

complaint

Mr B complains that Oakam Ltd lent to him irresponsibly.

background

Using information from Oakam and Mr B I have compiled a Loan Table. I've tried to be as accurate as I can but there are several refinancing arrangements, combined with additional fees at each stage. This Loan Table is for ease of reference and an overview only.

Loan	Date	Amount	Net cash received	Term (m)	Regular Monthly repayment*	Repaid or Refinanced
1	13/04/2011	£200.00	£200.00	6	£65	29/07/2011 £150.25 to Loan 2
2	29/07/2011	£545	£349.75	12	£87	30/11/2011 £474.81 to Loan 3
3	30/11/2011	£1,729	£1,194.19	18	£216	29/06/2012 £1,454.53 to Loan 4
4	29/06/2012	£2,474.83	£887.23	18	£224	04/01/2013 £2,043.88 to Loan 5
5	04/01/2013	£2,568.41	£456.12	18	£233	11/07/2013 £2,142.46 to Loan 6
6	11/07/2013	£2,563.43	£366.06	18	£232	22/03/2014 £1,930.46 to Loan 7
7	22/03/2014	£2,291.56	£314.00	18	£286	28/09/2015 repaid

*Each loan was structured so the first payment was higher than the subsequent regular payments listed above. In addition, Oakam charged fees for each loan which varied from £40 for loan 1 to £133.07 for loan 4. These were part of the loan and attracted interest.

Mr B applied for two subsequent loans in 2014 neither of which were given to him. He has repaid all his loans with Oakam in full.

Mr B explained to Oakam when it was investigating his complaint in May 2018 that his bank statements reveal a number of payday loans he was paying for as well as the Oakam ones, and his addiction to gambling. He explained to our adjudicator that:

These loans were approved at a time when I had between 5 -8 other payday loans with other lenders.

Each time I was accepted the value increased and I was messaged and texted each time I was able to increase my loan.

This led me to a point where [sic] my finances could not be sustained and I had to keep finding ways to borrow more money to get through each month.

I was also a heavy gambler which would have been evident on my bank statements.

In its final response letter to Mr B, Oakam said that the full credit checks it carried out had shown to it that Mr B had active accounts but Oakam considered that they were 'managed

well’; that no accounts were in arrears, and that the credit report showed no other ‘*signs of financial struggle*’.

One of our adjudicators looked at the complaint and thought that Oakam should put things right for Mr B from Loan 2 onwards. Oakam disagreed and responded with many points including: the type of credit offered to Mr B; it referred to the Office of Fair Trading Irresponsible Lending Guide (OFT ILG); its core mission; it’s borrower-focussed assessments; it had looked at a number of Mr B’s bank statements and payslips before lending and it considered his gambling but did not think the sums spent were a ‘*disproportionate sum of his income*’.

The complaint remained unresolved and was passed to me for a decision. I issued a provisional decision on 11 June 2020 with a reply date of 11 July 2020. Mr B has responded and agreed with my provisional decision.

My provisional findings are attached to this final decision and form part of it.

my findings

I’ve reconsidered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I am proceeding to Final Decision today as this is one of our oldest cases and Mr B has been waiting for a resolution since August 2018 when it commenced at this service. Oakam was asked if it was going to respond to my provisional decision. On 6 July 2020 it told us ‘*...please be aware we do intend to respond to the decision made for [Mr B’s] complaint and should be able to do so by the end of next week.*’

On 21 July 2020 Oakam had a query surrounding the County Court Judgment I had referred to. I responded to that query with detail and a screenshot. I explained that I was going to draw this complaint to a close and that I planned to issue my final decision. I extended the reply date to 27 July 2020 and that meant Oakam have had from 11 June to 27 July 2020 to respond. I have not heard from Oakam recently. But in fairness to both parties I have decided to issue the Final Decision as I think that Oakam has had adequate time to provide a full response.

As Mr B accepted my provisional findings and as I have not received anything further from Oakam to counter the provisional findings then I have no reason to depart or alter from them.

Neither party has fully explained whether the Bonus was paid out to Mr B or was put towards the outstanding sums. Oakam has explained to me before the provisional decision was issued that the loan statement ‘*... for 22 March 2014 shows all the bonus rewards [Mr B] had earned and collected from November 2011 to March 2014. For the loan taken on 22 March 2014, the total bonus reward [Mr B] collected was £847.50.*’

I can see from that statement that the Total Rewards were £1,692.83. So, it seems to me that more is due to Mr B. They cannot be ignored in relation to the redress calculations.

So, I uphold Mr B’s complaint in relation to Loans 2 to 7 for the reasons set out in the provisional decision.

what Oakam should do to put things right

To put things right for Mr B, Oakam should:

- refund all the interest and charges applied as a result of Loans 2 to 7; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid, if they were, to the date of settlement†;
- remove any adverse payment information recorded on Mr B's credit file as a result of the interest and charges on Loans 2 to 4;
- the number of loans taken from Loan 5 onwards means any information recorded about them is adverse. So, all entries about Loans 5 to 7 should be removed from Mr B's credit file.

The Bonus Rewards Oakam has described as being '*collected*' will have to be accounted for in relation to each loan when calculating the redress due to Mr B. Those Rewards which may still be due to him will also have to be accounted for.

†HM Revenue & Customs requires Oakam to take off tax from this interest. It must give Mr B a certificate showing how much tax it's taken off if he asks for one.

my final decision

My final decision is that I uphold Mr B's complaint in part and Oakam Ltd should do as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 August 2020.

Rachael Williams
ombudsman

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Oakam has summarised in its submissions to us many of the OFT ILG paragraphs to which usually I would refer. But I have not in this decision, as Oakam is familiar with the regulations behind creditworthiness assessments.

I am aware that several of these loans are over 12 months in length and so may not fall within the formal definition of high-cost short term credit. But still these are loans with high levels of cost attached to them and, as Oakam has already demonstrated, the irresponsible lending guidelines remain applicable.

Before lending money to a consumer, a lender should take proportionate steps to understand whether the consumer will be able to repay what they are borrowing in a sustainable manner without it adversely impacting on their financial situation.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves did not set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key element was that any checks needed to be proportionate and had to take into account a number of different things, including how much was being lent and when the sum being borrowed was due to be repaid. And I add to this that once information had been gathered by the lender, it needed to be incorporated and used as part of any creditworthiness assessment.

As Mr B did not disagree with our adjudicator's opinion then it seems that Loan 1 is not disputed, and I have not reviewed that loan further, but I have kept this loan in mind when thinking about Mr B's overall lending relationship with Oakham.

Having looked at all the evidence, I am planning to uphold the complaint in relation to Loans 2 to 7. I give reasons here.

The credit reports Oakam obtained for Mr B from the beginning meant that it was aware he had an old, but still unsatisfied, County Court Judgement and one default on a different account. So Oakam was aware from the beginning that Mr B had some previous problems managing his finances.

Oakam has said to us that *'To validate the income and expenditure information provided, we did obtain bank statements on 29 July 2011, 30 November 2011, 29 June 2012, 11 July 2013, 22 March 2014 and 14 July 2014. We also obtained payslips on 29 July 2011, 30 November 2011 and 4 January 2013.'*

Most of those same statements have been sent to us by Mr B and I have looked at them all. Here is a summary of what I have seen, and I think it's reasonable of me to conclude that Oakam's trained representatives saw the same. Even where a bank statement asked for at the time of an application, for example - 29 July 2011 (Loan 2), may not have been available, it's likely the bank statement for the month before was available. And I have looked at those too which show similar transactions to those outlined here.

1 to 29 July 2011 – income around £1,600; £600 to one on-line betting company, and cash withdrawals of £1,090. One payday lender loan credit of £1,000.

1 to 30 November 2011 - income around £1,600; betting and gaming transactions of about £320; cash withdrawals of £1,330 and several credits and debits to several other payday or high cost lenders.

29 June 2012 – Mr B's income had increased to £2,140; £87 in overdraft fees (planned and unplanned); bank interest and charges; at least two other payday or high cost lenders with several credits and debits from/to them plus Oakam; cash withdrawals £1,000.

11 July 2013 – income had reduced to around £1,490; about ten other payday and high-cost credit lenders appear on the statement and on one day - 29 July 2013 – the debits to them were around £1,685. Cash withdrawal of £900 with some on-line betting and gaming transactions.

Mr B has described his gambling as an addiction. And I can see from Mr B's statements that the sums involved were not insubstantial especially as its very likely that some, or all, of the cash withdrawals were used for the same activity. As Oakam has said it was aware that gambling can lead to vulnerability, and its staff had been trained to review bank statements to recognise gambling transactions, then I think it's very likely that the sort of information outlined above suggests that those staff likely would have known Mr B had a gambling issue.

The checks Oakam ought to have carried out were to be proportionate to several factors, including Mr B's current financial situation and indications of present or past financial difficulties, as well as future financial commitments. Having seen these transactions on his statements, my view is that it would not be unreasonable to consider that many hundreds of pounds being spent on gambling each month would be a *current financial situation* to be taken into account before approving a loan. This, plus the extensive use of other payday loans, revealed in Mr B's statements and seen by Oakam, are likely to be a strong indication of present financial difficulty.

In addition, it is likely to mean that Mr B may have had an issue with repaying Oakam's loans in a '*sustainable*' fashion within the meaning of the OFT ILG. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed to by, gambling then a properly carried out affordability assessment was likely to lead a responsible lender to conclude that a loan was not affordable for an applicant in that situation.

As it's likely that these statements were given to Oakam at the time, then I do think that the lending decisions from Loan 2 onwards were irresponsible and I uphold loans 2 to 4.

I have also looked at the overall pattern of Oakam's lending history with Mr B, with a view to seeing if there was a point at which Oakam should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Oakam should have realised that it shouldn't have provided any further loans.

Given the circumstances of Mr B's case, I think that this point was reached by Loan 5. I say this because:

- from Loan 5 onwards Mr B was provided with a new loan within days of settling a previous one – often the same day. This had been going on for several months up to this point and then continued after Loan 5. So Oakam ought to have realised it was more likely than not Mr B was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr B's indebtedness was increasing unsustainably;
- Here is part of the Loan Table from the beginning of this decision and it shows that for Loans 4, 5 and 6, Mr B was effectively refinancing around £2,000 worth of debt each time. So, by March 2014 he owed much the same as he did in January 2013.

Loan 4	04/01/2013 £2,043.88 refinanced to Loan 5
Loan 5	11/07/2013 £2,142.46 refinanced to Loan 6
Loan 6	22/03/2014 £1,930.46 refinanced to Loan 7

- Mr B wasn't making any real inroads to the amount he owed Oakam. Loan 7 was taken out almost three years after his first. And although the loan was for a much larger amount, the net cash received in his hand (after settling an earlier debt) was not much more but the interest and indebtedness had been going on for a long time. Mr B had paid large amounts of interest to, in effect, service a debt to Oakam over an extended period.

I think that Mr B lost out because Oakam continued to provide borrowing from Loan 5 onwards because:

- these loans had the effect of unfairly prolonging Mr B's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period.
- the sheer number of loans and deferrals was likely to have had negative implications on Mr B's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, I am planning to uphold the complaint about Loans 5 to 7 and Oakam should put things right.

Bonus Reward

I have the summaries of the agreements and the Terms and Conditions for these type of credit agreements. Clause 4 in each agreement relates to the terms surrounding the Bonus Reward for each loan. Some of Clause 4 is set out here:

'4.1 Provided that You make 6 consecutive repayments in full and on time on your up to date account, You will be entitled to a Bonus Reward of one sixth of the sum of 6 instalments made. 4.2 Oakam will reserve the right to offset any outstanding Bonus Rewards against arrears on Your account to help you repay Your loan.'

These will have to be accounted for when calculating the redress. Oakam has explained to me that the loan statement '... for 22 March 2014 shows all the bonus rewards [Mr B] had earned and collected from November 2011 to March 2014. For the loan taken on 22 March 2014, the total bonus reward [Mr B] collected was £847.50.'

End of provisional decision extract