DRN-5039557

The complaint

Mr A has complained that OAKBROOK FINANCE LIMITED trading as Likely Loans ("Likely Loans") irresponsibly lent to him.

What happened

Mr A was advanced one loan of £2,000 on 19 July 2021 following an application through a broker. Mr A was due to make 12 monthly repayments of £219.53. If Mr A had repaid the loan in line with the credit agreement, he would've repaid a total of £2,634.36. Mr A settled the loan in August 2022.

Following Mr A's complaint Likely Loans explained the checks that it carried out were proportionate and demonstrated that Mr A would likely be able to afford the repayments. Unhappy with this response, Mr A referred the complaint to the Financial Ombudsman.

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

Mr A didn't agree saying Likely Loans should have looked at his bank statements for the months prior to the lending and had it done so it would've seen a recently opened payday loan, returned direct debit payments, council tax arrears and gambling through a trading platform.

These comments didn't change the investigator's mind and 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 A's ability to make the repayments under the loan agreement. 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 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 payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

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 A (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 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 A's complaint.

Having looked at everything I have decided to conclude the checks Likely Loans conducted were proportionate and the repayment of the loan appeared affordable. I'm also of the view, that Likely Loans could only make its decision based on the information it received and gathered and it was entitled, at the start of the lending relationship to have relied on the information Mr A gave it as well as the results of its own checks. I have therefore not upheld Mr A's complaint and I've explained why below.

Mr A declared his income was £90,000 per year and Likely Loans cross referenced this income with a tool provided by a credit reference agency. Likely Loans says that it would've only asked for verification from Mr A about his income if the tool indicated that what he declared was inaccurate.

As no further verification was sought, it therefore follows that the tool confirmed that Mr A's annual salary was £90,000 broken down to a net income of just over £5,000 each month. For a first loan, it was reasonable for Likely Loans to have relied on the results of this check.

To establish Mr A's living costs, Likely Loans used information from its credit search (which I'll come on to below) as well as information from the Office of National Statistics (ONS). The credit search found Mr A had around £154 per month of existing credit commitments. On top of that it added £1,400 for housing costs, £1,162 of housing expenditure and with the Likely Loan's repayment it concluded Mr A had around £2,137 per month in disposable income.

Likely Loans, as part of its affordability assessment carried out a credit search and it has 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.

Likely Loans was told Mr A had around £3,700 of existing credit commitments across nine active accounts which was costing Mr A around £154 per month to repay.

It also knew Mr A had a defaulted account, but it was also told that the most recent default had been recorded 24 months before the loan was advanced. There were also no suggestions that Mr A had a County Court Judgement or any other type of insolvency or was having repayment difficulties.

There also wasn't any indication that Mr A was reliant on payday loans – the credit check showed that the last payday loan had been opened 29 months before this loan was advanced. This didn't suggest to Likely Loans that Mr A was dependent on credit.

Likely Loans wouldn't have been overly concerning about the default because it had occurred too long before the loan was advanced. There was no other indication that Mr A was in arrears or was having difficulties maintaining his existing credit commitments. It therefore follows the credit checks for this loan wouldn't have prompted Likely Loans to have conduct further checks such as reviewing Mr A's bank statements or declining his application.

I understand that Mr A says Likely Loans ought to have looked at his bank statements prior to providing the loan – and had it done so it may not have lent. But it follows that as I consider a proportionate check was carried out which didn't suggest any underlining difficulties that it wouldn't have been fair or proportionate in the circumstances for Likely Loans to have reviewed Mr A's bank statements.

I'm sorry to hear that Mr A says he was gambling on a trading platform at the time the loan was granted and that he has suffered a loss. But there were no signs from the information received by Likely Loans that he was using the trading platform and so it couldn't reasonably have known about it.

This was the first and only loan, so I think it was reasonable for Likely Loans to have relied on the information Mr A provided along with the results of its own checks which showed he had sufficient disposable income to afford the repayments. There also wasn't anything else to suggest that Mr A was having either current financial difficulties or anything to suggest that the loan repayments would be unsustainable for him. So, I don't uphold his complaint about the loan, and I make no award against Likely Loans.

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 A 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.

My final decision

For the reasons given above, I am not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 November 2024.

Robert Walker
Ombudsman