DRN-4954353

The complaint

Mr C has complained that OAKBROOK FINANCE LIMITED trading as Likely Loans ("Likely Loans") didn't carry out sufficient checks to ensure that Mr C could afford the repayments.

What happened

Mr C was given one loan of £5,000 by Likely Loans on 26 October 2020. Mr C was due to make 36 monthly repayments of £263.60. Had Mr C made his payments in line with the credit agreement he would've repaid a total of £9,489.60. Mr C has some problems repaying the loan and the debt was sold by Likely Loans to a third party in October 2022.

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

The complaint was then reviewed by an investigator who didn't uphold the complaint. He said Likely Loans carried out proportionate checks including cross referencing Mr C's income and carrying out a credit search – the results of which didn't indicate financial difficulties. The checks showed Mr C could afford the loan repayments.

Mr C didn't agree, and I've read all of his submissions and emails but in summary he said.

- Likely Loans shouldn't have made assumptions about Mr C's living costs – which wasn't proportionate given the loan value and length of the loan.
- He provided a copy of a final decision, issued by another ombudsman against Likely Loans. In the copy decision provided the ombudsman concluded some questions ought to have been asked about that customer's living costs in a complaint which was to do with a smaller loan over a shorter term.
- Mr C had recently opened a new credit card – in September 2020 that had a balance and as well as a new loan in October 2020 which was costing £178.65 per month.
- Had bank statements been asked for then Likely Loans may have discovered gambling transactions.
- Mr C queried whether Likely Loans used Open Banking as part of its assessment.
- Likely Loans says this loan was taken for debt consolidation purposes but "…*the debts would not have amounted to anywhere near the funds that I had requested so this in itself should have prompted Oakbrook Finance to ask for further information."*
- Mr M had recently repaid a payday and this showed he had a "…*habit of taking out payday loans*"
- Mr C has queried the reasons why Likely Loans had conducted a number of recent soft searches on his credit file.
- It's not reasonable to say that just because Mr C lived with his parents that he had sufficient disposable income to afford the loan.
- Mr C had concerns about the debt sale and what his credit file is showing.
- Mr C says the loan was approved within an hour this shows that there wasn't any analysis of the expenditure prior to the loan being approved.

These comments didn't change the investigator's mind about the outcome. As no agreement could be reached the complaint has been 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 of 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 C'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 loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr C 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 C. 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 C. 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 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 of the arguments, evidence and information provided in this context and what this all means for Mr C's complaint.

Having looked at everything I'm satisfied that the checks carried out were proportionate and Likely Loans was reasonably entitled to reach the conclusion that the repayments for the loans were affordable. I have therefore not upheld Mr C's complaint and I've explained why below.

As I understand, Likely Loans asked Mr C for details of his income, carried out credit searches and combined this information with statistical data on living costs, in order to understand what Mr C had left over each month. It says that its checks showed Mr C had enough left over to be able to make the repayments to this loan. I've considered whether this is the case.

Mr C declared his income to be £33.000 per year gross. Likely Loans worked out what it believed the monthly equivalent was – £1,986.33. This was then cross referenced with a tool provided by a credit reference agency and it was this sum used for the affordability assessment. It wasn't unreasonable for a first loan for Likely Loans to have relied on this figure.

This is one of the ways that many lenders go about checking an income, and so I don't think Likely Loans needed to take further steps here – such as asking for payslips or perhaps requesting bank statements to show Mr C's wages being credited. It was entirely fairly and reasonable to have relied on the results of the check.

Likely Loans also confirmed that as it was confident in Mr C's income declaration there was no need to use open banking to check this or any other information – so I've not been persuaded that open banking was used here.

Likely Loans has also provided the Financial Ombudsman with a summary of the results it received from the credit reference agency. I want to add that although Likely Loans carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Likely Loans needed to do was consider the results it received.

Enquires were made with Likely Loans about the credit file data and it's explained that in short, it receives data in a "*coded format*" and is then put through its own system to review the data that was received. I've only mentioned to this to demonstrate that different lenders can and do have a different approach to dealing with credit file data and there isn't a wholly wrong or right way of going about checking someone's credit file. Having looked at the data Likely Loans has provided, it knew that there were only four outstanding accounts.

Mr C had a communication account – which has been opened since 2013 and so didn't have any balance to pay. There was a building society account again with a zero balance. He had car insurance which had a balance of £1,467 and one credit card where he had a balance of £909.

The credit file also didn't show any defaults, missed payments or any other types of insolvencies. Overall, the information received by Likely Loans didn't and wouldn't suggest that Mr C was overindebted, was struggling to keep on top of his repayments or was likely experiencing financial difficulties at the time.

Likely Loans was told that there were no defaults, delinquent accounts, any other form of insolvency or a County Court Judgements recorded on Mr C's credit file and he hadn't used payday loans since 2015. Which would've further suggested to Likely Loans that Mr C was managing his active credit commitments well and without any problems.

I appreciate that Mr C says that he recently taken out a new credit card – which had a balance of around £660 at the time and a personal loan costing around £178 per month. But these weren't being reported within the credit file data received by Likely Loans at the time. Mr C has also said that he had a payday instalment loan that he'd taken in March 2020 and which was repaid at the start of October 2020 and so it isn't right to say the hadn't recently used payday loans.

I can't be sure as to the reasons why Mr C's payday loan or other recently opened credit wasn't in the data that Likely Loans obtained. One reason could be that the accounts had only recently been opened and hadn't yet been reported to the credit reference agencies –

indeed this seems to be the reason given by Likely Loans. It just wasn't aware of them and so couldn't have taken them into account with regards to its affordability assessment.

Or the accounts in question – such as the payday loan account was reported to a different credit reference agency than the one used by Likely Loans – and if that was the case then the information wouldn't have been discovered either. As Likely Loans wasn't aware of these other accounts it couldn't factor the costs of them into the affordability assessment.

From the information I've been given, it seems that from the information on Mr C's credit file was supplemented with details of his housing costs which he declared as being £500 per month.

Likely Loans has said, that if it had used information from the Office of National Statistics (ONS) in order to estimate the other day to day living costs Mr C may have had. This information usually, considers a number of variables, such as age, number of dependants and where a consumer lives. This is entirely in line with industry regulations at the time, CONC 5.2A.19G(1) – the relevant guidance says;

(1) For the purpose of considering the customer's non-discretionary expenditure under CONC 5.2A.17R, the firm may take into account statistical data unless it knows or has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customer's situation

So, the fact that Likely Loans used statistical data to estimate what Mr C's monthly outgoings would be isn't unreasonable. However, it is of course possible, that in some situations it's not reasonable to have relied on the information from the ONS. For example, if the information it received from the credit reference agency indicated that Mr C's finances were distressed and therefore it was clear that he fell outside of the profile of the average borrower, or maybe his income was significantly lower than that of the average borrower.

But neither of those factors apply here. As I've explained, the credit search didn't show any significant adverse information recorded against Mr C and the cross-checking Likely Loans did on the income Mr C declared shows that it was reasonably entitled to rely on this information. In these circumstances, I don't think it was unreasonable for Likely Loans to use the statistical data it did.

Likely Loans says Mr C did declare he lived at home with parents. Which may have given Likely Loans added confidence that he wouldn't have all of the typical living costs associated with renting or having a mortgage such as council tax or other utilities.

So Likely Loans used a monthly income of £1,986.33, and allocated £500 to Mr C's rent, £601.44 for his committed and non-discretionary living costs (which as I've explained was based on statistical data); and £272 for what it considered to be reasonable repayments to the existing credit commitments which showed on Mr C's credit search. It was satisfied that after this Mr C had enough left over to make the monthly loan instalment of £263.59 and left in excess of the £50 buffer it applied when assessing affordability. So, it was satisfied that the monthly loan payments were affordable.

Mr M has said that the loan agreement was processed too quickly and shows that the checks weren't reasonable. But online applications, such as Mr C's here, tend to be quicker than those made using other methods. Furthermore, Likely Loans has provided me with the evidence of the checks that it carried out too. So, I'm not persuaded Mr C's argument that the speed of his successful application means that sufficient checks weren't carried out.

Mr C says there was a discrepancy in the information he provided to Likely Loans (and which it considered) in as much as he stated that the purpose of this loan was debt consolidation. Whereas Likely Loans' own checks showed that he was borrowing more than the outstanding debts that it knew about. I have considered this point.

But I don't think that Mr C borrowing more than what he owed meant that he couldn't possibly have used any of the loan to consolidate. Indeed, Mr C was borrowing enough to consolidate all of his outstanding debts into one account, and he would have money left over. In these circumstances, I don't think Likely Loans ought to have concluded that it was not possible for the loan to be used for the stated purpose or that it needed to carry out further checks as a result.

In reaching my conclusions, I've reviewed the decision, reached by another ombudsman, where the ombudsman concluded that Likely Loans' use of statistical data wasn't reasonable and proportionate, which Mr C has taken from our database of published decisions.

However, we consider complaints on an individual basis and looking at the individual circumstances. And what will constitute a reasonable check will very much depend on the particular circumstances of the individual application – a fair and reasonable check – even for the same customer (let alone a different one, such as here) - could look different for different applications.

Furthermore, I think it's also worth me explaining that I'm not bound by the outcomes reached by other ombudsmen. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. That said, I think consistency is important and with a view to providing some clarity and reassurance to Mr C, it might help for me to explain that there are some key differences between Mr C's complaint and the one he's referred to.

Firstly, the customer in the case Mr C has provided the decision for had significant adverse information recorded against them in the form of four defaulted accounts. As I've explained earlier on this decision, Mr C did not have any defaults, CCJs or any other adverse information recorded against him, or anything else indicating that he fell outside the profile of the average borrower.

Equally, I can't see that Likely Loans had any idea of the borrower's mortgage or rent, or their residential status in the other case either. Whereas in this case, Mr C had declared that he was living at home with parents and paid £500 a month in rent. Again, this is likely to affect what might or might not be covered in the statistical data and whether it was reasonable to rely on it in that case, as I have found Likely Loans was entitled to rely on it here.

For the sake of completeness, I would also add that the ombudsman in the case that Mr C has referred to only looked at that customer's statements to get an idea of what they would have declared about their living costs. The ombudsman did not say that Likely Loans needed to request copies of that customer's bank statements before it agreed to lend.

In any event, I'm therefore satisfied that there are a number of differences in the facts and circumstances of Mr C's case and the one that he has referred to. So, while I'm not required to replicate the outcomes reached by other ombudsmen, these differences in the facts and circumstances of the cases leave me satisfied that my answer here is not incompatible or inconsistent with the one Mr C has referred to, notwithstanding the different conclusions on some of the points.

Overall, having considering the loan term, the information declared by Mr C and the checks Likely Loans carried out, I'm satisfied the checks were proportionate and showed it that Mr C could likely afford the repayments he was committed to making.

It therefore follows that in my view Likely Loans conducted proportionate checks that showed it Mr C ought to be able to afford his repayment and so I don't think that Likely Loans provided Mr C with an unaffordable loan or that it lent irresponsibly.

Other considerations

Mr C has also raised concerns about the data subject access request that he asked for from Likely Loans. I made enquires with it about this and it says that it responded to the request within a week of it being received – although a recent email does suggest that Mr C only received a response about one element of it in November 2024.

If Mr C thinks there is information missing or he's unhappy with what has been provided he may wish to take this up separately with Likely Loans or raise his concerns with the Information Commissioner's Office.

Likely Loans has confirmed the terms and conditions with the credit agreement allow it to assign the rights to the loan to another third party – without the consent of the consumers who debt it is. This can be found in section 10.2 of the general terms and condition.

This is a standard term typical of most loans and there isn't anything unusual about it. In any event, I don't think that a lender deciding to sell an account is necessarily unfair or unreasonable – particularly where the customer has breached the terms and conditions and has defaulted on the original agreement.

Likely Loans has since clarified that the debt was marked for sale in July 2022, but wasn't transferred to the new owner until October 2022. Mr C has provided a copy of a letter from Likely Loans showing it notified him of the sale in September 2023.

I don't know why it took Likely Loans so long to notify him that the debt has been sold. But given Likely Loans had the right to reassign the debt and I've not seen anything to make me think that Mr C was attempting to repay or come to an arrangement with Likely Loans between October 2022 and September 2023 when he found about the sale, I'm not going to be awarding any compensation for this.

If Mr C has any concerns with the actions or conduct of the third party who now owns his debt then he is of course free to take these concerns up directly with them.

Finally, I did ask Likely Loans as to why, as Mr C had pointed out there had been soft searches carried out into his credit file at around the time he had made his complaint. Likely Loans told us that it did these soft searches to *"…cross reference the data due to the length of time that had passed since the application*."

As these are soft searches, then these won't appear in searches that any other lenders Mr C may approach for further credit, but if Mr C is unhappy with these additional searches, then he can, if he wishes approach Likely Loans with any concerns he has.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Likely Loans lent irresponsibly to Mr C or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

I can see that Mr C has taken a lot of time over his submissions and points, and I appreciate that this outcome will come as a disappointment for him. An outstanding balance is still likely due and so I would encourage him to speak to the third-party that has purchased his debt to discuss the repayment of the balance.

My final decision

For the reasons given above, I am not upholding Mr C’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 3 January 2025.

Robert Walker
Ombudsman