DRN-4673409

Complaint

Mr C has complained that Oakbrook Finance Limited (trading as "Likely Loans") unfairly provided him with unaffordable loans.

Background

Likely Loans provided Mr C with five loans. As far as I can see is Mr C's loan history was as follows:

Loan	Taken	Amount	Settlement**	Term*	APR	Payment*	Settled
1	October 2018	£1,000.00	N/A	24	59.90%	£65.53	November 2018
2	May 2019	£800.00	N/A	24	59.90%	£52.42	Into loan 3
3	September 2020	£852.82	£352.82	24	59.90%	£55.88	Into loan 4
4	May 2021	£1,153.64	£653.44	24	49.90%	£71.34	Into loan 5
5	December 2021	£1,450.07	£950.07	24	49.90%	£89.67	December 2023

* Monthly
** This is the amount of funds from the new loan which went to Mr C's previous one. On each occasion Mr C was provided with £500 of new funds.

Mr C's complaint was reviewed by one of our investigators. He thought that Likely Loans hadn't done anything wrong or treated Mr C unfairly when providing about these loans. So he didn't uphold the complaint.

Mr C disagreed with our investigator's view. So the complaint was passed to an ombudsman for review.

My provisional decision of 23 February 2024

I issued a provisional decision – on 23 February 2024 - setting out why I was intending to partially uphold Mr W's complaint. In summary, I was minded to reach this conclusion because I thought that Likely Loans:

- *did* complete reasonable and proportionate checks on Mr C to satisfy itself that he was able to repay loans 1 and 2 and that it made fair and reasonable decisions to arrange these loans;

- *didn't* complete reasonable and proportionate checks on Mr C to satisfy itself that he was able to repay loans 3, 4 and 5;

- is likely to have concluded that loan 3 was individually unaffordable for Mr C;

- ought fairly and reasonably to have realised that loans 3 and 4 were unsustainable or otherwise harmful for Mr C and so shouldn't have been provided as they would more likely than not unfairly and excessively increased his overall indebtedness;

- *didn't* also act unfairly or unreasonably towards Mr C in some other way.

The left me intending to find that Likely Loans unfairly and unreasonably provided loans 4 and 5 to Mr C in May 2021 and December 2021 and that it should put things right.

Responses to my provisional decision

Mr C responded to my provisional decision confirming that he accepted its conclusions and that he had nothing to add.

Likely Loans didn't respond to my provisional decision or provide anything further for me to consider

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/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr C's complaint.

Having carefully thought about everything including the responses to my provisional decision, I remain satisfied that there are three overarching questions that I need to answer in order to fairly and reasonably decide Mr C's complaint.

These three overarching questions are:

- Did Likely Loans complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loans in a sustainable way?
  - If so, did it make a fair decision?
  - If not, would those checks have shown that Mr C would've been able to do so?
- Bearing in mind the circumstances, at the time of each application, was there a point where Likely Loans ought reasonably to have realised Mr C's indebtedness was being increased in a way that was unsustainable or otherwise harmful and so it shouldn't have provided further loans?
- Did Likely Loans act unfairly or unreasonably in some other way?

If I determine that Likely Loans didn't act fairly and reasonably in its dealings with Mr C and that he has lost out as a result, I will go on to consider what is fair compensation.

Did Likely Loans complete reasonable and proportionate checks to satisfy itself that Mr C would be able to meet repay his loans in a sustainable way?

The rules, regulations and good industry practice in place when Likely Loans lent to Mr C required it to carry out a reasonable and proportionate assessment of whether he could afford to repay his loans in a sustainable manner. 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 loans sustainably would cause difficulties or adverse consequences for Mr C. In practice this meant that Likely Loans had to ensure that making the payments to the loan wouldn’t cause Mr C undue difficulty or adverse consequences. In other words, it wasn’t enough for Likely Loans to simply think about the likelihood of Mr C making payments, it had to consider the impact of loan repayments on Mr C.

Checks also had to be “proportionate” to the specific circumstances of the 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 the consumer (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 customer’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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- 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).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I’ve carefully thought about all of the relevant factors in this case.

Were Likely Loans’ checks reasonable and proportionate?

Likely Loans has said that it completed an income and expenditure assessment with Mr C before providing all of these loans. It said that it considers it did enough to establish that all of these loans were affordable. I’ve considered what it did for each loan and the position at the respective times, individually.

- Loan 1

Loan 1 was for £1,000.00, had an APR of 59.9% and was due to be repaid in 24 monthly repayments of £65.53.

From what I can see Mr C was asked about details of annual income which he confirmed as £19,000.00 and his housing costs, which he confirmed he was paying just over £600 to. It looks like Likely Loans also carried out a credit check which showed that he was paying just over £30 a month towards his existing credit commitments.

I also understand that the credit search carried out on Mr C showed that his existing credit commitments were well managed and that he didn't any significant adverse information such as defaults or county court judgements recorded against him.

I accept that Likely Loans may not have asked Mr C for further information about his other household bills and expenditure. However, given what was left over from his monthly income once his housing costs and payments to existing credit commitments were deducted, I'm satisfied that a detailed breakdown of Mr C's non-credit related expenditure wasn't necessary here.

So bearing in mind Likely Loans obtained a reasonable amount of information on Mr C's circumstances and there wasn't anything inconsistent in what was gathered, I'm satisfied that it did carry out reasonable and proportionate checks before bringing about loan 1 for Mr C. And given that these checks showed Mr C had sufficient disposable income to make the required payments, I'm satisfied that Likely Loans acted fairly and reasonably when providing this loan to Mr C.

- Loan 2

Loan 2 was for £800.00, also had an APR of 59.9% and was due to be repaid in 24 monthly repayments of £52.42.

From what I can see Mr C was asked about details of his annual income and his housing costs. On this occasion, Mr C confirmed he was receiving £20,800.00 a year and also confirmed that he was a paying a similar amount (as per loan 1) towards housing costs. This time it looks like Likely Loans' credit check showed that he was paying just under £100 a month towards his existing credit commitments.

I also understand that the credit search carried out on Mr C once again showed that his existing credit commitments were well managed and that he didn't have any significant adverse information - such as defaults or county court judgements recorded - against him. I accept that this was Mr C's second loan. But I'm mindful that Mr C settled loan 1 early and almost six months prior to applying for this loan which was for a smaller amount.

Again Likely Loans might not have asked Mr C for further information about his other household bills and expenditure. But again given what was left over from his monthly income once his housing costs and payments to existing credit commitments were deducted, I'm satisfied that a detailed breakdown of Mr C's non-credit related expenditure wasn't necessary here.

Although I do think the fact that Mr C's indebtedness was increasing in circumstances where his income was also supposedly doing so, was a warning sign for Likely Loans to monitor going forward.

So bearing in mind Likely Loans obtained a reasonable amount of information on Mr C's circumstances and while there were a couple of things to monitor going forwards, I'm satisfied that it did carry out reasonable and proportionate checks before providing loan 2 to Mr C.

Given that these checks showed Mr C had sufficient disposable income to make the required payments, I'm satisfied that Likely Loans acted fairly and reasonably when providing loan 2 to Mr C.

- Loan 3

Loan 3 was for £1,153.82, £352.82 of which was to pay the outstanding balance on loan 2, again had an APR of 59.9% and was due to be repaid in 24 monthly repayments of £55.88.

Loan 3 was also taken out before loan 2 had been repaid. And Likely Loans still only carried out similar checks to what it had done for loans 1 and 2. Mr C confirmed he had an annual salary of an amount which Likely Loans considered translated into £1,677.33 a month. So Likely Loans considered that Mr C had an even higher income than he had before. Furthermore Mr C's housing costs had for some reason reduced.

Likely Loans' credit check also showed that the monthly amount Mr C was paying towards his credit commitments had increased from when he took out loan 2 as well. He was now paying close to three times what he was paying just 16 months or so prior. He was now paying close to £300 instead of the close to £100 he was paying at the time of loan 2 and around £32 he was paying at the time of loan 1. So Mr C's indebtedness was increasing in circumstances where his income was supposedly increasing.

In my view, Mr C's increasing indebtedness ought to have prompted Likely Loans to have asked further questions about his living costs and regular non-credit related expenditure in order to get an understanding of why Mr C proving to be more indebted despite having been provided with the funds to consolidate his existing borrowing.

As there's no evidence that Likely Loans did find out more about Mr C's circumstances, or that it asked Mr C to provide anything more than he had done for loans 1 and 2 despite him now applying for funds for a third time, I'm satisfied that it didn't complete fair, reasonable and proportionate affordability checks before providing loan 3 to Mr C.

- Loans 4 and 5

Loan 4 was for £1,153.64, £653.64 of which was to pay the outstanding balance on loan 3, had an APR of 49.9% and was due to be repaid in 24 monthly repayments of £71.34. And Loan 5 was for £1,450.07, £950.07 of which was to pay the outstanding balance on loan 4, again it had an APR of 49.9% and it was due to be repaid in 24 monthly repayments of £89.67.

The period between loan 3 and loan 4 and loan 4 and loan 5 was also less than the period between loan 3 and loan 2. And Likely Loans also ought to have been concerned that these were now Mr C's fourth and fifth loans. Yet, other than taking further steps to ascertain Mr C's income which showed it was less than had been declared, I can't see that Likely Loans did much more than what it had done before providing loans 1, 2 and 3.

Mr C again confirmed his salary was increasing. It was supposedly around £1,800.00 for loan 4 and £1,700.00 for loan 5 (still more than at the time for loan 3). Likely Loans' credit check also showed that the amount Mr C paid towards his credit commitments continued to increase and more importantly he was now only proving able to repay his previous loans by taking new ones.

Likely Loans says that Mr C saved on interest by repaying his previous loans earlier. But significant portions of what he owed with further borrowing and by paying early settlement interest which ended up being capitalised into principal on the later loans, which in itself attracted further interest. And yet Likely Loans still considered that it was fair and reasonable to assume Mr C had enough left over to meet his non-credit related living costs despite all of this.

In my view, Mr C's increasing indebtedness ought to have caused Likely Loans concern. And not only should it have asked Mr C further questions about his living costs and regular non-credit related expenditure, I think that Likely Loans needed to take further steps to at the very least cross-check whatever Mr C said about his expenditure.

Likely Loans could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Mr C did have enough funds to be able to make the payments before it arranged this loan.

As Likely Loans has not provided me with evidence of it finding out more about Mr C's circumstances, or that it asked Mr C to provide much more than he had done for loans 1, 2 and 3 despite his, what on the face of things appeared to be, increasing indebtedness, I'm satisfied that it didn't complete fair, reasonable and proportionate affordability checks before providing loans 4 and 5 to Mr C.

Would reasonable and proportionate checks have shown Likely Loans that Mr C wouldn't have been able to sustainably repay loan 3?

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Mr C hasn't provided us with the information we've asked him for in order to be able to assess what his circumstances were like at the time he was provided with this loan. And without this information, I'm unable to ascertain whether proportionate checks would have prevented Likely Loans from lending to him in this instance.

Furthermore, bearing in mind the amount of the monthly repayments required and this was the first time Mr C was approaching for a new loan before having repaid his previous one, I can't reasonably conclude that the repayments in themselves were demonstrably unaffordable at the time either, notwithstanding being unable to recreate what proportionate checks are likely to have shown.

So overall and having carefully considered everything, I've not been provided with enough such that I'm persuaded proportionate checks would have shown that Likely Loans that loan 3 was individually unaffordable for Mr C and so it shouldn't have provided it to him.

Bearing in mind the circumstances, at the time of each application, was there a point where Likely Loans ought reasonably to have realised Mr C's indebtedness was being increased in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

As previously explained, where a firm failed to carry out reasonable and proportionate checks before providing a loan or loans, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, I haven't gone on to recreate individual, proportionate checks for loans 4 and 5 because I don't think that it is necessary to do so here. I think this is the case because in addition to assessing the circumstances behind each *individual* loan arranged for Mr C by Likely Loans, I also think it is fair and reasonable to look at the *overall pattern* of lending and what unfolded during the course of Mr C's history with Likely Loans.

I'm mindful here that the relevant rules and guidance make it clear that a firm shouldn't continue arranging further lending where the loans are unsustainable or otherwise harmful and/or it is apparent that the customer may be experiencing financial difficulties.

And I think that by loan 4, Likely Loans ought fairly and reasonably to have realised that Mr C's financial position was such that further loans were simply unsustainable for him. I've already set out most of the reasons for this in the section on why I don't think that Likely Loans' checks were reasonable and proportionate. But the factors which lead me to conclude that Likely Loans ought fairly and reasonably to have realised loans 4 and 5 were unsustainable or otherwise harmful are:

- Mr C's monthly payments towards credit were increasing and this was despite the fact that his income was supposedly increasing.

- loan 4 was the second time, in a row, where Mr C was looking to borrow funds at a high rate of interest without having first having repaid what he already owed.

- Mr C was only proving able to repay his loans by taking out further borrowing.

- By loan 5 Mr C had already been borrowing for over three years, at high interest, from Likely Loans and yet he was being a provided with a loan for the most he'd borrowed and with the highest payments he'd have to make.

I'm also concerned about the effect consolidating loans 3 and 4 into loans 4 and 5 respectively had on the overall costs Mr C had to repay. Mr C's loans will have followed a typical amortisation schedule. In the early stages of the loan a significant proportion of Mr C's monthly payments were going towards repaying the accrued interest. And as loans 4 and 5 were settled within months of being provided (with the proceeds from new loans), a significant proportion of his monthly payments would have repaid interest rather than reduced his balance.

In my view, Mr C's 'repayment record' and Likely Loans granting further loans moved Mr C further and further away from the eventual debt-free position consolidation loans (which was the recorded purpose for more than one of the loans was provided for) are, in theory at least, supposed to leave a borrower at the end.

Overall and having considered everything, I'm satisfied that Likely Loans ought fairly and reasonably to have realised that loans 4 and 5 were unsustainable or otherwise harmful for Mr C and unfairly and excessively increased his overall indebtedness. As this is the case, I'm satisfied that Likely Loans failed to act fairly and reasonably towards Mr C when providing loans 4 and 5 to him.

Did Likely Loans act unfairly or unreasonably towards Mr C in some other way?

I’ve carefully thought about everything provided. Having done so, I’ve not seen anything here that leads me to conclude that Likely Loans acted unfairly or unreasonably towards Mr C in some other way.

So I don’t think that Likely Loans acted unfairly or unreasonably towards Mr C in some other way.

Conclusions

Overall and having carefully thought about the three overarching questions, set out on page two of this decision, I’m satisfied that Likely Loans:

- *did* complete reasonable and proportionate checks on Mr C to satisfy itself that he was able to repay loans 1 and 2 and that it made fair and reasonable decisions to arrange these loans;

- *didn’t* complete reasonable and proportionate checks on Mr C to satisfy itself that he was able to repay loans 3, 4 and 5;

- is likely to have concluded that loan 3 was individually unaffordable for Mr C;

- ought fairly and reasonably to have realised that loans 3 and 4 were unsustainable or otherwise harmful for Mr C and so shouldn’t have been provided as they would more likely than not unfairly and excessively increased his overall indebtedness;

- *didn’t* also act unfairly or unreasonably towards Mr C in some other way.

The above findings leave me satisfied that Likely Loans unfairly and unreasonably provided loans 4 and 5 to Mr C in May 2021 and December 2021 and that it should put things right.

Fair compensation – what Likely Loans needs to do to put things right for Mr C

Having considered everything, I think that it would be fair and reasonable in all the circumstances of Mr C’s complaint for Likely Loans to put things right for Mr C in the following way:

- refund all the interest, fees and charges Mr C paid on loans 4 and 5;

- add interest at 8% per year simple on any refunded interest, fees and charges for loans 4 and 5 from the date they were paid by Mr C to the date of settlement†;

- remove any adverse information recorded on Mr C’s credit file as a result of loans 4 and 5.

† HM Revenue & Customs requires Likely Loans to take off tax from this interest. Likely Loans must give Mr C a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I’ve explained above and in my provisional decision of 23 February 2024, I’m upholding Mr C’s complaint. Oakbrook Finance Limited should put things right for Mr C in the way I’ve directed it to above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 8 April 2024.

Jeshen Narayanan
Ombudsman