DRN-3358980

The complaint

Ms M complains through her representative that Oakbrook Finance Limited trading as Likely Loans lent her money on high cost loans she was unable to afford to repay.

What happened

Oakbrook provided the following loans to Ms M (using figures rounded up or down):

	Date	Amount	Term (months)	Monthly instalment	Repaid
Loan 1	28/3/2015	£1,000	30	£53	By loan 2
Loan 2	5/10/2016	£1022	36	£49	By loan 3
Loan 3	2/11/2017	£1279	36	£61	By loan 4
Loan 4	26/10/2018	£1558	36	£74	Paid up*

*So far as I'm aware.

She complained that she had to keep seeking top up loans and that she had difficulty finding the money to make repayments, which led to her missing some payments.

Oakbrook said that for each loan it obtained credit information. The reports are not available but the data was incorporated into its affordability assessments. It says it verified her income for each loan and says there were no difficulties with her repaying each loan (although the first three loans were paid off by each subsequent loan at the time). It believes the loans were affordable.

Ms M has sent in her bank statements for the period around each loan.

Our adjudicator said that for each loan the data showed that Ms M shouldn't have been lent the money. This was because of her commitments at the time of each loan, set against her income.

Oakbrook didn't respond to the adjudicator's view, so the matter has been passed to me for further consideration.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

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

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

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

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

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

In other words, it wasn't enough for Oakbrook to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Ms M**.** Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications. I think that such a check ought generally to have been *more* thorough:

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

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

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

The third point above is particularly relevant, Ms M asked for and was given top up loans to repay each previous loan. This disguised any difficulty she might have had in repaying each loan as the period between each loan kept getting shorter. She was on a low salary throughout the period of these loans, so I think for each loan that Oakbrook should have carried out a thorough assessment of her finances.

loan 1

Ms M declared an income of £9,000. Oakbrook's own assessment showed that, after accounting for the loan instalment, she would have had a disposable income of about £40 a month. She had also been in considerable debt before – she had arrangements with four credit providers and with seven debt collectors to make payments of £1 a month. Oakbrook should have taken those factors into account. I don't think that on its own assessment Ms M was able to afford the loan. So I don't think it made a fair lending decision.

loan 2

I think the information that came to light in respect of loan 1 should have alerted Oakbrook to carry out further checks. I wouldn't say it should have obtained bank statements, but those statements nevertheless would have given useful information.

Whilst Oakbrook assessed that Ms M could afford the loan, with a monthly disposable income of over £648, this was based on a monthly income of £872. Her salary from her bank statements was more like £305 a month. She had to rely on payments from others to keep her account in credit. The payment arrangements on those eleven accounts continued. Based on her commitments and her income I think this loan was unaffordable leaving her with a negative disposable income.

loans 3 and 4

Again I think Oakbrook should have been alerted to carry out more extensive checks on Ms M's circumstances. Her credit commitments, and her arrangements on defaulted accounts remained the same. And again I think her income was overstated (as Oakbrook would have discovered had it carried out more extensive checks). Her pay, according to her statements didn't go above £325 a month. In light of her history and her repeated requests for a top up, I think if Oakbrook had carried out those further checks it would have found the loans to be unaffordable. I note that it did refuse further top ups after loan 4.

In respect of all four loans I don't think Oakbrook made fair lending decisions.

Putting things right

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

- Remove all interest, fees and charges applied to all four loans.
- Treat any payments made by Ms M as payments towards the capital amounts on each of the four loans.
- If Ms M has paid more than the capital, refund any overpayments to her with 8%* simple interest from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Oakbrook should come to a reasonable repayment plan with Ms M.
- Remove any adverse information about the loans from Ms M's credit file.

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

My final decision

I uphold the complaint and require Oakbrook Finance Limited trading as Likely Loans to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M to accept or reject my decision before 26 April 2022.

Ray Lawley
Ombudsman