DRN-4627646

Financial Ombudsman Service

The complaint

Mr M has complained through a representative that OAKBROOK FINANCE LIMITED trading as Likely Loans ("Likely Loans") didn't carry out sufficient affordability checks before it lent to him.

What happened

A summary of Mr M's borrowing can be found in the table below.

loan number	loan value	agreement date	repayment date	number of monthly instalments	monthly instalment
1	£1,500.00	24 October 2017	31 August 2018	12	£159.75
2	£2,303	31 August 2018	31 July 2019	18	£181.79

For loan 2, Mr M received £2,000 of fresh funds as the rest of the advanced funds went towards repaying loan 1. Rounding up the repayments to £160 and £182 it seems that the difference between the monthly cost to Mr M in repaying loan 1 and loan 2 was around £22.

Following Mr M's complaint Likely Loans wrote to his representative and explained the checks that it carried out before lending each loan, that the checks were proportionate and demonstrated that Mr M would likely be able to afford the repayments he was committed to making. Unhappy with this response, Mr M's representative referred the complaint to the Financial Ombudsman.

In our investigator's assessment, he didn't uphold Mr M's complaint about either loan. He concluded, Likely Loans' checks went far enough, and these checks demonstrated that Mr M would be able to afford the repayments he had committed to.

Mr M's representative didn't agree and instead provided a copy of his credit report as well as copy bank statements. In its submissions it focussed on the points surrounding the lending of loan 2. From that it seems Mr M's representative's opinion on loan 1 accords with that of our investigator and so I take it is not disputed. But I have reviewed it.

For loan 2 it said that between Mr M opening loan 1 with Likely Loans and opening loan 2, his debt level had increased: he had taken out two further loans, two new credit cards and a high cost loan. The credit reference agency report it has sent to us is a personal one for Mr M dated February 2023 and it does cover the period from February 2017.

The unresolved complaint was passed to me to decide.

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.

The rules and regulations in place required Likely Loans to carry out a reasonable and proportionate assessment of Mr M's ability to make the repayments under the loan agreements. 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 loans would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr M 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 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 Mr M (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 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 the arguments, evidence and information provided in this context and what this all means for Mr M's complaint.

From the information provided by Likely Loans it carried out the same sort of checks before both loans were advanced. Having looked at everything I have decided to conclude those checks were proportionate and the repayment of the loans appeared affordable. I have therefore not upheld Mr M's complaint and I've explained why below.

Loan 1

Although it seems that Loan 1 likely is not in dispute I have reviewed it.

Likely Loans has explained that it has not got a copy of a credit reference agency report from October 2017. In October 2017 (and still for current loans applications) there is no requirement to obtain a credit report on an applicant. And so, we have been provided with as much information as Likely Loans can give which included its analysis of credit file data extracted electronically.

This is augmented by Mr M's own summary of his income and outgoings at the time.

The application details Mr M supplied to Likely Loans in October 2017 states his income was £42,000 a year which would be including tax. It has used £2,511 as his monthly income after tax.

It said that the credit results showed he had £0 debt. I find this rather unlikely but there are no set standards of what a credit search ought to include or what it ought to reveal. What the search did reveal was he had no registered judgments, no insolvency issues, no defaults and so the report it had appeared positive.

Likely Loans has explained that where an applicant has not submitted any information about their monthly expenditure then it would simply reduce the net income by the applicant's credit commitments together with the loan repayment figure it was about to approve. It went on to explain:

> *'If this application were to be received today, we would apply the greater of either self-declared monthly expenditure or data retrieved as an estimate of monthly expenses from the Office for National Statistics (ONS).'*

So Likely Loans applied a *'retrospective affordability assessment'* to the 2017 loan application and the figure it obtained for '*housing and living costs'* was £1,043. So that plus the loan cost plus Mr M's declared income of £2,511 each month led to it re-submitting to us that the loan would have looked affordable.

In the absence of any actual credit file data then I used the personal credit report Mr M's representative had sent and all I was able to see was that Mr M had a credit card taken in August 2017 with a £750 limit and the repayments were satisfactory on that account. Mr M had no insolvency issues nor any Judgments recorded pre-October 2017 or at all.

Mr M recently has told us through his representative that his income was £1,967 each month. I have looked at the one set of bank account statements relevant to his loan application period (September and October 2017) and I can see his income appeared to be around £1,899 into his account.

I have thought about the discrepancy between Mr M's application income figure in 2017 and what he has told his representative recently and what his bank statements show. It may be accounted for by the gross to net of tax calculation Likely Loans did in 2017. That's the only explanation I have thought may apply here. But not a great deal turns on the income figure as still I think the loan looked to have been affordable even if Likely Loans had used the lower income figure in 2017.

Further, Mr M recently has summarised his outgoings for '*housekeeping*' as £1,000 which dovetails with the ONS statistical data Likely Loans has used in its retrospective assessment. He listed a travel cost of £360 a month and home insurance of just under £50 and a phone contract of about £18.

And so, using both sets of evidence I do consider that the loan was affordable and although information from each of the parties is not necessarily ideal or complete, for a first loan for a relatively modest term of 12 months then I consider Likely Loans carried out appropriate checks. I do not uphold the complaint for loan 1.

Mr M went on to repay the loan each month without issue and the statement of account shows he never was late or missed a repayment.

Loan 2.

Before Loan 1 was due to end Mr M approached Likely Loans for a 'top-up' loan on 31 August 2018. So, it has told us that there was no application document but Likely Loans appeared to know that his salary was around £2,038 after tax each month.

For the 2018 application Likely Loans' procedures appeared to have changed in that in the absence of information surrounding Mr M's monthly expenses it used statistical data to calculate the figure - £907 a month.

It had carried out a credit search and had determined that Mr M's total debt at the time was £13,100 and his credit commitment cost was £808 a month. The new loan cost was going to be just under £182 a month (a £22 a month change) and so it calculated that Mr M was able to afford his outgoings, his credit commitments and his new loan cost and still have around £141 left over each month.

Likely Loans' credit search also informed it of the following. Reference to '*your client'* is Mr M:

> *'Having reviewed your client's credit record at the time of their application, we found the following information:*
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> *• Your client made 2 searches in the last six months.*
> *• Your client had not been in arrears in the last six months.*
> *• Your client was not in arrears on any of their financial commitments.*
> *• Your client had no CCJs registered against them within 36 months of their application.*
> *• Your client had no defaults registered against them within 36 months of their application.*
> *• Your client was not engaged in a Debt Management Plan.*
> *• Your client did not have any Payment Arrangements in place.*
> *• Your client was not in Bankruptcy or in an IVA.*
> *• Your client was never in arrears on their Likely Loan.*
> *• Your client had a monthly repayment size of £181.79, representing less than 8.9% of their monthly income.*

Your client successfully repaid their loan ahead of their contractual schedule which aligns with our creditworthiness assessment at the point of application that the repayments were affordable.'

Whereas Mr M's representative says that in the six months before he obtained loan 2, he took out two loans, a high cost loan and two new credit cards. It says this indicates he could not afford the new loan 2.

I used the personal credit report Mr M's representative had sent me to see that Mr M did obtain the following accounts between October 2017 and August 2018:

- a credit card in May 2018 with a £2,500 limit. The balance in August 2018 was £2,311. In August 2018 there was no adverse payment history recorded on the account.

- a credit card in February 2018. This card had the retailer’s name on the report. It’s the card Mr M says he took a £3,000 cash withdrawal from but there’s no evidence of that on the report I’ve been sent. And I add that approval of a credit card often can be a sign of good credit rating and so not necessarily an indication to a professional lender that Mr M was in any difficulty. And as of August 2018, the account had nothing adverse recorded. The balance was £4,694 at that date.

- a credit card in January 2018 with a £5,100 limit. There was no evidence of any cash advances to that one either. And as of August 2018, the account had nothing adverse recorded.

- A credit card in December 2017 with a £750 limit. No adverse entries on it in August 2018. The balance on it in August 2018 was £384.

- a loan for £5,250 in January 2018 and was repaying £176 each month. As of August 2018, the account had nothing adverse recorded.

- a loan for £2,758 in May 2018, the repayments for which were £229 a month. As of August 2018, the account had nothing adverse recorded.

Mr M already had a credit card with a £750 limit. In August 2018 there was no adverse payment entries on the account.

Having other credit would not have been a reason for Likely Loans to think it ought to refuse the top-up loan request from Mr M especially where it followed a good repayment record on Loan 1 and no adverse entries on his credit report that I’ve seen and which Likely loans has said was reflected in the search it did in August 2018.

Overall, I don’t think given the number of loans, Mr M’s income and what Likely Loans discovered from the credit report information it had obtained would’ve prompted further checks. The unsecured debt had increased and the credit file data showed no adverse data such as defaults, arrears, or County Court Judgments. Furthermore; there was nothing from the existing information Likely Loans had at the time of the application which would have alerted it that Mr M was experiencing financial difficulty.

Mr M’s representative has sent copy bank statements, but in the circumstances of this complaint, it would’ve been disproportionate for Likely Loans to have considered the statements. Many sent do not pre-date the two lending decisions of October 2017 and August 2018 and so are irrelevant when I’m being asked to assess those decisions.

Consequently, I have not reviewed the majority of the statements Mr M’s representative has sent to us, apart from the one set covering the period July 2017 to March 2018. And then they were to assist me in identifying his net income around October 2017.

Mr M repaid Loan 2 within the year and early on 31 July 2019.

I do not uphold Mr M’s complaint.

I’ve also considered whether Likely Loans acted unfairly or unreasonably in some other way given what Mr M has complained about, including whether its relationship with Mr M might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974.

However, for the same reasons I've set out above, I've not seen anything that makes me think this was likely to have been the case.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 May 2024.

Rachael Williams
Ombudsman