well over a quarter of her net pay to existing creditors. I think that this was such a significant proportion of Mrs B's monthly income it was a clear warning sign that she was already over-reliant on credit and an indication that she was having serious money problems. It wasn't clear why she would need such a large loan when, as Likely Loans has pointed out, her change in circumstances meant that her living costs were potentially less than they had been previously. And by the time she took out this loan, costing a further £379.64 each month, this would take her monthly repayments on credit commitments alone to almost half her take home pay.

I think that this amount was such a significant proportion of her net income, it was a clear indication that Mrs B was unlikely to be able to maintain such a high level of debt sustainably.

I think that Likely Loans should've realised that Mrs B's total and escalating indebtedness showed that managing her credit accounts had got beyond her control and it seemed likely she was borrowing from one creditor to pay others. In the event, Likely Loans has since discovered that an outstanding loan with another provider of high cost credit was settled when it provided loan 2 to Mrs B – so I think that bears out my concerns about the way Mrs B was using credit.

Using part of this loan for debt consolidation isn't enough to make me think it was fairly provided or that it proved helpful in the event to Mrs B. I think the scale of her overall debt at that time compared to the lesser value of the loan would suggest that she would remain in serious financial trouble regardless. And I think that's borne out by the information that can be seen on a credit report Likely Loans obtained a couple of months after Mrs B took out loan 2. She may not have taken out any further borrowing, but it also shows that whilst Mrs B began to make inroads into paying some of her other debt, overall this loan increased her total indebtedness to around £19,533. So I think it's fair to say that overall, this was detrimental to Mrs B.

I've taken into account Likely Loans' point that using its loan to repay a loan that cost Mrs B £225 each month potentially reduced her spending on credit each month. But this doesn't make me think this is a reason not to uphold her complaint. By my reckoning, Mrs B was still contractually committed to pay more than a third of her take home pay just on servicing debt – and more than this would be needed to repay her credit card debt in a meaningful way by making more than the minimum monthly repayments owed.

I think it is evident that Mrs B still had to pay such a significant proportion of her income towards servicing her credit commitments it went beyond a level likely to be sustainable for her.

The fact alone that Mrs B has managed her monthly repayments to the loan and repaid it early doesn't mean that she was able to do so sustainably or that this is a reason for me not to uphold her complaint that the loan was unaffordable and irresponsibly provided.

For all the reasons I have explained, I am upholding Mrs B's complaint that she should not have been given the loan.

I hope that setting things out as I've done is helpful and I invite Likely Loans to reconsider its position in view of what I've said in my provisional decision.

This means that as Mrs B has been further indebted with a high amount of interest on a loan that she shouldn't have been provided with she has lost out as a result of what Likely Loans did wrong. I think Likely Loans needs to take the following steps to put things right."

What the parties said in response to my provisional decision

Likely Loans has confirmed it accepts my provisional decision. I have heard nothing further from Mrs B.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint.

I'd like to thank both parties for all the information that has been provided about this matter and Likely Loans for responding to my provisional decision. Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

Putting things right

Our adjudicator didn't recommend that Likely Loans should pay any additional redress. Mrs B hasn't commented on that and I haven't seen anything which makes me think Likely Loans acted unfairly or unreasonably towards Mrs B in any other way.

So I'm not awarding any additional redress.

And I think it is fair and reasonable for Mrs B to repay the capital amount that she borrowed when she took out loan 2, because she had the benefit of that lending.

But she has been charged extra for a loan that should not have been provided to her and that's unfair.

In line with this Service's approach, Mrs B shouldn't repay more than the capital amount she borrowed.

So, Likely Loans should do the following:

- add up the total amount of money Mrs B received as a result of having been given loan 2. The repayments Mrs B made should be deducted from this amount.
- If this results in Mrs B having paid more than she received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement).
- Whilst it's fair that Mrs B's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by any adverse information recorded

about a loan that was unfairly provided. So Likely Loans should remove any negative information recorded on Mrs B's credit file regarding loan 2.

*HM Revenue & Customs requires Likely Loans to deduct tax from this interest. Likely Loans should give Mrs B a certificate showing how much tax has been deducted if she asks for one.

My final decision

I uphold Mrs B's complaint about loan 2 and OAKBROOK FINANCE LIMITED trading as Likely Loans should take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 4 April 2022.

Susan Webb
Ombudsman