DRN-4601872

The complaint

Miss J complains that Oakbrook Finance Limited trading as Likely Loans irresponsibly agreed loans for her.

What happened

Likely Loans agreed two loans for Miss J. The first was taken out in May 2021, the second in July 2022. I've summarised some of the information Likely Loans provided about these loans in the table below.

	Start date	End date	Amount borrowed	Monthly payents	Loan term (months)	Total owed
Loan 1	28/05/2021	18/07/2021	£5,000	£379.81	24	£9,115.44
Loan 2	18/07/2022	Outstanding	£4,563	£515.23	12	£8,182.76

Miss J used some of the capital from her second loan to fully repay her first. From the information Likely Loans provided, Miss J met her repayments for her first loan on time. She made two payments for the second loan, and then arranged a different repayment amount. Miss J stopped making payments altogether in early 2023 and Likely Loans reported that her account was in default in March 2023.

Miss J complained to Likely Loans that it had been irresponsible to lend to her. She said that it hadn't assessed the affordability of the loans for her before agreeing them, that she had a high level of existing debt and a poor credit score.

Likely Loans said that it carried out affordability assessments before lending to Miss J to check she could afford the repayments. It relied on information she provided, information from her credit file and statistical data and concluded that the loans would be affordable for her. It didn't uphold Miss J's complaint and she referred it to us.

One of our investigators looked into Miss J's complaint and didn't recommended that it be upheld. They found that Likely Loans carried out proportionate checks before lending to Miss J the first time and that, even had it looked into her circumstances further before agreeing a second loan, it would have concluded that the loan would be affordable for her.

Miss J 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 issued a provisional decision on 12 January 2024 explaining why I thought Miss J's complaint about her second loan should be upheld. I allowed time for either party to comment on what I'd said or provide any new information. Miss J accepted my provisional decision and Likely Loans confirmed it had nothing further to add.

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 reviewed everything again and, having no new information to consider, I see no reason to depart from my provisional conclusions. I'll set out again why I'm upholding Miss J's complaint in part in this final decision.

As before, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Likely Loans, need to abide by. Likely Loans 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 them.

Before entering into a credit agreement, Likely Loans needed to check that Miss J could afford to meet her repayments out of her usual means for the term of the loan, without having to borrow further, while meeting existing commitments and without the repayments having a significant impact on her financial situation. The checks needed to be proportionate to the nature of the credit (the amount borrowed or the term, for example) and to Miss J's circumstances. Likely Loans needed to bear in mind that certain factors might point towards a more rigorous assessment and others towards a less rigorous one when deciding what type of creditworthiness assessment was required.

The overarching requirement was that Likely Loans needed to pay due regard to Miss J's interests and treat her fairly. CONC 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 Likely Loans complete reasonable and proportionate checks when assessing Miss J's applications 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 Likely Loans make fair lending decisions?

Likely Loans provided the information it relied on in its assessments which included Miss J's application form for her first loan. It explained that it verified Miss J's income with her bank statements obtained via Open Banking for her first loan, and used an online credit reference agency tool which analysed account turnover to check her income when she applied for her second. It used information from Miss J's credit file each time to estimate her monthly debt repayments and estimated her other expenses using national datasets.

Miss J provided a copy of her credit file and her bank statements covering the months before each loan.

<u>Loan 1 – May 2021</u>

Miss J said in her application form that she was self-employed with a gross income of £45,600 and a net monthly income of £2,889. She also said that her housing costs came to £250 a month. Likely Loans estimated that Miss J's monthly income was £3,917, based on her bank statements. It estimated her credit commitments as £288, her living expenses as £531 and concluded that Miss J would have a disposable income of £2,467 after meeting all her expenses including the loan repayment of £380. Likely Loans said it didn't find any adverse information on Miss J's credit file and so it approved the loan.

Miss J said she was self-employed in her application and it's clear from her bank statements that her usual living costs were higher than the estimated figures Likely Loans relied on. Miss J's rent payments were £850, her living costs around £900 and her regular debt payments, to several credit cards and buy-now-pay-later companies, came to around £400.

As Miss J was self-employed, it may be that she needed to pay tax on some of the deposits into her account but I don't have any information about this and her income payments are broadly in line with the figure Likely Loans used.

Likely Loans hasn't provided a copy of the credit file information it relied on and the credit report Miss J provided doesn't go back as far as May 2021, so I don't know how much existing debt Miss J had when she took out this loan. Her statements show occasional large payments towards her debts and transfers of on average £750 a month via an international money transfer company.

Having carefully considered all of the available information, I've concluded that Likely Loans would have continued with its loan offer to Miss J, even if it relied on what it could see about her expenses from her bank statements rather than its estimates. It seems Miss J would have enough disposable income to meet the loan repayments, and they weren't so high relative to her income that it was clear she'd have difficulty meeting them while maintaining all her usual commitments.

<u>Loan 2 – July 2022</u>

When Miss J applied for her second loan Likely Loans estimated that her monthly income was £3,583 based on an analysis of her account transactions. It used the figure of £250 for her housing costs and estimated that her credit commitments came to £632 and her living costs came to £538. Likely Loans concluded that Miss J would have a disposable income of £1,603 a month after meeting all her expenses including the loan repayment of £515. Likely Loans said it didn't find anything of concern on Miss J's credit file and that she'd met her repayments for her first loan on time, and so it approved the loan.

I think this assessment ought to have raised serious concerns for Likely Loans given that it concluded Miss J was spending more on her debts than she'd been a year ago and would potentially need to spend a third of her income each month repaying these going forwards. I think it would have been a reasonable response for Likely Loans to have looked into Miss J's circumstances further before lending to her. As mentioned, Miss J has provided her bank statements and I've relied on these to understand more about her finances at the time. To be clear, I'm not suggesting this is the information that Likely Loans should have gathered, but I think it's reasonable for me to rely on it to understand what a proportionate check might have revealed.

As before, the bank statements show that Miss J's average income payments were broadly in line with the figure Likely Loans used. Miss J may have needed to pay tax on some of the deposits into her account but I don't have any information about this. However, I can see that Miss J's usual living costs and her debt repayments were significantly higher than the estimated figures Likely Loans relied on.

Miss J's living costs hadn't changed significantly since she took out her first loan – her rent was still around £850 and her living costs around £900. However, Miss J's debt repayments to her credit cards, alongside payments to a new credit account and buy-now-pay-later companies, had increased to around £700 a month. In addition, Miss J had also taken out two new loans since her previous Likely Loan borrowing in May 2021 – the first of which had a repayment of £150, the second was taken out just a few months before in March 2022 and had a repayment of £443. Agreeing this second loan would potentially bring Miss J's monthly debt repayments to £1,800 or half her income, and I doubt Likely Loans would have agreed to lend to her again had it carried out a proportionate check.

Altogether, Miss J had over £30,000 of existing debt by this point. I think it's fair to say that Miss J was already overindebted and it wasn't likely that she would be able to meet the repayments for this new loan while meeting her other credit commitments and without further borrowing. I've seen no indications that this loan was taken out to consolidate debt, and it seems to me that agreeing it added to Miss J's indebtedness. I can't say that entering into the agreement under these circumstances was fair to Miss J or paid due regard to her interests and I don't think Likely Loans made a fair lending decision on this occasion.

Altogether, I've concluded that Likely Loans was irresponsible to lend to Miss J in July 2022.

Putting things right

I've concluded that Likely Loans was irresponsible to have agreed a second loan for Miss J in July 2022. I think it's fair that Miss J repays the capital amount she borrowed as she's had the use of the money, even though some of it was used to repay an existing loan. I don't think it's fair that Miss J pays any interest, fees or premiums associated with the loan.

To put things right for Miss J, Likely Loans should:

- Cap the amount she needs to repay at the capital amount she borrowed;
- Consider all payments she's made as payments towards this capital amount; and
    - If Miss J has repaid more than the capital she borrowed, which I don't think is the case here, then Likely Loans should refund these overpayments to her along with 8% simple interest per annum*; or
    - If she hasn't yet repaid the capital then Likely Loans needs to treat Miss J fairly and with forbearance which may mean agreeing an affordable repayment plan with her or amending an existing one.
- Remove any adverse information about this loan from Miss J's credit file once settled.

** HM Revenue & Customs requires Likely Loans to take off tax from this interest. Likely Loans must give Miss J a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the above reasons I am upholding Miss J's complaint about Oakbrook Finance Limited trading as Likely Loans in part and it now needs to put things right for her as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 4 March 2024.

Michelle Boundy
Ombudsman