

complaint

Miss D says Oakam Ltd lent to her irresponsibly.

background

I sent Miss D and Oakam my provisional findings on this complaint on 28 May 2020. A copy is attached and it forms part of this final decision. I explained to both parties why I planned to uphold this complaint in part and asked them to let me know if they had anything further they wanted me to consider. Neither Miss D nor Oakam sent me anything else to consider.

my findings

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

As neither party sent me anything else to consider, my final decision is the same as my provisional decision, for the same reasons – and so Oakam must put things right as set out in my attached provisional decision.

my final decision

I uphold Miss D's complaint in part. Oakam Ltd must put things right as set out in my attached provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 1 August 2020.

Matthew Bradford
Ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss D says Oakam Ltd lent to her irresponsibly.

background

Miss D had 14 loans with Oakam. I've set out some information Oakam provided about the loans in the appendix to this decision. An adjudicator considered Miss D's complaint and thought it should be upheld. The adjudicator didn't think Oakam should have provided loans 4 to 14. Oakam didn't agree. It made a number of general and case-specific points. Its general points included:

- It provides instalment loans (as opposed to payday loans) which can be structured in a way which is affordable.
- The loans are amortising which means each repayment includes a repayment towards the principal – and so its customers don't just service interest over a long period of time.
- Given the above, it's unlikely a consumer would need to reborrow in order to meet their debt obligations.
- Oakam doesn't charge extra interest to cover missed repayments.
- Oakam only extends credit to customer who are not in arrears.
- Oakam aims to help customers transition from higher-cost shorter-term credit products, to longer-term lower-cost products, helping them repair their credit history and eventually migrate to mainstream lenders.

Oakam also sought to draw comparisons between Miss D's complaint and a previous case this service dealt with in 2016.

On Miss D's specific complaint, Oakam said:

- Miss D repaid her loans without undue difficulty, as demonstrated by the small number of late repayments over a period of five years and four months.
- Miss D's credit history improved over time.
- Miss D met her repayments out of her disposable income.
- Miss D's applications were on several occasions subject to more in-depth checks, including looking at her bank statements.
- Oakam carried out face-to-face interviews to get a wider picture of Miss D's circumstances.
- Miss D was not using a significant portion of her income to service her credit commitments.

As there was no agreement, the complaint was passed to me to decide.

Regulatory background

From the start of the period of lending until 1 April 2015, Oakam was regulated by the Office of Fair Training (OFT). Relevant guidance for responsible lending during this period was set out in the OFT's irresponsible lending guidance for creditors (ILG). From 1 April 2015 onwards, regulation transferred

to the Financial Conduct Authority (FCA), whose regulation and guidance is mainly set out in the Consumer Credit Sourcebook (CONC). The ILG and CONC provided similar guidance on irresponsible lending at the times Oakam lent to Miss D.

The ILG included the following guidance for regulated consumer credit firms:

“In the OFT’s view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower’s financial situation, taking account of information that the creditor is aware of at the time the credit is granted.

...

In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question. We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower’s likely ability to be able to meet repayments under the credit agreement in a sustainable manner.”

The concept of sustainably was discussed as follows:

The OFT regards ‘in a sustainable manner’ in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

The OFT would regard ‘without undue difficulty’ in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.”*

And specific irresponsible lending practices included:

“Inappropriately encouraging borrowers to increase, aggregate or roll over existing debt to unsustainable levels.”

The FCA’s rules and guidance in CONC set out similar and sometimes more detailed guidance on the concept of sustainability. CONC also referred back to the ILG and so the ILG remains relevant throughout the whole period of lending.

my provisional 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 irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and law, I think the overarching questions I need to consider in deciding what’s fair and reasonable in the circumstances of this complaint are:

- Did Oakam, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss D would be able to repay in a sustainable way? If not, would those checks have shown that Miss D would’ve been able to do so?

- Bearing in mind the circumstances, at the time of each application, was there a point where Oakam ought reasonably to have realised it was increasing Miss D's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?
- Did Oakam act unfairly or unreasonably in some other way?

Did Oakam, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss D would be able to repay in a sustainable way?

In its final response letter, Oakam offered to uphold loan 1 as it didn't think it had been processed within acceptable standards. But it didn't pay Miss D anything, as it said she hadn't paid any interest. I don't agree. Each repayment made by Miss D included both capital and interest. That Miss D repaid less than the total capital she borrowed, because the loan was refinanced before she'd repaid the whole loan, is irrelevant. So I intend to uphold the complaint about loan 1 and to tell Oakam to refund the interest Miss D paid on this loan.

For loan 2, Oakam recorded Miss D's income as £1,373 per month – made up of child benefit, tax credit and other benefits which are not defined. Miss D's outgoings are recorded as £600 – including £100 for rent, £150 for housekeeping and £0 for other credit. This left Miss D with a net disposable income of £773 per month. The notes for the loan say a 'low touch' top-up criterion was applied, which I assume is because only two months had passed since loan 1 was granted.

Oakam had, according to its notes, checked Miss D's income against her bank statements. I think it was right that Oakam did that – Miss D had significant adverse credit history, including multiple active CCJs and her only income was from benefits. I haven't actually seen Miss D's bank statements, as neither party has provided copies. In the circumstances, this means there's nothing much to undermine what Oakam has recorded about Miss D's income and I'm prepared to accept what it has recorded.

I'm more sceptical about what Oakam has recorded about Miss D's outgoings. They seem very low for a household with children. And it can't really be correct to say Miss D had no other credit commitments when she had unsatisfied CCJs (the costs of which are not recorded elsewhere). And £773 seems very high as a monthly disposable income figure in Miss D's circumstances. Miss D was looking to borrow amounts equal to or less than her monthly disposable income and then to repay those amounts over six months to a year. So I think Miss D's monthly expenditure also ought to have been checked against Miss D's bank statements. Oakam's notes don't suggest it did this in a thorough way. But again, as I don't have access to those statements, I can't say the outgoings figures are incorrect, or that the loan was unaffordable. So I don't intend to uphold the complaint about loan 2.

I've reached much the same finding for loans 3 to 5. Throughout this period, Oakam recorded Miss D's income as £1,450-£1,820, her expenditure as £600-£900 and her monthly disposable income as £540-£1,222. It continued to record that Miss D had no other credit commitments, although Oakam's credit checks suggested otherwise. As I've said above, I think the disposable income recorded was very high, bearing in mind Miss D's personal circumstances. The monthly disposable income figure recorded for loan 3, for example, was £1,222 per month – but for loan 3 Miss D received £500 cash in-hand. It's not clear to me from the information Oakam obtained why Miss D would need to borrow £500, at such high cost, to buy clothes (as recorded on the loan application) when she could apparently easily afford this expenditure without borrowing at all. So for loans 3 to 5, I continue to think Oakam ought to have taken a closer look at Miss D's bank statements or taken other additional steps to verify her expenditure. But as with loan 2, I don't have enough information to show me what such checks would likely have shown for loans 3 to 5. So I'm not planning to uphold the complaint about these loans.

Bearing in mind the circumstances, at the time of each application, was there a point where Oakam ought reasonably to have realised it was increasing Miss D's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

I've also looked at the overall pattern of Miss D's lending history with Oakam, 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 particular circumstances of Miss D's case, I think that this point was reached by loan 6 – I'll explain why.

I appreciate that Oakam considers the nature of its loans means it's unlikely Miss D was borrowing in a way which was unsustainable. But I think that's exactly what was happening. Oakam is right that Miss D was, for the most part, taking out longer-term loans, rather than payday type loans (although six of Miss D's loans do meet the FCA's definition of high-cost short-term credit). But Miss D wasn't repaying her loans over the long-term. Almost all of Miss D's loans were refinanced into the next loan in the chain. All of the loans up to loan six were refinanced in this way. By the time of loan 6, Miss D had already been borrowing from Oakam for about a year, so was taking about one loan every two months on average.

This means – contrary to what Oakam has said – that Miss D was really only repaying the interest on her loans. On a 12-18 month amortising loan, the first few repayments would be weighted heavily towards repaying interest. This is demonstrated in my table below, which shows that each time the loans were refinanced, the amount still owed had barely decreased from the figure at the outset. And each time Miss D refinanced a loan, it was to borrow more. If that pattern continued, Miss D's indebtedness to Oakam would be extended over a significant period, as it indeed was – for over six years.

So while I appreciate Miss D may have made most of her repayments on time and that her credit rating may also have improved, I don't think this means the lending from loans six onwards was sustainable and I don't think Oakam acted fairly and reasonably by continually increasing and extending Miss D's indebtedness.

I've quoted above OFT guidance which states it wasn't fair to inappropriately encourage borrowers to increase, aggregate or roll over existing debt to unsustainable levels. I haven't seen enough evidence to safely say Miss D was *inappropriately encouraged* to roll over her debts, but I do think, from the pattern of lending, that Miss D's debt was allowed to aggregate and roll over into levels which were, on balance, unsustainable.

That Miss D's debts were unsustainable is borne out by the fact she didn't make any real inroads into reducing the amount she owed over time. Miss D's debt increased consistently over the six-year period I've looked at and she paid largely only interest before refinancing her loans. So Miss D, in effect paid large amounts of interest to Oakam, in effect, to service a debt to it over an extended period.

For these reasons, I intend to uphold Miss D's complaint about loans 6 to 14, in addition to loan 1.

Did Oakam act unfairly or unreasonably in some other way?

I do think Oakam has unfairly suggested it doesn't owe Miss D redress for loan 1, despite agreeing to uphold the complaint about it. But apart from that, I do not think Oakam has acted unfairly in any other way.

Finally – I've considered the points Oakam has made about a different case. We decide each case on its individual merits and comparisons with other cases aren't always useful. I think Oakam is aware of the approach this service takes to complaints about affordability – we've published substantial details about this on our website and the regulator has highlighted key decisions to the high-cost credit industry. Additionally, from what I can see the case Oakam mentions included an offer from Oakam to write off a substantial amount of interest and capital – and that's not the case here. This is a substantial difference between the two complaints.

putting things right

My redress proposal assumes some loans are still outstanding. If this is wrong, Oakam should let me know.

Oakam shouldn't have given Miss D loan 1, or loans 6 to 14.

If Oakam has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Oakam is not able to buy the debts back then Oakam should liaise with the new debt owner to achieve the results outlined below.

- A) Oakam should add together the total of the repayments made by Miss D towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.
- B) Oakam should calculate 8% simple interest* on the individual payments made by Miss D which were considered as part of "A", calculated from the date Miss D originally made the payments, to the date the complaint is settled.
- C) Oakam should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss D as though they had been repayments of the principal on all outstanding loans. If this results in Miss D having made overpayments then Oakam should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Oakam should then refund the amounts calculated in "A" and "B" and move to step "E".
- D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Miss D. However if there is still an outstanding balance then Oakam should try to agree an affordable repayment plan with Miss D. Oakam shouldn't pursue outstanding balances made up of principal it has already written-off.
- E) Oakam should remove any adverse information recorded on Miss D's credit file in relation to loan 1. The overall pattern of Miss D's borrowing for loans 6 to 14 means any information recorded about them is adverse, so Oakam should remove these loans entirely from Miss D's credit file. Oakam does not have to remove any outstanding loans from Miss D's credit file until these have been repaid, but Oakam should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires Oakam to deduct tax from this interest. Oakam should give Miss D a certificate showing how much tax you've deducted, if he asks for one.

my provisional decision

For the reasons given above I intend to uphold Miss D's complaint in part and to tell Oakam Ltd to put things right by taking the steps set out above.

Appendix – loan table and notes

The table below sets out some information Oakam provided about the loans. This information was provided on 18 October 2018 and so some of the information about the loans which were outstanding at the time (11 and 14) may now be out of date.

The 'Cash to Miss D' column sets out how much cash Miss D actually received 'in hand' at the time she took out the loan – to help show clearly how much was used to settle the previous loan (where relevant).

The 'End balance' column sets out the balance of the loan at the point it was refinanced – where the balance is £0, the loan was repaid in full, rather than refinanced.

This table and the associated notes are for information only and the information within should not be considered definitive nor should it be used to calculate any proposed redress.

Loan no.	Start date	End date	Loan amount	Repayment	Term	End balance	Cash to Miss D
1	21/06/2012	07/08/2012	£300	£20/week	6 months	£285.66	£300
2	07/08/2012	30/10/2012	£761.76	£27/week	12 months	£673.13	£414
3	30/10/2012	18/12/2012	£1,248.13	£44/week	12 months	£1,174.12	£500
4	18/12/2012	14/03/2013	£1,574.12	£46/week	18 months	£1,552.45	£400
5	14/03/2013	31/07/2013	£1,652.45	£47/week	18 months	£1,497.62	£100
6	31/07/2013	21/10/2013	£1,742.63	£46/week	18 months	£1,668.99	£250
7	21/10/2013	25/01/2014	£2,248.59	£46/week	18 months	£2,030.47	£504
8	25/01/2014	05/08/2014	£2,488.17	£51/week	18 months	£1,894.71	£398
9	05/08/2014	20/11/2014	£2,872.21	£49/week	24 months	£2,676.23	£850
10	20/11/2014	28/05/2016	£3,458.23	£51/week	36 months	£2,539.47	£680
11	28/05/2016	n/a	£3,804.47	£53.83/week	36 months	n/a	£1,100
12	11/05/2017	04/10/2017	£500	£33.75/week	6 months	£0	£500
13	05/10/2017	05/03/2018	£600	£40.51/week	6 months	£0	£600
14	06/03/2018	n/a	£1,300	£45.84/week	12 months	n/a	£1,300

I note our adjudicator said Miss D had one more loan, on 21 June 2018. This was because in its final response letter Oakam said:

"We have reviewed the application [Miss D] has taken with Oakam on 21 June 2018. For this loan we note our usual affordability checks were carried out but acknowledge they were not processed within our acceptable standards. Thus, we will be able to uphold her complaint for this loan. For this loan, Miss D's loan has received £300 in credit..."

However, in its response to the adjudication, Oakam said no such loan exists. I've seen no agreement for such a loan. I think this was simply an error in Oakam's final response letter and it intended to refer to loan 1 on 21 June 2012. Oakam offered to uphold that loan in its final response, so it now forms part of my proposed redress. If my assumption is wrong, Oakam should let me know.**

*[**since my provisional decision, Oakam has confirmed the reference to 21 June 2018 was an error]*