

The complaint

Miss C complains that Oakbrook Finance Limited trading as Likely Loans (“Oakbrook”) was irresponsible to lend to her on two occasions.

Miss C has brought her complaint to us via complaints management company but, for simplicity, I’ll refer to her throughout.

What happened

Oakbrook agreed two loans for Miss C. The first was for £2,000 agreed in May 2020, the second was also for £2,000 agreed in July 2022. The first loan was to be repaid over three years with monthly repayments of £110. Miss C settled this early in February 2022. The second loan was to be repaid over two years with repayments of £123 and is still ongoing.

Miss C said that Oakbrook was irresponsible to lend to her because of the adverse information on her credit file.

Oakbrook didn’t uphold Miss C’s complaint. It said that it carried out an income and expenditure assessment when she applied for her loans and found they would be affordable for her. Oakbrook checked Miss C’s credit file and found that she had no recent defaulted accounts or county court judgements and wasn’t overindebted.

Miss C referred her complaint to us and before our investigator reviewed the complaint, Oakbrook got in touch to say it had reviewed it and were now willing to uphold Miss C’s complaint about her first loan. It offered to refund the interest and charges Miss C had paid and remove all negative information from her credit file about the loan.

Our investigator looked into Miss C’s complaint about her second loan and didn’t recommend that it be upheld. They found that Oakbrook carried out proportionate checks which didn’t raise any concerns and concluded that it wasn’t irresponsible to lend on the basis of the information it had.

Miss C didn’t agree with this conclusion and asked for her complaint to come to an ombudsman for a review and it came to me. I sent out a provisional decision on the 14 December 2022 explaining why I planned to uphold Miss C’s complaint about her second loan and setting out my proposals for putting things right for her.

I allowed some time for both parties to provide comments on my conclusions and redress proposals or provide any new information for me to consider when making my final decision on the complaint. Neither party had anything further to add.

As before, I haven’t investigated what happened when Miss C first borrowed from Oakbrook as it has decided to uphold her complaint about this first loan and so it’s no longer in dispute. This final decision deals with Miss C’s complaint about her second loan, agreed in 2022.

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.

Having reconsidered everything, and having no new information to consider, I see no reason to depart from my provisional findings and am upholding Miss C's complaint. I'll set out again my reasons for doing so in this final decision on the matter.

As before, I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Oakbrook, need to abide by. Oakbrook will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise and refer to them where appropriate.

Before entering into a credit agreement, Oakbrook needed to check that Miss C could afford to meet her repayments out of her usual means for the term of the loan. This means she should be able to make her repayments without having to borrow further, while meeting existing commitments and without experiencing adverse consequences. The checks Oakbrook carried out needed to be proportionate to the nature of the credit (the amount borrowed or the term, for example) and to Miss C's particular circumstances.

The overarching requirement was that Oakbrook needed to pay due regard to Miss C's interests and treat her fairly. CONC 2.2.2G(1) gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did Oakbrook complete reasonable and proportionate checks when assessing Miss C's application for her second loan to satisfy itself that she would be able to make her repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did Oakbrook make a fair lending decision?

The income and expenditure assessment Oakbrook carried out when Miss C applied for her second loan in July 2022 records that her salary was £35,000, giving her a monthly income of £2,289 (assuming she wasn't contributing to a pension or had any other deductions). Miss C's monthly expenses came to £1,602. £533 of this was spent on repaying existing debt. Oakbrook said it sense-checked what Miss C said about her income using an online open banking tool which gave it confidence her income was as she'd said. It used national datasets to estimate Miss C's expenses along with information from her credit file. The credit file information provided by Oakbrook shows that Miss C had debts of £18,500 and a defaulted debt of over £3,000 which was almost two years old.

As Oakbrook will know, it needed to have regard to information which might indicate that a customer is in, has recently experienced, or is likely to experience, financial difficulty. While the above assessment shows Miss C would likely be able to meet her repayments, it also shows that agreeing this loan for her would mean she'd need to spend 29% of her declared income on repaying debt, which is a sizeable proportion. Oakbrook also knew that Miss C had problems meeting her repayments on time for her first loan – the statement of account shows Miss C's direct debit was unpaid 12 times, the last two instances were in February 2022. She did catch up with her payments usually within a month and I haven't seen any customer contact notes to understand the details of what happened.

On balance, I think Oakbrook should have been concerned enough to have looked further into Miss C's circumstances and verified her means before lending to her again. I appreciate

it sense-checked her income but I can't see that it verified what she was earning or investigated what her expenses were. I've concluded that Oakbrook didn't carry out a proportionate check.

Miss C has provided her bank statements from the time. I'm not suggesting this was the information Oakbrook should have relied on but in the absence of anything else, I think it's reasonable for me to rely on this to gain an understanding of what Miss C's finances were like when she applied for her second loan and to come to a view on what proportionate checks might have revealed.

I can see from the statements that Miss C's income was lower than she'd said at around £2,000 and she was in receipt of child benefit at about £87 a month. Her regular expenses came to at least £635 excluding food and petrol costs which could reach £350 a month.

Miss C's debts were higher than Oakbrook's estimate at about £625 including repaying a short term and a home credit loan, and overdraft fees. Additionally, Miss C was making a regular monthly payment of £295 to someone referenced 'loan' which I've assumed was her repayment for a personal loan. This takes her total debt repayments to £920 and means Miss C would need to spend half her income each month repaying debt. She'd also be left with about £60 to meet any unexpected or unaccounted for expenses such as child-related costs, clothing or toiletries, for example. The bank statements show many unpaid direct debits – in June, for example, Miss C's direct debits for her rent, car hire purchase and utility bills were returned unpaid.

I think it's likely that Oakbrook would have learnt through a proportionate check that Miss C wasn't in a position to be able to repay another loan without difficulty. I've concluded that it was irresponsible to have lent to her on this occasion.

Putting things right

I've concluded that Oakbrook was irresponsible to have agreed to lend to Miss C a second time and so she shouldn't have to pay any interest, fees or charges associated with the loan agreed in 2022. For completeness I've also included here what Oakbrook offered to do to resolve Miss C's complaint about her first loan.

To put things right for Miss C, Oakbrook should:

- a) refund all interest, fees and charges that she paid on the loan agreed in May 2020 along with 8% simple interest per annum* on these overpayments from the date they were paid until the date this complaint is settled; and
- b) remove any adverse information about this loan from her credit file; and
- c) cap the amount Miss C has to repay on the second loan agreed in July 2022 to the capital she borrowed, in other words £2,000.
- d) Oakbrook can use the refund calculated in a) to offset the outstanding capital debt for Miss C's second loan and:
 - if the refund more than covers the capital amount owing then Oakbrook needs to refund the surplus to Miss C; or
 - if a capital balance remains outstanding, then Oakbrook needs to treat Miss C fairly and with forbearance and due consideration regarding this, which may mean coming to an affordable repayment plan with her.
- e) remove any negative information about this second loan from Miss C's credit file once settled.

* HM Revenue & Customs requires Oakbrook to take off tax from this interest. Oakbrook

must give Miss C a certificate showing how much tax it's taken off if she asks for one. Oakbrook didn't specifically mention this compensatory interest in its offer letter for the first loan – I have assumed it intends to pay Miss C along the lines of our usual approach, which is to include an amount of 8% simple interest per annum on overpayments to reflect the fact the Miss C shouldn't have been without these funds.

My final decision

For the reasons given above, I am upholding Miss C's complaint about Oakbrook Finance Limited trading as Likely Loans and propose it takes the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 15 February 2023.

Michelle Boundy
Ombudsman