

## The complaint

Mr A complains that OAKBROOK FINANCE LIMITED trading as Likely Loans, ("Oakbrook"), lent to him and did not do proper checks before lending.

## What happened

Mr A took two loans with Oakbrook and a brief table gives a few details. Both loans were for 36 months. Loan 2 was used to pay off the balance of loan 1 and an interest rebate of £1,075.31 was accounted for. Mr A's new loan funds were £750 which credited his bank account in August 2021. An outstanding balance remains on Loan 2. It defaulted in January 2024.

Loan	Approved	Amount	Interest	Repayments	repaid
1	22 January 2021	£1,500	£1,458.84	£82.19	30 July 2021 Interest refund given
2	30 July 2021	£2,140.39	£1,776.05	£108.79	o/s

Mr A complained to Oakbrook in December 2023, received its final response letter (FRL) in January 2024 and referred the complaint to us later in January 2024.

One of our investigators looked at all the information from both parties and considered that Oakbrook had carried out proportionate checks and having done that had no evidence in 2021 with which to have a cause for concern. Our investigator did not consider that Oakbrook had done anything wrong and wrote to the parties to inform them of that.

Mr A has raised other points during the complaint progression which our investigator has answered in two follow-up views. I have addressed them in this decision.

Recently Mr A has listed several points he wants an ombudsman to review but it includes an allegation of harassment from Oakbrook. This is a fresh complaint point and not one I will be dealing with. I've no evidence about the contact pattern between Mr A and Oakbrook since January 2024 and nothing relating to telephone calls.

The unresolved complaint on the original complaint points were passed to me to decide. I chose to issue a provisional decision on 15 July 2024 (duplicated later in this final decision) to allow both parties to respond to a partial new outcome.

## 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 have set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Taking into account the relevant rules, guidance, and good industry practice, I think I need to

consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Oakbrook completed reasonable and proportionate checks to satisfy itself that Mr A would be able to repay in a sustainable way? And, if not, would those checks have shown that Mr A would've been able to do so?

If I determine that Oakbrook did not act fairly and reasonably in its dealings with Mr A and that he has lost out as a result, I will go on to consider what is fair compensation. The checks had to be "borrower focused" – so Oakbrook had to think about whether repaying the loan would be sustainable. In practice this meant that it had to ensure that making the repayments on the loan wouldn't cause Mr A 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 payments 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 Oakbrook to approach the loan application from the perspective of the likelihood of getting its money back. Oakbrook had to consider the impact of the loan repayments on Mr A. 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.

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 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 carefully considered all the arguments, evidence and information provided in this context and what this all meant for Mr A's complaint. I chose to issue a provisional decision on 15 July 2024. That is duplicated on the next few pages for both parties to have the provisional and the final decisions all in one document. It is in smaller type to differentiate it and forms part of this final decision.

I took careful note of Mr A's descriptions of the health issues he must deal with each day and the effect that these have on him mentally.

I read the Financial Conduct Authority's (FCA) Guidance on the treatment of vulnerable customers (FG21/1 dated February 2021) and the FCA CONC 7.3 rules and associated guidance which impact on how Oakbrook treated the debt in 2023 and must continue to do in the future.

**The duplicated provisional decision dated 15 July 2024.**

*Loan 1*

Mr A approached Oakbrook for the first time in January 2021 and applied for £1,500 over 36 months. Oakbrook has explained in detail that it carried out several checks including verifying his income using a system of Open Banking. This could only have been done with Mr A's permission as it allows Oakbrook temporary access to view his bank statements.

I do not have a copy of those Open Banking transactions seen by Oakbrook, but I do have a copy of Mr A's bank statements for a period leading up to the first loan application which I have used instead. The statement copies cover a short period leading up to loan 1. And from that I can see that Mr A received £700 DWP Universal Credit (UC) and a Personal Independence Payment (PIP) of around £605. Mr A has explained he receives the 'higher level' of PIP. These two payments amount to around £1,305 each month. Mr A had declared £15,649 annual income of which £1,305 is the monthly equivalent. So, I am satisfied Oakbrook had checked his income as through the Open Banking it would have seen these credits to the account.

Oakbrook used several methods to check Mr A's existing credit commitments and his total indebtedness. The accounts Mr A had were – a current account, two communications accounts and a home credit account. His total overall debt which looked to have included his current account overdraft and his home credit loan was £904. His payments to the home credit loan were for around £60 a month. I consider this to have been a low level of debt. Oakbrook had recorded that Mr A had one account marked '1' as being one payment in arrears five months before he had applied for loan 1. As Oakbrook has explained, and as I know from the industry relating to these types of lenders and for this type of credit, then the customers using these sorts of lenders often do have adverse credit file entries. But that's not of itself a reason not to lend. And for an applicant to have one entry of arrears for a home credit loan would not, in my view, have been unusual for Oakbrook.

Oakbrook had checked for County Court Judgments, insolvencies, any delinquent accounts in recent months and any defaulted accounts – its research showed there were none apart from that one arrears marker. I have given my view on that in the previous paragraph. Oakbrook used Office of National Statistics to come to a household expenditure figure and I consider that reasonable for this first loan and of this value.

I realise that Mr A thinks that Oakbrook ought to have had all the information he may have had before approving the loan. But the regulations covering responsible lending for regulated firms do not require that. I have decided the checks carried out by Oakbrook were proportionate and I would not have expected it to have done more than it did before lending £1,500 to a new customer with repayments of £82 a month. Even accounting for the length of term, which I have done, still I think it did enough.

Applying the regulations surrounding responsible lending I do consider that Oakbrook carried out proportionate checks. And I think that Mr A looked able to afford £82 a month. I plan not to uphold Mr A's complaint about loan 1.

## *Loan 2*

On 30 July 2021, Mr A asked for a top up loan. Oakbrook has said that his repayment record to date had been good and I've seen copies of the Loan 1 statement of account.

Mr A was applying for a £2,140 loan repayable in 36 monthly instalments. It would have cleared his first loan with Oakbrook and the net increase each month for the loan repayments was going to be around £27 to just over £108. The net funds Mr A was due to receive were £750. An interest rebate from the early closed loan 1 had been applied to his account as well.

Mr A's income was checked. Oakbrook checked for County Court Judgments, insolvencies, any delinquent accounts in recent months and any defaulted accounts – its research showed none.

As before, Oakbrook used ONS data to add in his household expenditure. The loan looked

affordable.

Oakbrook has said that his total debt had increased to £5,300 and he had six active accounts one of which would have been the existing Oakbrook loan which at that date had an outstanding balance of around £2,547.

The main change from the Oakbrook credit research I have seen is that Mr A's current account liability had increased to £1,796 which means he was using his overdraft. And his home credit liability had increased to being two accounts and had a debt balance of £836. So, although the overall debt figures were relatively low, it's clear that for Mr A he'd got deeper into debt in a short space of time since being approved loan 1. He had regularly paid loan 1 but was now needing to obtain more credit and in the meantime had increased his liability with his bank (overdraft) and had taken one more home credit loan. And all this had happened despite receiving £1,500 in loan funds just a few months earlier.

As Oakbrook knew Mr A was unemployed and on benefits (which Mr A had informed them of and it had seen from the earlier Open Banking transaction check) then I think it ought to have checked further before lending. And I say this because an economic issue surrounding an unemployed person on benefits is that there's little chance of any salary increase or a change in a monthly wage as they've no job and reliant on benefits. And the corollary to that is that the person on benefits is at risk of a benefit reduction. Mr A has made these points and I think they are relevant.

One way to have made further checks is for Oakbrook to have asked for verification of documents such as his rent costs, his expenditure, and his bank overdraft situation. Another convenient way is to look at copy bank statements or to have further used the Open Banking method it had used for loan 1. I don't think it did that as it said it checked income through a different method for loan 2. So, I do not think it obtained open banking permission or any copy statements.

However, I have a copy of Mr A's bank statement which covered the period 12 July 2021 to 10 August 2021. Having checked the period up to 30 July 2021. I do not think that Oakbrook would likely have seen anything to suggest financial difficulties. So even if it had done more checks I doubt it would have made a difference to Oakbrook.

Use of an overdraft on its own would not necessarily lead to a lender to decide not to approve more credit. The overdraft did not show evidence of over-use for instance regular straying into unarranged overdraft territory. Mr A's overall debt figure was relatively modest. Mr A's loan 2 was consolidating his loan 1. There were no other indications of financial difficulties at this stage.

So, for irresponsible lending I plan not to uphold the complaint about loan 2.

And as a follow-up from that, I have read in the Oakbrook account notes that in 2022 Mr A wanted further top-up loans and was regularly informed he was ineligible or not given one. And the reasons were based on the FCA guidelines surrounding affordability. And so, I think that Oakbrook demonstrated its application of the irresponsible lending regulations well.

#### *Knowledge of Mr A's disability*

Mr A has made the point that Oakbrook would have seen that he only received DWP UC and PIP as income. Mr A has sent to us details of what a PIP may cover. The bank account statements in any Open Banking transactions Oakbrook would have seen at loan 1 were not likely to have stipulated which PIP he received. And seeing that Mr A received UC and PIP each month would not – on its own – have led Oakbrook to have refused his loan application.

I have been sent copies of Oakbrook's account notes which are detailed in the recording of the lending relationship it had with Mr A up to January 2024. And it was informed by Mr A of

his disability in July 2022. It received his permission to add this to his record and so from that date his records had a 'vulnerable customer' marker which was endorsed or added again in November 2023. But these post-dated the two loan approvals. And there's no evidence Mr A informed them of his disability in 2021. And as I have already indicated, that would not necessarily have led to a loan decline.

However, I note that Mr A has told us further distressing points surrounding his reduced future income and that his ability to repay this loan is receding. I deal with this later in the decision.

### *Discrimination*

I see Mr A has complained to Oakbrook in the past about its alleged discriminatory approach to lending and so I say no more about that as Mr A received final response letters for those complaints in 2022. Mr A had options at that time to take the complaint further if he had wished. Oakbrook informed him on 13 September 2022 that any further correspondence about this complaint matter would have to have been through the Financial Ombudsman Service. It was never referred to us.

### *Harassment allegation and mental health – future impact*

Mr A says that Oakbrook has been making multiple phone calls to him and he is alleging harassment by it. The harassment allegation has been raised recently as an additional factor for me to look at. The investigator was not asked to look into this and Oakbrook has had no notice of this.

Rather than delay the main irresponsible lending complaint I am issuing this decision. The other new points relate to a different timescale – more recent interaction with Mr A since the loan was in arrears – and I've no information about that period. The irresponsible lending part covers the loan decisions made in 2021.

If Mr A wants to raise a new complaint he can do that by writing to Oakbrook about it first.

### *Repayment concerns*

The other distressing points Mr A has listed for me to consider recently surround Mr A's health, mobility, and reduced income levels. It is vital that these are addressed by Oakbrook.

As I said earlier in this provisional decision I have read the FCA Guidance on the treatment of vulnerable customers and the CONC 7.3 rules and associated guidance which impact on how Oakbrook treated the debt and must continue to do in the future. And I consider that there's a difference between someone informing Oakbrook of what may amount to a temporary vulnerability and Mr A's situation which is a permanent disability.

It's a matter for Oakbrook to ensure it applied CONC 7.3 when considering Mr A's ability to repay the loan last Autumn 2023 and going forward. Between September 2022 and September 2023 there appears to have been no contact from Mr A to Oakbrook. But in September 2023 Mr A did ask for a further top up loan. It was not an option offered by Oakbrook.

He then had a failed Direct Debit for the loan 2 repayment and on 5 October 2023 he telephoned Oakbrook to say he was receiving less income and not able to afford it. He's told us it will be about £120 to £200 each month less. But Oakbrook would need to check this going forward.

A new arrangement to pay fortnightly at £54.40 was set up. By 25 October 2023 Mr A was in arrears and on 13 November 2023 Mr A called Oakbrook again to say he could not afford the instalments. His vulnerability details relating to his disability were noted again with more detail that it was a lifelong illness and he had no prospect of work.

Oakbrook has an obligation to treat Mr M fairly and with forbearance. Mr A made it clear he

can't afford the current payments of over £108 per month, not even £1 a month. Application of CONC 7.3.2 and 7.3.2A and the associated guidance (CONC 7.3.5) ought to have been applied. That gives Oakbrook scope to consider (amongst other things)

*'... suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);'*

Considering the CONC provisions and the situation where from 13 November 2023 Mr A's status was clearly known to Oakbrook not as a temporary vulnerable person but as a customer with lifelong issues which would mean he was not able to work, then I think that from that date all account charges ought to have been removed or not charged. And as for the outstanding interest I think that the account should be re-worked to allow for the financial circumstances about which Oakbrook knew from 13 November 2023.

I appreciate that this was a fixed term agreement with fixed interest figures calculated in 2021. But there's always scope of alterations in the debt level to be made. Oakbrook already had Mr A marked as a vulnerable customer and by 13 November 2023 knew more details which ought, in my view, have precipitated a better outcome for him. I think Oakbrook ought to have acted more fairly.

### **How did both parties respond to the provisional decision**

Oakbrook did not respond. Mr A needs a resolution and so I am issuing my final decision a few days after the replay date has passed.

Mr A did reply and said:

*'Thank you for your response. I'm just anxious to get all this sorted in a way that won't leave me as crippled financially as I am physically and mentally. It's been a difficult journey getting to this point between juggling all this and my declining health.'*

Mr A said that he was unaware of the default for loan 2 until he received my provisional decision.

As Oakbrook has not sent to me anything further, and as Mr A has not made any further comments about the outcome as set out in my provisional decision, then I see no reason to depart from the findings I made in my provisional decision and those are repeated here as part of my final decision.

I do not uphold the complaint in relation to the irresponsible lending part of the complaint.

I reiterate the points I made about the harassment allegations.

I reiterate my concerns in relation to Mr A's repayment of the debt.

Recently, Mr A has made further points surrounding his health and wellbeing which lead me to reiterate that Oakbrook must take note and comply with the FCA Guidance on the treatment of vulnerable customers and the CONC 7.3 rules and associated guidance which impact on how Oakbrook treats the debt in the future. And I consider that there's a difference between someone informing Oakbrook of what may amount to a temporary vulnerability and Mr A's situation which is a permanent disability.

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It's a matter for Oakbrook to ensure it applies CONC 7.3 when considering Mr A's ability to repay the loan going forward. I consider that a full Income and Expenditure assessment needs to be carried out to assess what Mr A can pay after Oakbrook has done what I direct it to do to put things right in relation to this complaint.

### **Putting things right**

I'm satisfied, based on what I've currently got to hand that Oakbrook made a fair lending decision for each loan.

However, Oakbrook was told Mr A was in financial difficulties and by 13 November 2023, it was on notice that even the £1 payments weren't affordable for him. It was aware Mr A's personal circumstances were such that his benefits income was likely to fall and he had no prospect of employment.

I think it's fair and reasonable of me to direct that from 13 November 2023 charges and contractual interest that Mr A was due to repay ought to be removed from the outstanding balance. So, to put things right Oakbrook ought to:

- rework the amount of interest it front-loaded on loan 2, taking into account that no interest ought to be charged from 13 November 2023, and
- remove all fees and charges which were added from 13 November 2023
- it should also provide Mr A with a statement of account showing what his new outstanding balance for loan 2 will be
- if an outstanding balance is still due then Oakbrook should work with Mr A to repay what is owed in a sustainable manner.

I've considered whether the relationship between Mr A and Oakbrook might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have provisionally directed should be carried out for Mr A and that it results in fair compensation for him in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **My final decision**

My final decision is that I uphold the complaint in part and I plan to direct that OAKBROOK FINANCE LIMITED trading as Likely Loans, ("Oakbrook") does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 August 2024.

Rachael Williams  
**Ombudsman**