

Complaint

Miss D has complained about two unsecured personal loans which were provided to her by Lloyds Bank PLC ("Lloyds"). She says Lloyds didn't do take enough action to protect her after she asked for help in 2016 and this culminated in Lloyds providing these loans irresponsibly.

Background to the complaint and my provisional decision of 9 November 2020

Miss D was provided with two personal loans by Lloyds in 2019. The first loan was for £10,000.00 and was provided in May 2019. This loan was due to be repaid in 84 instalments of £175.17. However, the loan was repaid in full a couple of days later. Miss D then made a further loan application in September 2019. This time the amount advanced was £15,000.00 and the loan was due to be repaid in 48 instalments of £344.20. As I understand it, Miss D has found it increasingly difficult to make her monthly payments and she eventually complained to Lloyds saying the loan had been provided irresponsibly.

In its response to Miss D's complaint, while not providing much in the way of detail, Lloyds didn't agree its enquiries into the affordability of the loan were inadequate. It says that it made every effort to ensure it didn't lend to customers who can't afford to repay. And it referred to the broad parameters of its lending criteria. It eventually concluded that while it could have done more to help Miss D in 2016, it didn't think that the loan had been provided irresponsibly.

One of our investigators looked at Miss D's complaint and concluded that Lloyds hadn't acted unfairly towards Miss D when providing her with these loans. Miss D disagreed with our investigator and requested that the matter be considered by an ombudsman. As a result, the complaint was referred to me for a decision.

On 9 November 2020, I issued a provisional decision setting out my initial findings on Miss D's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started out by setting out the regulatory framework and other relevant publications that I thought were important to my determination of Miss D's complaint.

The legal and regulatory framework

Lloyds was authorised by the FCA when it provided these loans to Miss D in May 2019 and September 2019 so it was subject to the FCA's rules in respect of consumer credit activities.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principles here are PRIN 2.1.1 R (2) which says:

A firm must conduct its business with due skill, care and diligence.

And PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to firms specifically when carrying out credit related regulated activities. Bearing in mind the complaint before me, I think the most relevant section of CONC here is CONC 5 (and specifically CONC 5.2A) which sets out a firm's obligations in relation to responsible lending.

Section 5.2A of CONC sets out what a lender needs to do in relation to a creditworthiness assessment before agreeing to give a consumer a loan of this type.

CONC 5.2A.4R states:

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

1. *entering into a regulated credit agreement*

CONC 5.2A.5R states:

The firm must not take a step in CONC 5.2A.4R(1) to (3) unless it can demonstrate that it has, before doing so:

1. *undertaken a creditworthiness assessment and, where relevant, the assessment under CONC 5.2A.31R(2) (guarantors) in accordance with the rules set out in this section; and*
2. *had proper regard to the outcome of that assessment in respect of affordability risk.*

CONC 5.2A.7R goes on to state:

A firm must base its creditworthiness assessment on sufficient information:

1. *of which it is aware at the time the creditworthiness assessment is carried out;*
2. *obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and*

the information must enable the firm to carry out a reasonable creditworthiness assessment.

CONC 5.2A.10R sets out what should form part of the creditworthiness assessment and states:

The firm must consider:

- 1. the risk that the customer will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and*
- 2. the risk to the customer of not being able to make repayments under the agreement in accordance with CONC 5.2A.12R (referred to as 'affordability risk' in this section).*

CONC 5.2A.12R provides more details regarding the considerations required in an affordability assessment and says:

The firm must consider the customer's ability to make repayments under the agreement:

- 1. as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;*
- 2. out of, or using, one or more of the following:*
 - a) the customer's income;*
 - b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or*
 - c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;*
- 3. without the customer having to borrow to meet the repayments;*
- 4. without failing to make any other payment the customer has a contractual or statutory obligation to make; and*
- 5. without the repayments having a significant adverse impact on the customer's financial situation.*

CONC 5.2A.20R provides further detail on the proportionality of assessments and states:

- 1. The extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.*
- 2. The firm must consider:*
 - a) the types of information to use in the creditworthiness assessment;*

- b) *the content and level of detail of the information to use;*
- c) *whether the information in the firm's possession is sufficient;*
- d) *whether and to what extent to obtain additional information from the customer;*
- e) *whether and to what extent to obtain information from a credit reference agency;*
- f) *any other sources of information to use;*
- g) *whether and to what extent to verify the accuracy of the information that is used;*
- h) *the degree of evaluation and analysis of the information that is used; and*
- i) *the steps to take to determine or estimate the customer's income or non-discretionary expenditure (where such a determination or estimate is required),*

having regard to the factors listed in (3) where applicable to the agreement.

3. *The factors to which the firm must have regard when complying with (2) and deciding what steps are needed to make the creditworthiness assessment a reasonable one include each of the following where applicable to the agreement:*

- a) *the type of credit;*
- b) *the amount of the credit or, where applicable, the credit limit;*
- c) *the duration (or likely duration) of the credit;*
- d) *the frequency of the repayments;*
- e) *the amounts of the repayments;*
- f) *the total amount payable;*
- g) *the total charge for credit;*
- h) *the annual percentage rate of charge;*
- i) *whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the customer under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates) is fixed or variable;*
- j) *any other costs which will or may be payable by or on behalf of the customer in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the customer under a hire-*

purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates; and

- k) any other potential adverse consequences for the customer arising under the agreement from a failure to make a repayment by the due date.*

Further guidance on the proportionality of assessments and circumstances regarding the checking of information are contained in CONC 5.2A.24G and CONC 5.2A.25G, which state:

CONC 5.2A.24G

- 1. The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.*
- 2. Factors that will affect that level of risk include the actual or potential cost of the credit and the total amount payable in absolute terms and relative to the customer's financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the total charge for credit are low, the amount of information that is sufficient to support a reasonable creditworthiness assessment may be less than would be required:*
 - a) in the case of more expensive credit or credit that is higher in amount; or*
 - b) where it is known that the customer's financial situation is such that the credit may be expected to have a more significant impact.*

CONC 5.2A.25G

- 1. In relation to CONC 5.2A.24G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:*
 - a) the total value of the customer's outstanding debts relative to the customer's income is high; or*
 - b) there is a high likelihood that the customer will not make repayments under the agreement by their due dates.*
- 2. In relation to CONC 5.2A.25G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.*

Finally, CONC 5.2A.22G has examples of information a lender should pay attention to if aware of and it states:

The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:

1. *the customer is in, has recently experienced, or is likely to experience, financial difficulties (see CONC 1.3); or*
2. *the customer is particularly vulnerable, for example because the customer has mental health difficulties or mental capacity limitations (see CONC 2.10 and CONC 7.2).*

Other relevant publications

CONC sets out the regulatory framework that firms carrying out consumer credit activities have to adhere to. But they represent a minimum standard for firms. And I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Lloyds was a subscriber to the Lending Standard Board's Lending Code, which it referred to in its final response to Miss D and currently subscribes to the Standards of Lending Practice which replaced it in July 2016.

The Lending Code

Section 4 of the Lending Code is concerned with Credit Assessments. It says:

Personal customers

50. Before lending any money, granting or increasing an overdraft or other borrowing, subscribers should assess whether the customer will be able to repay it in a sustainable manner. They should do this by considering the potential for the borrowing to adversely impact the customer's financial situation, information from CRAs, including existing financial commitments where provided, as well as the following, as appropriate:

- *The type and amount of credit being sought;*
- *How the customer has handled their finances in the past;*
- *Any known future financial commitments of the customer;*
- *Any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- *Internal credit scoring techniques (if used by the subscriber);*
- *The customer's declared income;*
- *Why the customer wants to borrow the money and for how long; and*
- *Any security provided.*

51. Subscribers should take a view on which of the above factors it is appropriate to consider in any particular circumstance dependent on, for example, the type and amount of credit being sought and the potential risks to the borrower.

52. Assessment may also include other checks that have not been listed above.

53. The requirement to consider information from CRAs does not apply in specialist customer segments such as private banking where use of CRA data may not be appropriate.

54. Where income is one of the factors considered when assessing ability to repay a personal loan and the loan is agreed only if the income of another person is taken into account, normally the loan should be provided on a joint and several basis. However there may be circumstances when it is appropriate to provide a loan on a sole basis.

55. Subscribers should ensure they are familiar with the requirements of the Code Sponsors' Guide to Credit Scoring and the explanations that need to be given to customers if credit scoring is used.

56. If a lending application is declined following credit assessment, the subscriber should explain the main reason why if asked by the customer. If the decline is as a result of information obtained from a CRA search, the subscriber should provide the customer with contact details for the CRA.

The Standards of Lending Practice

The standards relating to assessing the affordability of credit are set out in the 'Product Sale' section of the Standards of Lending Practice. The relevant section says:

"5. Before providing any form of credit, granting or increasing an overdraft or other borrowing, Firms should assess, from the information available to the Firm at the time, whether the customer will be able to repay it in a sustainable manner without the customer incurring financial difficulty or experiencing significant adverse consequences. [CONC 5]"

There is also a section on 'Money Management' and paragraph 3 of this section says:

"3. Firms should monitor customers' credit card and overdraft limits to ensure that the customer is not exhibiting signs of financial stress and where relevant, offer appropriate support."

I then confirmed that having taken into account the relevant rules, guidance, good industry practice and law, I thought there were two overarching questions which I needed to consider in order to decide what's fair and reasonable in the circumstances of Miss D's complaint. These questions were:

- Did Lloyds, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss D would be able to repay her loan in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Miss D would've been able to do so?
- Did Lloyds act unfairly or unreasonably in some other way?

I also said that if I determined that Lloyds didn't act fairly and reasonably in its dealings with Miss D and that she had lost out as a result, I would go on to consider what was fair compensation.

I started by considering the first of the questions.

My consideration of this matter began by me explaining that the regulations in place when Lloyds lent to Miss D required it to carry out a reasonable assessment of whether Miss D could afford to repay her loans in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should've been "borrower-focused" – so Lloyds had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss D*. In other words, it wasn't enough for Lloyds to think only about the likelihood that it would get its money back, it also needed to consider the impact of repayment on Miss D herself.

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 the borrower (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 loan applications.

In light of this, I thought 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).

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

Were Lloyds’ checks reasonable and proportionate?

My response to this question started by saying that I found Lloyds’ response to Miss D’s complaint and what it provided us to support its position to be disappointing. Lloyds said its checks were adequate. But as far as I could see it simply regurgitated details of its generic loan approval process. It seemed, to me at least, as though Lloyds relied on the loan applications having taken place online and assumed Miss D considered how much she wished to borrow and how much she could afford to repay, which to me appeared a failure to recognise its regulatory obligation to assess whether the payments were affordable.

Lloyds also said it used a process called credit scoring (which sounded no different to what I’m familiar with and what most other firms carry out) to assess Miss D’s application. But there wasn’t any explanation of what exactly these credit scoring checks revealed about Miss D’s financial circumstances at the respective times. Indeed it seemed to me that Lloyds simply expected us to accept both of Miss D’s loans were affordable because its systems approved them.

Considering Lloyds said it gathered sufficient information, in line with its regulatory obligations, to inform its lending decisions, I considered it to be extremely disappointing that Lloyds hadn’t seen fit to provide it. Equally it was also disappointing that Lloyds had been unable to tell me what it knew about Miss D’s circumstances when these loans were provided to her.

I made it clear that this service cannot and will not look for evidence and construct an argument to support Lloyds' defence of Miss D's complaint. If Lloyds couldn't or wouldn't provide the information relied on and describe why it showed it was fair and reasonable to lend to Miss D on each occasion, then I couldn't and wouldn't reach the conclusion that its checks before providing these loans were proportionate. Without any explanation from Lloyds on this matter, I couldn't take it as read that its lending decisions were fair. I invited Lloyds to provide more detail on these points, its checks and what they showed, in its response to my provisional decision.

The circumstances as they stood at the time left me minded to find that Lloyds didn't carry out reasonable and proportionate checks before providing Miss D with either of her loans.

As I'd found that Lloyds hadn't completed proportionate checks before providing either of Miss D's loans, I then proceeded to consider whether proportionate checks on Miss D's loans would have indicated, to Lloyds, that she would have been unable to repay her loans in a sustainable manner.

I started my analysis by saying Miss D was provided with loans of not insubstantial amounts – £10,000 and £15,000 respectively. So, in my view, this meant a proportionate check for Miss D's loans would've involved finding out – for example – about Miss D's normal monthly outgoings and regular financial commitments at the very least.

As Lloyds couldn't show me that it carried out proportionate checks for these loans, I couldn't say for sure what proportionate checks would most likely have shown. This meant I needed to decide whether it was more likely than not that a reasonable and proportionate affordability check would've told Lloyds that it was unfair to offer these loans to Miss D.

Miss D had a current account with Lloyds. And to help us understand for ourselves what Lloyds would more likely than not have discovered if it had completed reasonable and proportionate checks prior to providing Miss D's loans, we asked Lloyds to provide us with copies of her bank statements.

Lloyds provided the statements for Miss D's account. And even though I didn't know what Lloyds' checks showed it at the time, in the absence of anything else and as Lloyds had this information available, I thought it was perfectly reasonable for me to rely on this to ascertain Miss D's financial position at the time of the respective applications. I then looked at this information in order to determine Miss D's financial position at the time she was provided with these loans.

- Loan 1

Lloyds said it relied on the information Miss D provided during the online application. On the other hand, Miss D had said Lloyds failed to properly take into account that she'd proactively been in contact to explain she had a problem with gambling back in 2015 and 2016 and asked for help at that stage. As I understood it, Lloyds did put some measures in place to block some gambling transactions on Miss D's accounts. Although Lloyds agreed it could have done more and should have put a 'strict' marker on Miss D's accounts and also referred her to gambling charities. I considered all of this in the context that the monthly payments for this loan were around £175 albeit Miss D needed to make them for 7 years.

Bearing all of this in mind, I didn't think it was unreasonable for Lloyds to have proceeded with this application. While I was concerned that there were a large amount of transfers going in and out of the account, which look to have been completed to get around any gambling restrictions on the account, I didn't think it was obvious this was the case at that stage.

The proportion of Miss D's income going to the loan repayments, the recorded loan purpose of buying a car and there not appearing to be anything else to suggest Miss D might not have the disposable income to make the payments (such as significant commitments to other creditors), led me to think it wouldn't have been proportionate to look at these transfers in greater detail at this stage.

So overall and having considered the information before me, although I had some concerns about the level of scrutiny Lloyds applied to the application for loan 1, I was satisfied that should a reasonable and proportionate check have been carried out before loan 1 was provided, this wouldn't have indicated that Miss D would more likely than not have had difficulty repaying this loan. And it followed that at that stage I was inclined to find that reasonable and proportionate checks would not have prevented Lloyds from providing loan one to Miss D.

- Loan 2

I'd already made clear my thoughts about there being some clear warning signs Lloyds ought to have been alert to when it provided loan 1. Namely the unexplained transfers going in and out of Miss D's account which involved significant sums of money well in excess of her monthly salary. That said, I'd also explained the particular circumstances at the time meant I was currently prepared to give Lloyds the benefit of the doubt and find it wasn't unreasonable for it not to have scrutinised these transfers more closely.

Looking at loan 2, though, I didn't think that Lloyds had any reasonable basis for not applying further scrutiny to these transfers. I thought that this was the case for a number of reasons.

Firstly, the monthly repayments for loan 2 were significantly higher than those for loan 1 – almost double at approaching £350. This was a significant proportion of Miss D's monthly income of around £1500 a month. I saw what Lloyds has said about it not being required to verify Miss D's income. But I didn't understand the relevance of this argument given Lloyds had this information and there was no dispute regarding Miss D's income.

Secondly, the purpose of this loan was also recorded as purchasing a car. Given the loan purpose was asked for and recorded, I expected it to play some part in the decision on whether to lend. And, in these circumstances, I'd also expected a lender to question how plausible it was for an individual, on Miss D's salary, to require a second car loan for significantly more a mere matter of months after a first one.

Of course, it might have been possible Miss D was going to use the funds for loan 2 to buy another car and I certainly wasn't suggesting that this, in itself, meant Miss D's application should have been declined. But I did think this should have prompted Lloyds to have scrutinised the other information it had to hand in order to check how plausible this was rather than simply carry on with what - at face value at least – appeared questionable.

I'd already said that it wasn't immediately apparent where the transfers made prior to loan 1 being provided, were going to. However, I didn't think I could reasonably say that this was the case afterwards. I say this because the entire amount of the funds advanced for loan 1 were transferred to a betting company, which transactions were supposed to be blocked, the day after the funds were provided. Lloyds said the use of a third-party service to make the transfers meant that any gambling block would have been negated. Although I wasn't entirely persuaded by this argument given the payments were made using a well-known third-party payment service to a highly recognisable high-street betting company, which Miss D had been told transactions had been blocked, clearly appeared within the transaction.

Nonetheless I said, even if I were to accept this might not have automatically been picked up, bearing in mind what I'd already set about the circumstances of this application requiring closer scrutiny than that provided to loan 1, I would have expected these transactions to have been seen and then reviewed as part of the application process for loan 2. And if Lloyds had done this, as I thought that it ought fairly and reasonably to have done, it would have discovered Miss D was gambling significant sums of money.

I was also mindful of the guidance within CONC (as per CONC 5.2A.22G) which states a lender should have regard of any information which may indicate that a prospective borrower is particularly vulnerable. In this case, it wasn't in dispute that Miss D contacted Lloyds in 2015 and 2016 explaining she had a gambling problem and asking for help. Lloyds provided us with the details and records of these conversations as well as the actions taken as part of this complaint.

As Lloyds was able to provide this now, I considered that this was information Lloyds must have had available when it decided to provide Miss D with loan 2 in September 2019. And bearing in mind I thought it ought to have applied further scrutiny to the transfers in and out of Miss D's account in the period after loan 1 was provided, I also thought this was information indicating Miss D might've been vulnerable which Lloyds ought to have had regard to when making its lending decision for loan 2. I hadn't seen anything to suggest that Lloyds did do this, in fact Lloyds' arguments on this case suggested this had played no part at all in its lending decision notwithstanding everything else going on in Miss D's account in the period leading up to September 2019.

In my view, had a proportionate amount of scrutiny been applied to Miss D's application for loan 2, Lloyds would have seen there was a high likelihood of any funds lent being gambled. And, in these circumstances, Miss D's ability to make her loan payments was in large part dependent on her gambling successes. In these circumstances, I didn't think it could be reasonably concluded that Miss D would have been able to make her payments in a sustainable manner – especially bearing in mind the dissipation of the surplus funds (around £6000) Miss D won after taking loan 1 in the months leading up to loan 2.

So given all of Lloyds' obligations and what I thought was fair and reasonable taking into account the circumstances and everything I'd covered, I thought proportionate checks would more likely than not have shown Lloyds that Miss D was unlikely to be able to make the payments to loan 2 in a sustainable manner.

Finally, I then went on to consider the second of the overarching questions that I thought was relevant to my determination of Miss D's complaint. By this point I had already highlighted that there were instances of Lloyds of not properly taking into account Miss D's vulnerability.

But while I had concerns with Lloyds' actions in this regard, I thought these matters formed a large part of why I thought it unfairly provided loan 2 to Miss D, rather than it being an indication that it had additionally treated her unfairly in some other way. So at that point I didn't intend to find that Lloyds acted unfairly or unreasonably towards Miss D in some other way.

All of this led to me issuing a provisional decision which found that:

- Lloyds *didn't* complete reasonable and proportionate checks on Miss D to satisfy itself that she was able to repay either of these loans;

- it wasn't the case reasonable and proportionate checks *would* more likely than not have shown Miss D was unable to sustainably make the repayments for loan 1;
- reasonable and proportionate checks *would* more likely than not have shown Miss D was unable to sustainably make the repayments for loan 2;
- Lloyds didn't additionally act unfairly or unreasonably towards Miss D in some other way.

These findings left me intending to conclude that Lloyds hadn't acted fairly and reasonably towards Miss D when it provided her with loan 2.

I then went on to consider whether Miss D suffered adverse consequences as a result of Lloyds unfairly providing her with loan 2. I thought that she had because she was being expected to pay interest and charges on a loan which she should never have been given. Miss D was also likely to have experienced distress and inconvenience as a result of Lloyds lending such a large amount of money to her after she'd already notified of her gambling.

So overall and having carefully thought about everything provided and was what fair and reasonable in the circumstances of this case, I provisionally decided that Miss D lost out because Lloyds unfairly gave her loan 2, which it ought to have realised she wouldn't be able to sustainably repay.

I finally set out a method of putting things right for Miss D, which I found addressed Lloyds' failings and Miss D's resulting loss.

Lloyds' response to my provisional decision

Lloyds responded to my provisional decision. Its response said:

- It is comfortable its process for assessing creditworthiness and affordability is thorough, reasonable and proportionate and meets the CONC guidance. In order to qualify for lending, customers must pass credit assessments, indebtedness assessments, policy rules and an affordability assessment. It used a combination of credit reference agency data, models and customer stated data to assess the application from both a creditworthiness and affordability perspective, which is industry standard. Miss D's data showed no issues and so her loans were approved.
- For loan 1 Miss D was deemed to have a monthly disposable income of £529 and for loan 2 a monthly disposable income of £478. This meant that the monthly loan repayments for each of the loans were affordable.
- Miss D was asked to provide truthful and accurate information and asked if she knew about any upcoming changes to her circumstances. So it was Miss D's responsibility to ensure everything on her application was truthful and accurate including loan purpose, and income. It has checked under the CIFAS categories and providing false information would be classed as a category 3 'Application Fraud, Facility Granted: Material falsehoods in the personal information provided in the application/proposal'. This is also an act of criminal deception.
- Checking an individual's bank statements is neither reasonable nor proportionate and CONC guidance means it is only expected to take into account non-discretionary expenditure. As per CONC 5.2A.19G (1) '*For the purpose of considering the customer's non-discretionary expenditure under CONC 5.2A.17R, the firm may take*

into account statistical data unless it knows or has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customer's situation.', it is allowed to model this data which it did.

- Gambling is not an allowable loan purpose. The transactions I referred to were to a third-party and it processed them not the betting company and that is why the block didn't work on these transactions. Furthermore, Miss D was fully aware she was using the third-party for this purpose and could have advised Lloyds at any point had she had concerns about this. It could then have looked to have blocked all transactions for the third-party. Miss D also had the option to self-exclude herself from all gambling sites.
- It has since reviewed the transactions in April 19 and May 19 and can see Miss D's account remained in a healthy credit balance. It isn't always clear there are gambling transactions except the ones mentioned in my provisional decision, just after loan 1 was provided, when 2 £5,000 transactions took place. Miss D also received over £17,834.00 credits excluding £10,000.00 for loan 1. Miss D repaid loan 1 within 24 hours which suggested loan 1 was no longer needed.
- Looking at the account around the time loan 2 was granted there was only one transaction, for £4,980, which suggested Miss D was gambling. The next gambling transactions took place after the loan was provided and it is unfair to expect it to foresee this. Lloyds doesn't include discretionary spend in its affordability assessments and neither is it required to as it is deemed the customer's decision to decide how they spend their money. It would not be reasonable and proportionate to expect it to manually check its own company current account transactions. Also if a customer has current accounts with other financial institutions, it can't check those current account transactions.
- It does have a gambling rule in place, and this looks at a number of different criteria which a customer has to fulfil in order for transactions to be blocked. Miss D didn't meet all the criteria that's why the transactions went through. In terms of the gambling spend it isn't able to dictate to customers what they spend their money on.

Miss D's response to my provisional decision

Miss D responded to confirm that she accepted my provisional decision and proposed settlement. And she made no further points 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.

In reaching my decision, I've taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; and relevant codes of practice.

Taking into account the relevant rules, law and publications, I remain of the view that the two overarching questions that I set out in my provisional decision are what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint. These are:

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

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Miss D would've been able to do so?
- Did Lloyds act unfairly or unreasonably in some other way?

Lloyds hasn't challenged my conclusion that these overarching questions are relevant to me deciding this complaint. Indeed the structure of its response – in terms of it directly responding to copied and pasted sections of my provisional decision - suggests it's my findings on these questions that it disagrees with.

For ease of reference, I've addressed Lloyds' points thematically.

The information Lloyds provided regarding its checks

I want to start by thanking Lloyds for the clarification it has provided on the general checks it carries out before approving an application. But while Lloyds has provided this clarification, I am however concerned that when taken to its logical conclusion its argument appears to be that the checks it conducts at the time of any application will always be proportionate. This is despite CONC requiring any assessment carried out to be dependent on what is appropriate for both the consumer's circumstances and the particulars of the loan in question.

In any event, I think that it's important for me to set out that my role here isn't to determine whether Lloyds' systems and processes meet the industry standard (as it says) or the regulator's rules and guidance. I note Lloyds referred to CONC as guidance even though it contains rules as well as guidance and I consider it important to point this out. My role here is to determine whether Lloyds acted fairly and reasonably in its dealing with Miss D when providing her with these loans.

It isn't unreasonable for standardisation and automation to play some part in the decision making process. But a lender needs to be mindful of the fact that such standardised and automated checks are, by their nature, not customer specific. So, a lender should be particularly keen to scrutinise discrepancies when they appear – particularly where other parts of the creditworthiness assessment highlight any other risk factors.

In Miss D's case, Lloyds still hasn't provided the output of the credit checks or the other third-party information gathered. It has simply focused on Miss D's declarations (which I'll go on to consider further on) and hasn't provided what Miss D's credit file showed in terms of existing commitments. I know these commitments exist because I can see payments going to a number of credit cards and a car finance agreement on Miss D's current account statements.

Bearing in mind the number of existing commitments she appears to have had, I'm surprised at how Lloyds arrived at the conclusion Miss D was paying £197 and £198 a month towards her existing unsecured credit commitments, at the time of the respective loan applications, when she was paying around £155 a month towards her car finance agreement alone.

So irrespective of my concerns regarding Lloyds' arguments about its checks in general, it is in any event difficult for me to say that Lloyds' checks went far enough when it still hasn't provided some of the information it has been asked for and when the rest of what it has provided doesn't stand up to scrutiny.

In these circumstances, I can't reasonably say that any credit checks didn't reveal anything requiring further consideration or prompting further investigation, beyond standardised tools, sample data and declarations of income and expenditure. And as that is the case, the further

information Lloyds has provided hasn't persuaded me that its checks were reasonable and proportionate in the circumstances of Miss D's complaint.

The income and expenditure information Miss D provided

I've also considered what Lloyds has said about the accuracy of the information Miss D provided. I'm assuming that Lloyds' comments have been made in relation to Miss D's income declaration, as there isn't any indication that the information provided in relation to housing was inaccurate and Lloyds appears to have estimated Miss D's other monthly expenditure.

I think that it would be helpful for me to start by pointing out that CONC 5.2A.16G (3) states:

"For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer)".

That said, CONC 5.2A.15R (1)(a) allows for CONC 5.2A.16G (3) not to apply when:

"the firm can demonstrate that it is obvious in the circumstances of the particular case that the customer is able to make repayments in accordance with CONC 5.2A.12R, so as to make the actions described in (2) to (4) disproportionate;"

Lloyds' arguments suggest it relied solely on a statement of income from Miss D. This is despite the fact that there doesn't appear to be anything in what it has presented which suggests it was obvious in the particular circumstances of the case that Miss D was able to make her repayments. Indeed Miss D's repayments approached 20% of her declared income and Lloyds' calculation, which was based in large part on estimated expenditure, showed she only had around £130 a month or so left over once the monthly repayments for this loan were taken into account.

Given Lloyds' calculation was, in large part, based on estimates of Miss D's non-discretionary expenditure and may not have covered all of it, I don't think it was reasonable and proportionate to proceed on the basis that it was obvious Miss D would be able to make the payments such that it was disproportionate to have checked her income. I'm even more concerned by Lloyds' approach here as it would have known Miss D had a current account and so this information was readily available and could quite easily have played a part in the decision making process.

I'm also mindful that CONC 5.2A.36R says:

"A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment."

And there is further guidance provided at CONC 5.2A.37G which says:

"An example of where a firm has reasonable cause to suspect that the customer has not been truthful may be where information supplied by the customer concerning income or employment status is clearly inconsistent with other information of which the firm is aware."

The income information Lloyds proceeded with was inconsistent with other information regarding Miss D's actual income which it had but chose to ignore. It's also important to note that while Lloyds chose to refer to CONC 5.2A.19G to support its use of statistical data to determine Miss D's non-discretionary expenditure, it completely ignored the section of CONC relating to its obligations in relation to cross-referencing or verifying Miss D's income.

This is particularly important here because on my reading of the numbers had Lloyds deducted the monthly expenditure it arrived at, during the application for loan 2, from Miss D's actual income at this time, it would clearly have seen that she didn't have sufficient disposable income to be able to make the monthly payments to this loan.

So I don't think that it's fair and reasonable for Lloyds to claim it was misled by Miss D when it had sufficient information to have made an informed decision and it appears to have been selective in which CONC 5.2A obligations it chose to meet – especially as I don't know how the question regarding monthly income was even framed to Miss D. And I consider Lloyds' use of inflammatory language such as CIFAS application fraud and criminal deception to be particularly unhelpful here.

Lloyds' comments regarding Miss D's gambling

I've also given thought to what Lloyds has said about Miss D's gambling and it not being unreasonable for it to have played a greater role in its decision to lend. It says gambling is not an allowable loan purpose. I take this to mean it wouldn't have advanced the funds had it known Miss D would gamble them as well as it not being an option which was available for selection as the loan purpose. I thank Lloyds for providing this clarification.

Lloyds also says that Miss D was aware she was using a third-party payment mechanism to get around the block on transactions. And she could have advised Lloyds at any point if she had concerns and it could have blocked all transactions to the third-party. I find misses the points made in my provisional decision and it is extremely disappointing.

I say this because I've not considered and I'm still not considering whether Lloyds acted fairly and reasonably when processing Miss D's current account transactions to the third-party payment processor. What I'm considering here is what regard, if any, Lloyds ought fairly and reasonably to have had of these gambling transactions when making its lending decisions. And I'm considering this matter in the light of Lloyds saying it won't lend in circumstances where it knows the funds will be gambled.

Lloyds says it says it had no reason to believe that the funds from Miss D's loans would be gambled. It made some comments about it not being clear that Miss D was making gambling transactions prior to loan 1 and that Miss D's account remained in a healthy credit balance. But I already explained, in my provisional decision, that while closer scrutiny of Miss D's transactions in the period leading to loan 1 might have led to Lloyds realising Miss D was using a third-party payment provider to get round the restrictions on gambling transactions, it wasn't immediately apparent this was the case.

Loan 1 being Miss D's first with Lloyds, the proportion of her income going to the repayments, the recorded loan purpose and there not appearing to be anything else to suggest Miss D might not have the disposable income to make the payments, all led me to think it wouldn't have been proportionate to have applied the level of scrutiny required to have picked up these were gambling transactions. And so I didn't uphold the complaint about this loan on this basis.

However, I did not and still do not think it's fair and reasonable for Lloyds not to have applied further scrutiny and therefore discovered and factored in Miss D's gambling into its lending

decision for loan 2. Lloyds arguments suggest it is looking at each individual factor in isolation. In my view, this approach fails to take into account Miss D had an existing relationship with Lloyds and what it already knew about her by this stage, in favour of a narrower focus on the individual components of the application for loan two.

Lloyds says there was only one transaction, for £4,980.00, which suggested Miss D was gambling in the lead up to loan 2 being provided. The next gambling transactions took place after loan 2 had already been provided and it is unfair to expect it to have foreseen Miss D would use the funds in this way. I've considered what Lloyds has said.

I agree that a single gambling transaction of £4,980.00, when taken in isolation, isn't in itself reason for Lloyds to reasonably have foreseen Miss D would gamble the funds advanced for loan 2. But Lloyds is overlooking the fact that this transaction was for approaching nearly three times Miss D's declared (and more than three times her actual) monthly income. This was a huge sum bearing in mind Miss D's means. Equally, Lloyds has also chosen to ignore the two £5,000.00 transactions which took place shortly after loan 1 was provided and which were clearly made using the funds advance for this loan. The cumulative amount of these transactions total around 9 months of Miss D's salary and they were made within a 3 to 4 month period.

Furthermore, these transactions all took place against the backdrop of Miss D having contacted Lloyds in 2015 and 2016 to explain she had a gambling problem and asking for help. I set out my concerns about Lloyds' apparent failure to have had regard of information which indicated that Miss D may have been particularly vulnerable when deciding to lend to her – after all Lloyds' own records indicated she asked for gambling transactions to be blocked because she was a problem gambler. Lloyds response to my provisional decision chose not to address my concerns on this matter.

Indeed Lloyds' response leads me to think that Miss D's request for help and her potential vulnerability played little, or no, part in its consideration of the September 2019 loan application. It merely said it has a gambling rule in place, which looks at a number of different criteria that a customer has to fulfil in order for transactions to be blocked. Miss D didn't meet all the criteria – presumably saying she had a problem and asking for transactions to be blocked still wasn't enough - that's why the transactions went through. It also said that Miss D could have asked for gambling transactions to be blocked if that's what she wanted, even though she asked for that to happen in 2015 and 2016. In any event, this is all to do with what happened when the funds for loan 2 were already in Miss D's account and I've already explained that's not what I'm considering here.

What's also concerning here is that not only did Lloyds fail to take into account Miss D's potential vulnerability as well as everything else that terms of the gambling spend, which when taken together all pointed towards a high likelihood of any funds lent being gambled, Lloyds also completely missed the point of my provisional decision. By saying that it isn't able to dictate to customers what they spend their money on, Lloyds has completely missed the point that Miss D was borrowing money. So it wasn't a case of telling Miss D she couldn't spend or gamble her own money, it was taking this into account and Lloyds meeting its obligation not to lend money irresponsibly.

Bearing in mind everything Lloyds knew or ought to have known by September 2019, Lloyds had a duty and obligation to consider the possibility and likelihood of any funds advanced being gambled when deciding whether to accept Miss D's application. Lloyds' failure to do this as well as its own checks suggesting Miss D's existing committed expenditure, when deducted from her actual income, didn't leave her enough to make the repayments to loan 2, leave me concluding that not only did Lloyds fail to carry out reasonable and proportionate

checks; but also that such checks would more likely than not have shown Miss D couldn't repay loan 2 without experiencing difficulty.

In reaching this conclusion, I've also taken into account what Lloyds said about it not being reasonable and proportionate to expect it to manually check the current account transactions for its existing account holders and that if a customer has an account with another financial institution, it can't check those transactions. But my conclusions here should not be taken as saying that a failure to look at a prospective borrower's bank statements, be it for the lender considering the application or a different bank, will result in the lender being responsible for any subsequent impecunious position a borrower may later find themselves in.

Of course, it may be sensible for a lender to at least cross-reference any declarations made by a prospective borrower – certainly in terms of income bearing in mind CONC 5.2A.16G (3) - against any information it may already hold about the applicant. But that's not what I'm saying here. After all it's for a lender to decide what sources of information to consider provided it knows enough about the borrower to be able to reasonably say they could repay what they're committing to.

My conclusion here is that everything Lloyds knew about Miss D by the time of loan 2, her previous request for help because of her gambling; the significant sum of money being advanced with monthly repayments taking up a reasonable chunk of her monthly income; and this being a second application for credit within a short period, all point to it being reasonable and proportionate to have looked at Miss D's current account activity before advancing £15,000.00 to her. Lloyds didn't do this here and in circumstances where I find it was reasonable and proportionate to do so.

Conclusions

Having considered all of the points Lloyds made in response to my provisional decision, I find that:

- Lloyds *didn't* complete reasonable and proportionate checks on Miss D to satisfy itself that she was able to repay either of these loans;
- it wasn't the case reasonable and proportionate checks *would* more likely than not have shown Miss D was unable to sustainably make the repayments for loan 1;
- reasonable and proportionate checks *would* more likely than not have shown Miss D was unable to sustainably make the repayments for loan 2;
- Lloyds didn't additionally act unfairly or unreasonably towards Miss D in some other way.

Fair compensation – what Lloyds needs to do to put things right for Miss D

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Lloyds putting Miss D in the position she'd now be in if she hadn't been provided with loan 2.

But when it comes to complaints about irresponsible lending this isn't straightforward. Miss D was given the loan in question and she used the funds – albeit Miss D's statements show (and Lloyds appears to accept) that the funds for loan 2 may well have been lost gambling.

So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss D back in the position she would be in if she hadn't been given loans 2 in the first place – even if a relatively short period of time has passed – because Miss D doesn't have the £15,000.00 available to return to Lloyds for the agreement to be immediately unwound.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind the particular circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Lloyds to put things right in the following way.

As we explain on our website where we find, or a lender agrees, credit was provided irresponsibly, we'd typically say it's fair reasonable to expect the borrower to repay the funds they were lent but not any associated interest, fees or charges. But having given careful thought to the matter before me and the circumstances of this particular case, I don't think that such an award goes far enough here. I think that this is the case for two reasons.

Firstly, for the reasons I have in some detail already explained, Lloyds ought to have been aware there was a significant risk Miss D would gamble any funds lent to her in September 2019. And in these circumstances, her ability to sustainably repay what she was being lent let alone the associated interest was in large part dependant on her success gambling. Lloyds chose to lend in these circumstances despite the reasonably foreseeable prospect of the funds dissipating as a result of being gambled away and being no longer available to repay any debt as a result. As I understand it, both parties are in agreement that the funds have dissipated as a result of gambling losses.

It's also my understanding that Miss D has lost her job in the past few months. So I think that things will clearly be difficult for her in these times given her current financial position. And it's difficult to see how Miss D will be able to make payments to this loan going forward or repay the outstanding capital within a reasonable period of time, in these circumstances, without experiencing severe financial difficulty.

Bearing in mind the circumstances in which Lloyds lent, Miss D's current financial position and the amount of distress and inconvenience Lloyds unfairly providing this loan to Miss D, in the circumstances it did is likely to have caused, I don't think removing the interest fees and charges goes far enough. The circumstances of this case and in particular the financial hardship which is likely to be caused by requiring Miss D to pay funds she doesn't have and is unlikely to get, lead me to think that the fair and reasonable thing for Lloyds to do here, given all the circumstances, is write off the outstanding balance on loan 2.

As this will result in Miss D having repaid substantially less than the amount she was lent, I'm satisfied that this also encompasses fair compensation for any distress and inconvenience Lloyds' actions in relation to providing loan 2 caused her. So while I've carefully thought about matters and I may have told Lloyds to pay a not insubstantial amount of compensation for the distress and inconvenience its actions caused Miss D were it not for my direction to write off the outstanding balance, I'm not making an additional award for distress and inconvenience.

I turn now to Miss D's credit file. We'd typically expect a lender to remove any adverse information on a loan, from the borrower's credit file, where a complaint is upheld for irresponsible lending. However, I don't think that doing this would be the fair and reasonable thing to do here given what I'm asking Lloyds to do in terms of the loan balance. To explain, the basis for Miss D's complaint was and is that she has a problem which was made worse by Lloyds' decision to lend to her in September 2019. I've accepted this is the case and this has played a large part in my intended decision to uphold Miss D's complaint.

In these circumstances, it seems to me removing adverse information from Miss D's credit file, increasing the chances of her being able to borrow further would be counterproductive and arguably not in her best interests, or those of any potential lender. So I think it's fair and reasonable for Lloyds to reflect what I'm asking it to do in relation to the outstanding balance on the loan and record it wrote off a balance on this loan on Miss D's credit file.

My final decision

For the reasons given above, and in my provisional decision of 9 November 2020, I'm upholding Miss D's complaint. Lloyds Bank PLC should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 3 March 2021.

Jeshen Narayanan
Ombudsman