

The complaint

Mr C has complained through a representative that OAKBROOK FINANCE LIMITED trading as Likely Loans (Likely Loans) mis-sold him loans he couldn't afford to repay.

What happened

Likely Loans provided Mr C with three loans between May 2017 and December 2018. A summary of his borrowing can be found below.

loan number	loan amount 'new money'	agreement date	repayment date	term (months)	monthly repayment
1	£3,000.00	05/05/2017	11/12/2017	36	£165.51
2	£2,000.00	11/12/2017	31/12/2018	36	£264.04
3	£700.00	31/12/2018	26/12/2021	30	£281.67

Mr C had some repayment problems while repaying loan 3, but this was fully repaid following him entering a repayment plan.

Also, in the loan table above, the loan amount is only the 'new' money that was advanced to Mr C.

Mr C was advanced £2,000 for loan 2 but he also had to borrow an additional £2,786.01 to repay loan 1. So, Mr C borrowed nearly £4,800. This meant the total amount Mr C was expected to repay Likely Loans for loan 2 was £9,505.44.

The same situation arose for loan 3. Although Mr C borrowed £700 new money, he also borrowed £3,993.17 to repay loan 2. This meant Mr C was lent nearly £4,700. The total amount Mr C was due to repay for loan 3 was £8,450.10.

Mr C, through his representative complained to Likely Loans and received its final response letter on 6 June 2021. It explained that it wasn't upholding Mr C's complaint about his three loans.

Unhappy with this response, Mr C's representative referred the complaint to the Financial Ombudsman Service.

Mr C's complaint was considered by one of our adjudicators. She concluded Likely Loans had acted reasonably when it approved the first two loans in the table above. No mention was made of loan 3 in the assessment.

The adjudicator concluded Likely Loans had carried out proportionate checks which showed Likely Loans Mr C was likely in a position to afford the repayments he was committed to making.

Mr C's credit file did show some adverse credit file data, but this was recorded after loans 1 and 2 were advanced. Mr C's bank statements also showed some returned direct debits in March and April 2017 but after that date there were no other repayment problems. Likely Loans didn't respond to the adjudicator's assessment.

Mr C, through his representative, didn't accept the findings and asked for the case to be passed to an ombudsman. Mr C's representative provided additional comments to demonstrate why it disagreed with the outcome, in summary it said:

- A summary of the adverse credit file data which would've been seen by Likely Loans on Mr C's credit file.
- Information from Mr C's bank statements that ought to have highlighted that he was having problems such as returned direct debits and how overdrawn he was.
- In the representative's view, the credit file and the bank statement, clearly show Mr C was in financial stress and hardship and if the appropriate checks had been carried out than the loans wouldn't have been advanced.

As no agreement could be reached, the complaint was passed to me and I issued a provisional decision explaining what compensation Likely Loans needed to pay for loan three. The findings of the provisional decision are set out below in smaller font and italics and this forms part of the final decision.

What I said in the provisional 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 unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. Taking into account the relevant rules, guidance and good industry practice, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- *Did Likely Loans complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the loans in a sustainable way?*
- *If not, would those checks have shown that Mr C would have been able to do so?*
- *Did Likely Loans act unfairly or unreasonably in some other way?*

The rules and regulations in place required Likely Loans to carry out a reasonable and proportionate assessment of Mr C's ability to make the repayments under the loan agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Likely Loans had to think about whether repaying the loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr C undue difficulty or significant adverse consequences. That means he 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 he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Likely Loans to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr C.

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.

In light of this, I think that a reasonable and proportionate 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 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).*

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

Loan 1

For this loan, Likely Loans asked Mr C for his annual income and he declared he earned £18,000 – which confirmed a monthly amount of just over £1,200. Mr C also declared the purpose of the loan was for debt consolidation.

Likely Loans carried out a credit check which showed it that Mr C had around £4,000 of current outstanding debt along with 11 active credit accounts – and Likely Loans knew how this figure was arrived at. For example, it was aware that Mr C had 4 credit and / or store cards.

The remainder of the credit checks didn't show any recent defaults or other forms of insolvency. But it was aware some 32 months prior there had been some delinquent information recorded on his credit file.

Overall, it calculated that Mr C was committed to paying around £197 per month in order to service these outstanding commitments.

On top of credit commitments, Likely Loans may have used Office of National Statistics data (ONS) to assess what other living costs he may have had. This is because at the time the loan was approved Mr C declared he didn't have any living costs.

Once this check was completed, along with the credit search and the monthly repayment to Likely Loans it calculated Mr C had around £358 left over each month as disposable income. Based on its checks, Likely Loans concluded that Mr C was in a position to repay his loan as and when the payments became due.

I've considered the credit file that Mr C's representative provided the Financial Ombudsman in response to the adjudicator's assessment. But much of the adverse information it has highlighted in was recorded in 2018, which is after this loan was granted. So, Likely Loans wouldn't have been aware of it at the time it made the decision to lend.

Given the term of the loan and the amount being advanced, I think Likely Loans ought to have undertaken further checks in order to make sure the loan repayments were affordable and sustainable for Mr C. Especially in light of the fact that no living costs appear to have

been taken at the time of application. So, I do think Likely Loans' checks needed to go further than relying on the income that Mr C had declared.

Mr C's representative has provided the Financial Ombudsman with copies of bank statements for the period of time leading up to this loan being advanced. So, I don't think it's unreasonable to have considered these in order to understand what Likely Loans may have discovered had it made better checks.

I think if Likely Loans would've carried out further checks it still would've still concluded the loan was affordable for Mr C. There aren't any indicators in my view that would've led it to conclude the loan was affordable. For example, there is no evidence of other high cost or short-term lending or evidence of Mr C spending money on unsustainable items.

I appreciate, that there was a direct debt reversal in March 2017 – so a few months before this loan, but this on its own isn't sufficient for me to be able to say that Mr C was having financial difficulties – although I accept repeated direct debit reversals could be a sign of financial difficulties.

Equally, while Mr C was making use of the overdraft that in itself isn't enough for me to be able to conclude that the lending wasn't affordable for Mr C. He seems to have been using the overdraft as and when he needed it, which I think was reasonable.

Overall, while I have some concerns about the level and type of check that Likely Loans carried out before this loan was approved, based on the information I've seen, I don't think further checks would've led Likely Loans to a different decision. It was therefore reasonable for Likely Loans to have advanced this loan.

Loan 2

Up until the point loan 2 was advanced (which closed loan 1) Mr C's repayment history didn't show any obvious signs of repayment problems.

As I explained at the start of this decision, Mr C took £2,000 new money and then further funds to repay what was left (after an interest rebate on loan 1). Overall, the total amount Mr C was committed to repaying for loan 2 was £9,505.44.

It seems based on what Likely Loans told the Financial Ombudsman that similar checks were carried out for this loan as they were for loan 1. It recorded and used a monthly income figure of £2,271. Again, it seems that Mr C didn't declare any outgoings but had Likely Loans used the ONS data at the time, it would've suggested a monthly expenditure figure of around £750. Taking account of the credit commitment it was aware of, the living costs and loan repayment Mr C would've been left with around £863 per month in disposable income.

It also has provided a summary of the credit check that it carried out. Mr C's overall indebtedness had increased since loan 1, but this is likely due to Mr C being advanced loan 1. Looking at it in the round, the credit file contained similar information to what Likely Loans saw for loan 1.

Based on Likely Loans' checks, it would've concluded the loan was affordable for Mr C. However, Mr C had returned for more lending and his monthly repayment was increasing by around £100 and he was committing himself to repayments for a further 3 years, after already repaying Likely Loans for six months. The fact that at the time Likely Loans appears to not have taken any information from Mr C about his living costs ought to have led it to carry checks to have verified what Mr C was declaring.

I again, have a copy of Mr C's actual credit report, while this was generated in 2021, it does cover the period of time when this loan was approved. I can again see a number of defaults, but these were recorded in 2018 and later, which is after this loan was approved. So, they aren't relevant to my consideration of what Mr C's financial situation was at the time this loan was approved.

I've also considered the bank statements that have been provided. But, like loan 1, I don't think there is quite enough to be able to uphold this loan. I accept that Mr C was in receipt of benefits, as the representative pointed out but that wouldn't be enough to say that Mr C's complaint should be upheld, and neither can I say that use of an overdraft would lead to an uphold. Especially, as Mr C is not constantly overdrawn for the whole month, he goes overdrawn but then funds are credited which take the account into credit.

When looking at the statements it seems he was managing his credit commitments and didn't, like at loan 1 have outstanding high cost or other short-term credit commitments and wasn't spending his money on unsustainable sources.

Overall, I think Likely Loans could've carried out further checks before this loan was approved, but even if it had done so, it still would've, in my view, reasonably taken the decision to advance this loan to Mr C.

Loan 3

Likely Loans has accepted that this loan should be upheld in its cover letter to the Financial Ombudsman Service. In providing its file, Likely Loans said the following:

"After reviewing the information available, I conclude that the third top up loan should be upheld. If more questions had been asked, it may have become apparent that this loan was not suitable."

However, it didn't provide details as to the compensation that it would pay for this loan. So, I no longer think I need to make a finding about this loan. But I have included this loan in the redress below for what Likely Loans needs to do in order to put things right for Mr C.

Response to the provisional decision

Both Likely Loans and Mr C were asked to provide anything further for my consideration as soon as possible, but no later than 20 May 2022.

Mr C's representative told us that Mr C was happy to accept the findings made in the provisional decision.

Likely Loans didn't respond to the provisional decision.

The deadline for responses has now passed so, I see no reason to delay the issuing of the final 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.

Mr C has accepted the findings of the provisional decision and because Likely Loans hasn't provided any further information or additional comments for me to consider, I see no reason to depart from the findings that I reached in the provisional decision.

So, I don't think Mr C should've been advanced his third loan and I've outlined below what Likely Loans needs to do in order to put things right for Mr C.

Putting things right

I think it is fair and reasonable for Mr C to repay the total amount advanced for loan 3 (including the amount that went towards repaying loan 2) that he borrowed in respect of loan 3, because he's had the benefit of that lending. But as I have concluded Likely Loans shouldn't have provided the loan, it should look to remove the interest and fees from the amounts due under the loan agreement.

Likely Loans should:

- remove all interest, fees and charges applied to the total amount advanced for Loan 3;
- treat any payments made by Mr C as payments towards the capital amount;
- If and when Mr C has paid more than the capital, then any overpayments should be refunded to him with 8%* simple interest from the date the overpayments arose to the date of settlement; and
- remove any negative information about Loan 3 from Mr C's credit file.

*HM Revenue & Customs requires Likely Loans to deduct tax from this interest. Likely Loans should give Mr C a certificate showing how much tax it's deducted, if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision, I'm upholding Mr C's complaint in part.

OAKBROOK FINANCE LIMITED should put thing right for Mr C as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 June 2022.

Robert Walker
Ombudsman