

Complaint

Mrs W is unhappy with what Oakbrook Finance Limited (trading as “Likely Loans”) has offered to do to put things right as a result of irresponsibly providing her with two loans.

Background

Mrs W complained about three loans which Likely Loans provided to her in May 2016, June 2017 and February 2018. One of our adjudicators looked at the complaint and thought Likely Loans’ checks before providing loan 1 were proportionate and so it hadn’t treated Mrs W unfairly when providing this loan. But she also thought reasonable and proportionate checks would have shown Likely Loans it shouldn’t have provided Mrs W with loans 2 and 3.

Likely Loans agreed with our adjudicator’s assessment. In order to put things right, it wanted to repay the difference between the interest, fees and charges Mrs W paid on loans 2 and 3 and the interest rebate she received because loan 1 was paid early. It would then add interest to any compensation due – at 8% simple a year – and remove any adverse information recorded on Mrs W’s credit file as a result of loans 2 and 3.

Our adjudicator told Likely Loans this wasn’t the way her assessment directed it to put things right and Mrs W wasn’t happy with this alternative offer of settlement. As the parties couldn’t agree on how Likely Loans should put things right, the case was referred to an ombudsman.

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 and irresponsible lending - including the key relevant rules, guidance and good industry practice and how we typically say a lender should put things right in the event we think it shouldn’t have provided a loan - on our website. I’ve referred to this approach when looking at Mrs W’s case.

Both Mrs W and Likely Loans are in agreement about which loans should and shouldn’t have been provided. So I don’t need to look at Likely Loans’ decisions to provide loans 2 and 3. I simply need decide whether what it has offered to do to put things right for Mrs W is fair and reasonable. And having carefully thought about everything provided, I think Likely Loans needs to do more to put things right for Mrs W in this case. I’ll explain why I think this in a little more detail.

I think it would help for me to start by explaining that where a business accepts (or we decide) it provided a loan when it shouldn’t have done, we’d usually expect it to refund the interest and charges added to the loan that shouldn’t have been given – in other words anything charged over the amount lent. And if those interest and charges were paid also add 8% simple interest per year. The lender will normally also remove *adverse* information – recorded on the consumer’s credit file as a result of the interest and charges on those loans.

So, in this case, this would involve Likely Loans refunding all of the interest and charges Mrs W paid on loans 2 and 3. And removing any adverse information recorded on Mrs W’s credit file as a result of these loans.

Likely Loans agrees refunding the interest and charges Mrs W paid on loans 2 and 3 provides a useful starting point. But it doesn't believe that doing this alone puts Mrs W in the position she'd now be in if she hadn't been given loans 2 and 3 in the first place. It says that as everyone agrees it didn't do anything wrong when providing loan 1, it should be entitled to deduct the amount of the interest rebate Mrs W received on this loan as a result of repaying it with some of the proceeds of loan 2.

Although not fully articulated in this way, its argument appears to be that it should be able to recover the full cost of the contract for loan 1, because this contract would more likely than not have been fully performed had loan 2 not been provided. And any compensation paid now for loans 2 and 3 should fairly and reasonably reflect this is the position Mrs W would be in now if these loans had not been provided to her.

I've thought about Likely Loans' argument. However, I'm not persuaded by it for a couple of reasons. Firstly, I have an overarching concern with Likely Loans' proposed methodology because irrespective of how the funds to repay loan 1 were obtained, this loan was settled in June 2017. I don't think it's fair for Likely Loans to now retrospectively attempt to amend this loan (bearing in mind it wasn't a write off of capital but rather a refund of interest in line with Likely Loans' statutory obligations) more than three years later simply because it now accepts it acted unfairly towards Mrs W.

In any event, leaving aside my overarching concerns regarding Likely Loans' methodology, the particular circumstances of this case lead me to think that it's inappropriate for a deduction of the type Likely Loans has proposed to be made here. I say this because the circumstances here persuade me it doesn't automatically follow the contract for loan 1 would have been fully performed, in the way Likely Loans is suggesting, in the event loan 2 hadn't been provided.

As I understand it Mrs W still had 6 payments of £149.32 to make on loan 1 when she was provided with loan 2. I accept it's entirely possible Mrs W would have gone on to make all of these payments on time and in accordance with the agreement. But I don't think that I can reasonably reach the conclusion this would more likely than not have happened bearing in mind the facts of this case and the matters the parties are now in agreement on.

I'm particularly mindful that our adjudicator's findings in relation to loan 1, which both parties accepted, weren't that the monthly payments for loan 1 were affordable. What our adjudicator said was the checks Likely Loans carried out before providing loan 1 were proportionate, so it was entitled to rely on what it gathered when deciding to lend.

I think this is an important distinction to make here because our adjudicator thought the repayments for loan 2, which were only £1 a month more, were unaffordable and that proportionate checks at this stage would have shown Likely Loans this. So if all the parties agree that monthly payments of £150.32 were unaffordable for Mrs W in June 2017, I don't see how the 6 remaining payments of £149.32 would have been any more affordable for Mrs W at this stage. And it seems to me that Mrs W would more likely than not have had difficulty making the remaining payments on loan 1 had she not been provided with loan 2.

In these circumstances, I don't think it's reasonable to conclude that it's more likely than not Mrs W would have fully performed the contract for loan 1 in the event she hadn't been provided with loan 2. It's just as if not more likely – bearing in mind the circumstances – Mrs W would have had to stop making payments or borrowed elsewhere. As such, I'm satisfied that notwithstanding any overarching concerns about Likely Loans' method in

principle, the particular circumstances of this complaint mean I don't think the deduction Likely Loans wishes to make from the compensation due to Mrs W is fair and reasonable in all the circumstances of this case.

As this is the case, I think that Likely Loans should instead put things right in the way that I've set out below.

Fair compensation – what Likely Loans needs to do to put things right for Mrs W.

As I understand it, the amount Mrs W borrowed for loan three was more than it should have been because she had to borrow more to repay interest and charges which Likely Loans now needs to refund. I think that the compensation paid now needs to reflect that and I think it's fair and reasonable in all the circumstances of Mrs W's complaint for Likely Loans to put things right in the following way:

- The additional new funds Mrs W received as a result of being provided with loan 3 should be added to the total amount advanced for loan 2. The payments Mrs W made to loans 2 and 3 should then be deducted from this amount. If Mrs W has already repaid more than the combined amount of new funds received on loan 3 and the total amount advanced for loan 2, any extra should be treated as overpayments and refunded to her;
- add interest at 8% per year simple on any overpayments, should there be any, from the date they were made by Mrs W, if they were, to the date of settlement†;
- remove any adverse information recorded on Mrs W's credit file as a result of loans 2 and 3.

† HM Revenue & Customs requires Likely Loans to take off tax from this interest. Likely Loans must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given above, I'm upholding Mrs W's complaint. Oakbrook Finance Limited should put things right for Mrs W in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 29 November 2020.

Jeshen Narayanan
ombudsman