Financial Ombudsman Service

Complaint

Mrs H says Oakbrook Finance Limited ("Likely Loans") irresponsibly lent to her. She's said reasonable checks cannot have been carried out as such checks would clearly have shown that her debts were increasing and the loans were unaffordable.

Background

This complaint is about three loans that Likely Loans provided to Mrs H from April 2019 onwards. Loan 1 was for £1,700.00 and was due to be repaid in 24 monthly instalments of £111.40. Loan 2 was provided in January 2020 and was for £3,000.00 and some of the proceeds from this loan were used to repay the outstanding balance on loan 1.

Loan 2 was due to be repaid in 18 instalments of £157.91 but was settled in full before the first instalment. Mrs H's last loan was provided in November 2020. This loan was for an amount of £4000.00 and due to be repaid in 36 monthly instalments of £210.89.

Our investigator didn't think that Likely Loans had done anything wrong when providing these loans and so didn't uphold Mrs H's complaint. Mrs H disagreed and so the complaint was passed to an ombudsman.

I issued a provisional decision – on 12 July 2022 - setting out why I intended to uphold Mrs H's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started by saying that we've explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me decide Mrs H's complaint.

I went on to explain that Likely Loans 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 Mrs H 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. I set out that with this in mind, in the early stages of a lending relationship, less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Likely Loans 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 may signal that the borrowing had become, or was becoming, unsustainable);

- the *longer* the period of time a borrower will be indebted for (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).

I also explained that there may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Likely Loans said it agreed to Mrs H's applications after she provided details of her monthly income and expenditure. It says it cross-checked this against information on a credit search it carried out on Mrs H and statistical information from the Office of National Statistics ("ONS").

The information Mrs H provided about her income and expenditure showed she'd be able to make the repayments she was committing to. And the information obtained showed the required payments were affordable. Likely Loans said, in these circumstances it was reasonable to lend. On the other hand, Mrs H said she was in financial difficulty. I carefully thought about what Mrs H and Likely Loans had said.

Loan 1 was Mrs H's first loan with Likely Loans. Likely Loans did carry out external checks and didn't simply rely on what it was told. It carried out a credit search which didn't show anything too alarming. Bearing in mind the amount of the repayments, and Mrs H's lack of any previous lending with Likely Loans, I didn't think it was unreasonable for Likely Loans to have proceeded on the basis of the information it obtained as, on the face of things, it appeared to be accurate. So I didn't think that it was unreasonable for Likely Loans to have provided loan 1 to Mrs H.

I did think that there was an argument for saying that Likely Loans ought to have carried out further enquiries into Mrs H's circumstances when she applied for loan 2 – after all this was Mrs H's second loan and she hadn't even repaid loan 1 at this stage. However, I was mindful that this loan was settled in full before the first payment was even due. And bearing in mind the remaining interest on loan 1 was more than what she paid on loan 2, I was satisfied that Mrs H didn't lose out as a result of taking loan 2.

That said, I didn't think that the same could be said for loan 3. I thought this because having looked at the overall pattern of Likely Loans' lending history with Mrs H, I was of the view that Likely Loans should reasonably have seen that Mrs H was unlikely to have been able to make her payments in a sustainable manner by the time it provided loan 3.

I said this because by this stage Mrs H had an established borrowing pattern of taking out high cost loans. Our investigator referred to a 10-month break between loan 2 being repaid and loan 3 being taken. However, any credit check carried out is likely to have shown that Mrs H just borrowed from other high-cost lenders during this period instead. And, in my view, this pattern of borrowing was indicative of Mrs H borrowing further to cover the hole repaying previous loans was leaving in her finances.

I thought that Likely Loans provided loan 3 to Mrs H in circumstances where it ought reasonably to have realised that Mrs H was only likely to be able to repay what she was being lent by borrowing further. And this is in itself was considered unsustainable according to the rules set out by the regulator.

Furthermore, I didn't think that relying statistical data from the ONS, which was unlikely to be representative anyway given the wider situation at the time, was fair and reasonable in circumstances where Mrs H's indebtedness and reliance on high cost credit was increasing. Mrs H's indebtedness and borrowing history suggested that she fell outside the portfolio of the average borrower, which ONS statistics were based on.

So I didn't think that the checks Likely Loans carried out before providing loan 3 were reasonable and proportionate and if such checks had been carried out Likely Loans would more likely than not have seen that it was increasing Mrs H's indebtedness in a way that was unsustainable or otherwise harmful.

All of this left me intending to issue a final decision which concluded that Likely Loans didn't act unfairly or unreasonably when providing loans 1 and 2 but that it did do so when providing loan 3. So overall this left me intending to partially uphold Mrs H's complaint.

I finally set out a method of putting things right for Mrs H, which I found addressed Likely Loans' failings and Mrs H's resulting loss.

Responses to my provisional decision

Neither party responded to my provisional decision, or asked for any further time to do so.

My findings

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

I set out in some detail why I intended to partially uphold Mrs H's complaint. And as neither party has provided any further arguments for me to consider, I've not been persuaded to alter my conclusions. So I'm still partially upholding Mrs H's complaint. And I remain satisfied that Likely Loans needs to put things right for Mrs H.

Fair compensation – Likely Loans needs to do put things right for Mrs H

Having thought about everything, Likely Loans should put things right for Mrs H by:

- removing all interest, fees and charges applied to loan 3 from the outset. The payments Mrs H made, whether to Likely Loans or any other party, should be deducted from the new starting balance – the £4,000.00 originally lent. If Mrs H has already repaid more than £4,000.00 then Likely Loans should treat any extra as overpayments. And any overpayments should be refunded to Mrs H;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mrs H to the date of settlement†

- if no outstanding balance remains after all adjustments have been made, all adverse information Likely Loans recorded about this loan should be removed from Mrs H's credit file.

† HM Revenue & Customs requires Likely Loans to take off tax from this interest. Likely Loans must give Mrs H a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons given above and in my provisional decision of 26 July 2022, I’m partially upholding Mrs H’s complaint. Oakbrook Finance Limited should put things right for Mrs H in the way I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 25 August 2022.

Jeshen Narayanan
Ombudsman