DRN-2886526

The complaint

Miss R complains about six loans that she took out with Lloyds Bank PLC. She says that the loans were unaffordable and that she didn't understand what she was taking out.

What happened

I issued my provisional decision on this case on 2 June 2021. I wanted to give both parties the chance to respond before coming to my final decision. Both parties have now responded and so I'm in a position to issue my final decision on Miss R's complaint.

I have copied my provisional decision below, it also forms part of this final decision.

"Miss R took out a total of six loans with Lloyds between 2003 and 2008. Miss R complains that these loans were unaffordable to her and caused her to get into financial difficulty.

Miss R is being represented by Mrs T. Mrs T tells us that Miss R lacks the capacity to understand what she was agreeing to when she took out the loans. Mrs T has given us a lot of information about Miss R's circumstances – and this has been supported by medical evidence. The information confirms that Miss R has a learning disability and provides further information on the daily struggles Miss R faces. Mrs T tells us that Miss R doesn't understand her finances, the value of money and other such financial matters. She also struggles to carry out other basic day to day tasks. Lloyds is now aware of Miss R's situation. Mrs T says that because of the difficulties Miss R had in understanding her financial affairs, Lloyds shouldn't have sold these loans to Miss R. Mrs T tells us that the monthly loan repayments and increased borrowing led Miss R to financial difficulties.

Lloyds disagreed with Miss R that the loans were unaffordable. It said that it didn't know Miss R had a learning disability. But it thought that it had lent responsibly to Miss R – and so it didn't uphold her complaint.

Our investigator looked into things for Miss R and he thought that loans three to six were unaffordable for Miss R. And that Lloyds should refund the interest and charges on these loans to put things right for her.

Lloyds didn't agree. Essentially it said that Miss R had enough disposable income to be able to afford all loans. And so, it hadn't done anything wrong in lending to her. It also says that loans three to six were consolidation loans and so it decreased the monthly repayment amount for Miss R.

Because Lloyds didn't agree, this complaint has been passed to me to make a decision on the matter.

What I've provisionally decided – and why

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

Having done so, I intend to uphold Miss R's complaint in part. And I'll explain my reasons for doing so below.

Given how long ago these loans were taken out (the last of which was 2008), there isn't much information available from when they were sold. For example, Lloyds has limited notes about the conversations that took place, it doesn't have any application information, or information to show how it checked that Miss R could afford the loans. This isn't surprising or unusual. And I don't draw anything negative from Lloyds not having this information – I wouldn't have expected it to keep hold of it for all this time.

On the other hand, Miss R's recollections of what happened at the time have also diminished. She doesn't remember much about how she was spending her money at the time and what other loans and credit cards she had. Again, this is completely understandable, I wouldn't expect someone to know this after all this time. Especially given what I've read from the medical notes relating to Miss R and her ability to retain information. The lack of information available does make it difficult to have a clear picture as to what happened. And so, where there is minimal or missing information, I will base my decision on what I think is more likely than not.

Back when these loans were wold to Miss R, the expectation was on the lender, Lloyds in this case, not to lend to a consumer if it feels the credit is unaffordable.

Lloyds no longer has any information to show me what checks it carried out before it made the decision to lend to Miss R. But based on what I've seen so far, I think it likely that some of the checks it undertook weren't sufficient enough for it to be able to reasonably feel Miss R was able to repay the loans without difficulty.

To keep things simple, I'll look at each loan separately.

Loan 1

I've seen a copy of the loan agreement dated and signed 1 December 2003. The loan amount was for £1000 with a monthly repayment amount of £98.94 over the course of a 12 month period.

Lloyds has sent me a copy of the loan statement. This shows that each monthly repayment for the loan was made on time until the loan was fully repaid on 15 November 2004.

I've then gone on to look a Miss R's bank statements prior to when she took out this loan. There isn't anything on the bank statements that suggests to me that Miss R was in any financial difficulties at this point. Given that this loan was for a relatively low amount, I don't think it was wrong of Lloyds to agree to lend to her on this occasion.

Loan 2

This loan was taken out on 13 July 2004. The loan was for £2000 which was made up of £1500 cash loan to Miss R and £500 to repay existing credit with Lloyds. The monthly repayment amount for the loan was £92.64 (inclusive of loan protection insurance), to be repaid over a term of 30 months.

The £500 element of the loan to repay existing debts appears to have been used to repay some existing lending Miss R had with Lloyds. This is evident from the loan agreement and that Miss R was almost £500 into an overdraft facility at the time the loan was drawn down. So, it seems that the additional £500 was to repay that overdraft.

The month before the loan was drawn down, June 2004, it's clear that Miss R started to use the overdraft facility more, which would indicate a possible deterioration in Miss R's financial position. It also suggests that she could have been struggling to meet her normal living expenses at this time. Her financial position wouldn't have been helped by Lloyds agreeing to lend to her again, and while she was still paying off the first loan.

While it isn't immediately obvious that the loan was unaffordable for her – there is some limited evidence to suggest that it was – for example, she was using her overdraft facility, she already had a loan with Lloyds she hadn't yet repaid (and that ran alongside this loan), and the majority of the loan appears to have been used for day to day living expenses. All of which is information that was available to Lloyds at the time they lent this loan to her – and is information I'd have expected them to take into account. But at this stage, there weren't many signs of financial difficulty elsewhere, and so I don't think I've seen enough information to persuade me that it was unfair for Lloyds to lend to Miss R on this occasion.

Loan 3

In May 2005, Lloyds agreed to lend to Miss R again, and offered her a loan of £5800. This was a substantial increase on the amounts advanced previously and the monthly repayment for the loan was £166.28 (inclusive of loan protection insurance) – over a period of 60 months.

Lloyds has been able to provide me with some notes from the time of the application for this loan. These notes say that the loan was going to be used to repay the existing loan with Lloyds (loan 2), repay a Lloyds credit card, a credit card provided by a different lender and a store card. The notes suggest that the loan was agreed so that Miss R could reduce her monthly outgoings. So it's clear that as well as there being a significant increase in what was being lent at this time, Miss R also owed significantly more than what she did at the time she applied for loans 1 and 2.

Lloyds has provided this service with information about what it thinks her income was at the time – and what was leaving her account regularly. It's said that based on the bank statements it has seen, Miss R was getting around £618 a month and there were direct debits leaving the account of £115 a month. Lloyds say that this would have left Miss R with £337 a month (after the loan repayment) to pay for all other living expenses.

But Lloyds' calculations don't include any of the cash withdrawals leaving the account that were being used to pay for rent, utilities and other living expenses. While I don't have the exact figures of how much Miss R was paying for these things, I think it likely to be much more than the £337 Lloyds thinks was left over. So at the moment, I don't see how Lloyds can reasonably have felt that this loan was affordable to Miss R – given her increasing debt burden and she'd be left with only £337 a month to meet all of her monthly living costs and expenses.

While I appreciate Lloyds had tried to reduce Miss R's monthly outgoings, it doesn't appear to me that Lloyds did much to prevent her getting into more debt. Miss R did have other open accounts with Lloyds – like an overdraft and a credit card, so to avoid Miss R getting into further debt, it could have stipulated that this lending would only be agreed if Miss R closed the other lending facilities she had. But it didn't do this, which as you'll see later got Miss R into further problems financially.

Later, in October 2005, notes on Miss R's account suggest that she came into difficulties again – and this is also evidenced by her bank statements – showing that she was constantly in her overdraft. The notes provided by Lloyds suggest Miss R wanted to take out a £9,000 loan to clear all the debt she had. The notes go on to say that this would be agreed *if Miss R didn't use her credit card that month and didn't increase her overdraft. The notes say Miss R had also taken out a different loan with a different lender. Lloyds later declined to lend to her on this occasion – the notes suggest this was because Miss R was using her credit card to take out cash, which is generally accepted by the industry as being an indication that a customer may be experiencing financial difficulty. So, it seems to me that Lloyds itself already had some concerns over Miss R's financial position.*

Loan 4

In November 2006, Lloyds agreed to lend Miss R £13,000, more than double the amount it lent to her 18 months prior. The monthly repayments for this loan were £397.18 (inclusive of loan protection insurance) over a period of 60 months. Notes from the time the loan was provided suggest that this monthly repayment would 'save' Miss R around £150 a month.

The notes also say that the Lloyds credit card and overdraft facility would be removed. Lloyds say at this time; Miss R was getting around £885 a month and there were direct debits leaving the account of £136 a month. Lloyds say that this would have left Miss R with £352 a month (after the loan repayment) to pay for all other living expenses.

Again, Lloyds calculations don't include payments for rent, utilities and living expenses. So I don't currently think that Lloyds' could have reasonably felt that this loan was affordable for Miss R for the same reasons I did loan 3.

In addition to what I've said above, and based on the information I've seen, not much had changed from October 2005 when Lloyds declined to lend to Miss R. So it's unclear why it thought the loan in November 2006 was affordable when it felt Miss R would be unable to repay substantially less just over a year before.

Loan 5

In March 2007, around four months after loan 4 was provided, Lloyds agreed to lend Miss R £15,500, so an additional £2500. The monthly repayments would be £319.70 (inclusive of loan protection insurance) over a period of 84 months.

Miss R's average monthly income at the time was £837 and her average direct debit amounted to £58. Lloyds say Miss R would have been left with around £460 a month after the repayment for this loan. Again, Lloyds calculation doesn't take into account any of Miss R's day to day living expenses, which I think in reality would have amounted to more than £460.

Notes from the time suggest that the funds would repay the outstanding balance on loan 5 and pay off more additional lending Miss R had taken out. The notes state that Lloyds wouldn't lend to Miss R for another 12 months. I think Lloyds notes here show that it had concerns over the amount and frequency that Miss R was borrowing money – and yet it agreed to lend to her on this occasion anyway. Miss R's indebtedness was getting worse and had been for some time. She was continuing to utilise credit facilities elsewhere, and yet Lloyds still continued to lend to her despite the rather large increase in her overall indebtedness.

Loan 6

In June 2008, Lloyds again agreed to lend to Miss R, this time it agreed a loan of £14,685.95. The monthly repayments were £267.54 over a period of 70 months.

At the time, Lloyds say her average monthly income was £840 and direct debits totalled £86.

This would have left Miss R with around £486 a month. Again, this figure doesn't include payments for rent, bills and general living expenses.

While Lloyds might say here that it lent a lesser amount to Miss R on 'better' terms – for example the loan term and monthly repayment amount had reduced from loan 5 to loan 6 – I don't think that Lloyds could reasonably have felt that Miss R would be able to make these repayments. All it meant was that the monthly repayments on this loan were less unaffordable than the repayments on previous ones.

Conclusions

I've gone into little detail about the later loans, this is deliberate, as I think its clear to see from loan 3 onwards that Miss R was in difficulty and was borrowing because she was finding it difficult to repay the money she had already been lent. The additional loans after this only added to the problem.

I don't know what checks Lloyds carried out before it lent to Miss R, but given what I've said above and what it ought to have been aware of given the information it had I'm not persuaded that it can reasonably have felt Miss R would have been able to repay loans 3 to 6.

More recently, when Lloyds had done its own calculations as to what it thought Miss R's financial position was, the amount Lloyds referred to as Miss R's 'disposable income', didn't take into account her actual monthly living costs and expenses and left far too little to reasonably conclude that she had enough to meet these commitments. I'm also concerned that Lloyds appears to have no concerns that these loans were accounting for a significant portion of Miss R's low monthly income.

Had it taken this into account, I think it would have found that Miss R's financial position was much worse. And it doesn't surprise me, that as a consequence of Lloyds continuing to lend unaffordable amounts to Miss R, that she had to rely on other credit to pay for everyday expenses.

I find Lloyds' comments about the affordability of these loans concerning. It has relied on the fact that Miss R didn't miss repayments to evidence that the loans were affordable. This, in my opinion, isn't right. Miss R was using credit cards and getting herself into more debt to repay these loans – so while she might have been keeping up with the repayments, it seems to me that she was doing so by using different types of credit to pay for other expenses. And it completely ignores that Miss R's repayment of earlier loans was in large part dependent on her having been provided with the later ones.

While I appreciate that it's hard to know exactly where Miss R's money was being spent, I think what is clear is that Miss R couldn't maintain these loan repayments with the income she was getting. Mrs T has told this service that Miss R often complained of having no money – and not enough money to even feed herself. And this isn't surprising given the low amounts of monthly income left in Lloyds' own retrospective calculations. And its clear that repaying them had a significant and detrimental impact on her financial position.

Lloyds has also said that loans 3-6 were used for consolidation. And that it was often able to reduce the monthly amount Miss R was spending on repayment each month. While I appreciate that Lloyds might have, on some of the occasions, reduced the monthly amount Miss R was paying, this was often because the loan term was increasing. So despite any marginal saving on the monthly payments, Miss R's overall indebtedness was increasing. Based on everything I've said above, I don't think it was responsible of Lloyds to lend to Miss R after the second loan. It's clear to me that Miss R was struggling to make ends meet as a *result of her limited income. Lloyds ought to have realised that agreeing to these loans only meant that she got herself into more and more debt that she couldn't repay. So I'm intending to conclude that Lloyds didn't act fairly and reasonably when it provided loans 3 to 6 to Miss R.*

Putting things right

I've thought very carefully about what fair compensation would look like in this case.

Generally, this service looks to put things right by putting the consumer back in the position they would have been in had the lending not been agreed. And normally, in irresponsible lending cases, we'd ask the consumer to repay the capital balance, but the business, in this case Lloyds, would need to refund any interest and charges that had been associated with the loan. But having given careful thought to the matter 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, the impact of these loans has been quite serious for Miss R. Mrs T has told this service that there were often periods of time where Miss R couldn't afford to eat or pay for other basic living costs. She didn't understand why she didn't have any money – and this is as Mrs T says, is because she didn't understand that she'd taken out a loan or the implications that the loans would have on her long-term or her finances.

I accept that Lloyds may not have known about Miss R's difficulties at the time, nonetheless the consequences of Miss R being lent more money than she could reasonably afford to repay has led Miss R into years of financial hardship.

Secondly, Miss R is no longer able to work. This came about in 2013 when Miss R was officially diagnosed with a life-long learning disability. And so, what was already a large amount of money to expect Miss R to repay on a low income, would now be even more difficult as Miss R's sole income are the benefits she receives. I can't see anyway that Miss R would be able to repay the outstanding amount in a reasonable period of time without experiencing furthermore financial difficulties. And I can't see Miss R's circumstances changing any time soon.

Bearing in mind the circumstances of this case, Miss R's current financial position and the amount of distress and inconvenience caused by Lloyds unfairly providing these loans to Miss R, 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 has been caused and is likely to be caused by asking Miss R 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 for Lloyds to ensure that Miss R pays no more towards this loan.

I understand that this balance is now owed to a third-party. So I recommend that Lloyds do one of two things:

1. It can buy back the debt from the third party and write the balance off, or
2. Repay the outstanding balance amount to the third party."

What I've decided – and why

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

Having done so, it is my decision to uphold this complaint, and my findings on this matter remain the same as those in my provisional decision.

Lloyds responded to my provisional decision to say it agreed to buy back the debt from the third-party, and that it would write off the remaining balance.

Miss R's representative, Mrs T, responded to ask if her sister would get a refund of the interest and charges she's paid over the years and if she'd get a payment of compensation for distress and inconvenience.

From what I've seen, I don't think Miss R has repaid more than the principle sum lent to her. So, the amount of the debt left outstanding is a combination of the principle balance and interest and charges. Miss R has also had a refund of PPI premiums. A proportion of the monthly payments she was making towards the loans, would have included an amount for PPI, which she has already been refunded. With this in mind, I don't that a refund of interest and charges would have been more than the outstanding balance left to pay.

Because I've asked Lloyds to write off the outstanding balance, this will mean that Miss R will have repaid 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 3-6 caused her.

So, while I've carefully thought about matters and I may have told Lloyds to pay an amount of compensation for the distress and inconvenience its actions caused Miss R were it not for my direction to write off the outstanding balance, I'm not making an additional award for distress and inconvenience.

I understand that this situation has also caused a lot of distress and upset to Mrs T, as she has been dealing with Miss R's financial matters in more recent years. However, I'm not able to award additional compensation to Mrs T, as this complaint isn't about her account or the actions of Lloyds towards her. So, I won't be asking Lloyds to compensate Mrs T.

Putting things right

To put things right for Miss R, I order Lloyds to buy back the debt from the third party and write the outstanding debt off.

My final decision

For the reasons set out above, it is my decision to uphold Miss R's complaint. Lloyds Bank PLC must put things right for Miss R by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 19 July 2021.

Sophie Wilkinson
Ombudsman