

Complaint

Mr P has complained that Oakbrook Finance Limited (trading as “Likely Loans”) unfairly provided him with unaffordable loans.

Background

Likely Loans provided Mr P with four loans. As far as I can see is Mr P’s loan history was as follows:

Loan	Taken	Amount	Settlement***	Term**	APR	Payment*	Settled
1	September 2019	£3,000.00	N/A	36	64.90%	£164.38	February 2020
2	March 2020	£2,000.00	N/A	24	59.70%	£130.87	Into loan 3
3	October 2020	£3,592.16	£1,592.16	36	59.70%	£189.39	Into loan 4
4	May 2022	£3,430.43	£2,530.43	24	53.70%	£216.96	August 2023

* Monthly

** In months

*** This is the amount of funds from the new loan which went to Mr P’s previous one.

Mr P’s complaint was reviewed by one of our investigators. She thought that Likely Loans hadn’t done anything wrong or treated Mr P unfairly when providing about these loans. So she didn’t uphold the complaint.

Mr P disagreed with our investigator’s view. So the complaint was passed to an ombudsman for review.

My provisional decision of 23 July 2024

I issued a provisional decision – on 23 July 2024 - setting out why I was partially intending to uphold Mr P’s complaint.

In summary, I was intending to uphold Mr P’s complaint because I was satisfied that Likely Loans was reasonably entitled to conclude that the monthly payments to loans 1 and 2 were affordable. However, I was also satisfied that Likely Loans shouldn’t have provided loans 3 and 4 as it ought to have realised that proving these loans meant that it was increasing Mr P’s indebtedness in a way that was unsustainable or otherwise harmful.

Responses to my provisional decision

Likely Loans didn’t respond to my provisional decision or provide anything further for me to consider.

Mr P didn’t respond to my provisional decision or provide anything further for me to consider either.

My findings

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 the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr P's complaint.

Having carefully thought about everything, I think that there are three overarching questions that I need to answer in order to fairly and reasonably decide Mr P's complaint.

These three overarching questions are:

- Did Likely Loans complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay his loans in a sustainable way?
- Bearing in mind the circumstances, at the time of each application, was there a point where Likely Loans ought reasonably to have realised Mr P's indebtedness was being increased in a way that was unsustainable or otherwise harmful and so it shouldn't have provided further loans?
- Did Likely Loans act unfairly or unreasonably in some other way?

If I determine that Likely Loans didn't act fairly and reasonably in its dealings with Mr P and that he has lost out as a result, I will go on to consider what is fair compensation.

Did Likely Loans complete reasonable and proportionate checks to satisfy itself that Mr P would be able to meet repay his loans in a sustainable way?

The rules, regulations and good industry practice in place when Likely Loans lent to Mr P required it to carry out a reasonable and proportionate assessment of whether he could afford to repay his loans in a sustainable manner. 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 sustainably would cause difficulties or adverse consequences for Mr P. In practice this meant that Likely Loans had to ensure that making the payments to the loan wouldn't cause Mr P undue difficulty or adverse consequences. In other words, it wasn't enough for Likely Loans to simply think about the likelihood of Mr P making payments, it had to consider the impact of loan repayments on Mr P.

Checks also had to be "proportionate" to the specific circumstances of the 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.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- 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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Likely Loans' checks reasonable and proportionate?

Likely Loans has said that it completed an income and expenditure assessment with Mr P before providing all of these loans. It said that it considers it did enough to establish that all of these loans were affordable. I've considered what it did for each loan and the position at the respective times, individually.

- Loan 1

Loan 1 was for £3,000.00, had an APR of 64.9% and was due to be repaid in 36 monthly repayments of £164.38.

From what I can see Mr P was asked about details of annual income which he confirmed as £41,000.00 and his housing costs, which he confirmed he was paying just under £750 to. It looks like Likely Loans also carried out a credit check which showed that he was paying just under £550 a month towards his existing credit commitments.

I also understand that the credit search carried out on Mr P showed that his existing credit commitments were well managed and that he didn't any significant adverse information such as defaults or county court judgements recorded against him.

I accept that Likely Loans may not have asked Mr P for further information about his other household bills and expenditure. However, given what was left over from his monthly income once his housing costs and payments to existing credit commitments were deducted, I'm satisfied that a detailed breakdown of Mr P's non-credit related expenditure wasn't necessary here.

So bearing in mind Likely Loans obtained a reasonable amount of information on Mr P's circumstances and there wasn't anything inconsistent in what was gathered, I'm satisfied that it did carry out reasonable and proportionate checks before bringing about loan 1 for Mr P.

And given that these checks showed Mr P had sufficient disposable income to make the required payments, I'm satisfied that Likely Loans acted fairly and reasonably when providing this loan to Mr P.

- Loan 2

Loan 2 was for £2,000.00, had an APR of 57.9% and was due to be repaid in 24 monthly repayments of £130.87.

From what I can see Mr P was asked about details of his annual income and his housing costs. Mr P once again confirmed he was receiving £41,000.00 a year but the combined amount he paid towards housing costs and credit commitments increased to just over £1,000.00. This time it looks like Likely Loans' credit check showed that his credit commitments had reduced to just under £350 a month.

I also understand that the credit search carried out on Mr P once again showed that his existing credit commitments were well managed and that he didn't have any significant adverse information - such as defaults or county court judgements recorded - against him. I accept that this was Mr P's second loan. But I'm mindful that Mr P settled loan 1 early and a month prior to applying for this loan which was for a smaller amount.

Again Likely Loans might not have asked Mr P for further information about his other household bills and expenditure and instead relied on statistical data. But again given what was left over from his monthly income once his housing costs and payments to existing credit commitments were deducted, I'm satisfied that a detailed breakdown of Mr P's non-credit related expenditure wasn't necessary here.

Although I think the fact that Mr P had taken two consolidation loans and was now a repeat borrower was a matter that Likely Loans needed to keep in mind and incorporate into any analysis of whether he could afford to repay any further loans going forward.

Bearing in mind Likely Loans obtained a reasonable amount of information on Mr P's circumstances and while there were a couple of things to monitor going forwards, I'm satisfied that it did carry out reasonable and proportionate checks before providing loan 2 to Mr P.

Given that these checks showed Mr P had sufficient disposable income to make the required payments, I'm satisfied that Likely Loans acted fairly and reasonably when providing loan 2 to Mr P.

- Loans 3 and 4

Loan 3 was for £3,592.16, £1,592.16 of which was to pay the outstanding balance on loan 2, again had an APR of 57.9% and was due to be repaid in 36 monthly repayments of £182.39. And loan 4 was for £3,430.43, £2,530.43 of which was to pay the outstanding balance on loan 3, had an APR of 53.7% and was due to be repaid in 53 monthly repayments of £216.96.

Loan 3 was taken out before loan 2 had been repaid and loan 4 was taken out before loan 3 had been repaid. Yet as far as I can see, Likely Loans still only carried out similar checks to what it had done for loans 1 and 2. For loan 3, Mr P confirmed he had an annual salary of an amount which Likely Loans considered translated into £2,574.77 a month. Mr P salary supposedly for loan 4 and was nearly £1,000.00 a month more than it had been at the time of the application for loan 3.

Furthermore Mr P's housing costs at the time of loan 3 had, for some reason, reduced to almost half of what it was at the time of loan 2. I can't see that Likely Loans took any steps to question how Mr P's housing costs had reduced so drastically in seven months and why he'd need another loan in these circumstances.

The recorded purpose for loans 3 and 4 was debt consolidation and in my view, Likely Loans ought to have been concerned at this given the first two loans had the same recorded purpose. And as I've explained previously, this was something that it needed to keep in mind when assessing Mr P's ability to repay any further loans after loan 2.

Likely Loans says that Mr P saved on interest by repaying loans 2 and 3 earlier. But significant portions of what he owed with further borrowing and by paying early settlement interest which ended up being capitalised into principal on the later loans, which in itself attracted further interest. And yet Likely Loans still relies on Mr P having a good repayment record on his previous loans despite it being clear that he only repaid loans 2 and 3 by borrowing further.

I also think that Mr P's external debt total by the time of loan 4 ought to have caused Likely Loans concern. The amount he owed elsewhere was the highest that it had been in his time as a Likely Loans customer. And this was despite having been provided with three previous debt consolidation loans and his monthly income supposedly being £1,000.00 a month more.

In my view, all of this means that for loans 3 and 4, Likely Loans should not only have asked Mr P further questions about his living costs and regular non-credit related expenditure (rather than relying on statistical data), I think that Likely Loans needed to take further steps to at the very least cross-check whatever Mr P said about his expenditure.

Likely Loans could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Mr P did have enough funds to be able to make the payments before it provided loans 3 and 4.

As Likely Loans has not provided me with evidence of it finding out more about Mr P's circumstances, or that it asked Mr P to provide much more than he had done for loans 1, despite his previous loans and what on the face of things appeared to be, increasing indebtedness (at least at the time of loan 4), I'm satisfied that it didn't complete fair, reasonable and proportionate affordability checks before providing loans 3 and 4 for Mr P.

Bearing in mind the circumstances, at the time of each application, was there a point where Likely Loans ought reasonably to have realised Mr P's indebtedness was being increased in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, I haven't gone on to recreate individual, proportionate checks for loans 3 and 4 because I don't think that it is necessary to do so here. I think this is the case because in addition to assessing the circumstances behind each *individual* loan arranged for Mr P by Likely Loans, I also think it is fair and reasonable to look at the *overall pattern* of lending and what unfolded during the course of Mr P's history with Likely Loans.

I'm mindful here that the relevant rules and guidance make it clear that a firm shouldn't continue arranging further lending where the loans are unsustainable or otherwise harmful and/or it is apparent that the customer may be experiencing financial difficulties.

And I think that by loan 3, Likely Loans ought fairly and reasonably to have realised that Mr P's financial position was such that further loans were simply unsustainable for him. I've already set out most of the reasons for this in the section on why I don't think that Likely Loans' checks were reasonable and proportionate.

However, the factors which lead me to conclude that Likely Loans ought fairly and reasonably to have realised loans 3 and 4 were unsustainable or otherwise harmful are:

- Mr P was only proving able to repay his loans by taking out further loans.
- Mr P was only repaying loan 2 by taking out loan 3 to do so. The recorded purpose of loan 3 might have been debt consolidation but this was the third loan taken for this purpose. By this stage, Likely Loans ought to have been concerned that Mr P was returning for further high-cost loans, despite previously having been provided with funds to clear his indebtedness. He clearly wasn't consolidating his indebtedness in the way that he was committing to.
- Mr P supposedly had a need for loan 3 to consolidate his debts despite supposedly having lower living costs.
- it is clear that there was also a problem with the credit check data which Likely Loans was obtaining. I don't know why this is and I'm not saying that Likely Loans' credit checks were not fit for purpose. But I do think that further checks, which I'm satisfied were necessary by the time of loan 3, would more likely than not have shown Likely Loans that Mr P had taken out even more loans elsewhere and with other high-cost lenders.
- by the time of loan 4, Mr P's monthly payments towards credit were increasing and this was despite the fact that his income was supposedly increasing. This simply did not add up and suggested that there may well have been underlying issues.
- loan 4 was the second time, in a row, where Mr P was looking to borrow funds at a high rate of interest without having first having repaid what he already owed.
- by loan 4 Mr P had already been borrowing for more than two and a half years, at high interest, from Likely Loans and yet he was being provided with a loan for the almost the highest amount he'd borrowed and certainly with the highest monthly payments he'd have to make.

I'm also concerned about the effect consolidating loans 2 and 3 into loans 3 and 4 respectively had on the overall costs Mr P had to repay. Mr P's loans will have followed a typical amortisation schedule.

In the early stages of the loan a significant proportion of Mr P's monthly payments were going towards repaying the accrued interest. And as loans 3 and 4 were settled within months of being provided (with the proceeds from new loans), a significant proportion of his monthly payments would have repaid interest rather than reduced his balance.

In my view, Mr P's 'repayment record' and Likely Loans granting further loans moved Mr P further and further away from the eventual debt-free position consolidation loans (which was

the recorded purpose for all of these loans) are, in theory at least, supposed to leave a borrower at the end.

Overall and having considered everything, I'm satisfied that Likely Loans ought fairly and reasonably to have realised that loans 3 and 4 were unsustainable or otherwise harmful for Mr P and unfairly and excessively increased his overall indebtedness. As this is the case, I'm satisfied that Likely Loans failed to act fairly and reasonably towards Mr P when providing loans 3 and 4 to him.

Did Likely Loans act unfairly or unreasonably towards Mr P in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Likely Loans acted unfairly or unreasonably towards Mr P in some other way.

Conclusions

Overall and having carefully thought about the three overarching questions, set out on page two of this decision, I'm satisfied that Likely Loans:

- *did* complete reasonable and proportionate checks on Mr P to satisfy itself that he was able to repay loans 1 and 2 and that it made fair and reasonable decisions to arrange these loans;
- *didn't* complete reasonable and proportionate checks on Mr P to satisfy itself that he was able to repay loans 3 and 4;
- ought fairly and reasonably to have realised that loans 3 and 4 were unsustainable or otherwise harmful for Mr P and so shouldn't have been provided as they would more likely than not unfairly and excessively increased his overall indebtedness;
- *didn't* also act unfairly or unreasonably towards Mr P in some other way.

The above findings leave me satisfied that Likely Loans unfairly and unreasonably provided loans 3 and 4 to Mr P in October 2020 and May 2022 and that it should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Likely Loans and Mr P might have been unfair to Mr P under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that the direction, which I set out in the section below, results in fair compensation for Mr P given the overall circumstances of his complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Likely Loans needs to do to put things right for Mr P

Having considered everything, I'm satisfied that it would be fair and reasonable in all the circumstances for Likely Loans to put things right for Mr P in the following way:

- refund all the interest, fees and charges Mr P paid on loans 3 and 4;
- add interest at 8% per year simple on any refunded interest, fees and charges for loans 3 and 4 from the date they were paid by Mr P to the date of settlement†;

- remove any adverse information recorded on Mr P's credit file as a result of loans 3 and 4.

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

My final decision

For the reasons I've explained above and in my provisional decision of 23 July 2024, I'm upholding Mr P's complaint. Oakbrook Finance Limited should put things right for Mr P in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 September 2024.

Jeshen Narayanan
Ombudsman