DRN-3704621

The complaint

Mr R complains through his representative (a relative) that Lloyds Bank PLC lent him monies on two loans he was unable to afford to repay.

What happened

Lloyds provided Mr R with the following loans:

	Date	Amount	Period of loan	Monthly instalment*
Loan 1	20/7/18	£5,206	60 months	£134
Loan 2	22/6/19	£1,000	48 months	£34

*rounded up

The first loan was to consolidate a previous Lloyds' loan, and home improvements. Mr R said that he had had problems with managing his money. At the time of issuing both loans he was constantly in overdraft on both his bank accounts. He had recently been in touch with a debt advice charity, who had assessed that his outgoings exceeded his income. The interest on both loans has been frozen whilst a repayment plan is worked out. He complained to Lloyds about irresponsible lending.

Lloyds said it carried out checks on Mr R's credit status, verified his income and assessed his living expenses using Office for National Statistics (ONS) data. As Mr R passed all its eligibility tests it said that it was right to agree to provide both loans.

On referral to the Financial Ombudsman, our adjudicator said that Mr R's complaints about both loans should be upheld. She pointed out that Mr R was living on a retirement pension. She also said that she didn't think that Lloyds had done proportionate checks, taking into account that it had access to his bank accounts. She said that these checks would have shown that Mr R was already making heavy use of his overdraft at the time of applying for both loans. She further noted that he was spending substantial amounts on gambling.

Lloyds disagreed, pointing out that Mr R would still have had a surplus of disposable income each month. it said we shouldn't treat gambling in the same way as spending on necessities,

The matter has been passed to me for further consideration.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending – including all the relevant rules, guidance, and good industry practice – on our website.

Considering the relevant rules (including the Consumer Credit (CONC) Rules as set out in the handbook of the Financial Conduct Authority (FCA), guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Lloyds complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the loans in a sustainable way?

- If not, would those checks have shown that Mr R would have been able to do so?

The rules and regulations in place required Lloyds to carry out a reasonable and proportionate assessment of Mr R's ability to make the repayments under the agreements. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Lloyds had to think about whether repaying the loans would be sustainable. In practice this meant that Lloyds had to ensure that making the repayments on the loans wouldn't cause Mr R undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Lloyds to simply think about the likelihood of it getting its money back – it had to consider the impact of the loan repayments on Mr R**.** 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 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. I think that such a check ought generally to have been *more* thorough:

- The *lower* a consumer'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 *greater* the number and frequency of loans, and the longer the period 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).

loan 1

From the point view of Mr R's debts, the only ones on his credit report were two bank accounts, both in overdraft near their respective limits of £1,600 and £900. He was incurring daily overdraft fees. In Lloyds' notes of application for this, only Mr R's monthly rent payment is shown. Whilst Lloyds said that it based its assessment of his outgoings on ONS data, it hasn't said what figure it put on it. "CONC" rule 5.2.A 19 says "*For the purpose of considering the customer's non-discretionary expenditure….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*."

So I have to consider whether Lloyds should have carried out further checks, apart from those it did. Lloyds would have had full access to both of his bank accounts, but it told Mr R that it didn't check bank statements during loan applications, relying on the customer to make sure everything on the application was truthful. But here it knew both current accounts were in overdraft and had reached their respective limits. So I think this would have alerted it to look at the accounts.

Mr R's monthly income was at the time about £1,400. If Lloyds had looked at Mr R's accounts, this would have shown that he was spending around £810 on utilities, rent, council tax, insurance, and phone and tv subscriptions. This figure doesn't include spending on food or the cost of running a car (which is shown in the bank statements).

On top of this he was spending up to £200 a month buying lottery tickets. I'm aware that Lloyds doesn't consider the latter should be counted as non-discretionary expenditure, which assumes Mr R would have been able to stop if he wanted. It has pointed out that when it had spoken to Mr R's representative he said it wasn't an issue. That's not quite accurate - the note says at first the transactions were fine and weren't a problem but when they were gone through it was agreed that these were high and he would speak to Mr R about it. My view is that it should have a raised a concern in light of Mr R's modest income.

There were also a regular number of transactions on the account to an online payment service. I don't know what these were for or whether any credit was being used but they also may have been of concern.

Taking into account Mr R's rent and other monthly payments, his food, the cost of running a car, the new loan payment, and possible problems with gambling, I don't think Lloyds should have provided loan 1.

To be clear I think it carried out proportionate checks, but those checks should have alerted it to carry out more checks. If it had looked at his bank accounts which it had access to, I don't think that the loan would have been assessed as being affordable.

loan 2

Similar considerations apply to this loan. Although Mr R didn't appear to have got into deeper debt, nevertheless had hadn't managed to pay off any part of his overdrafts. His spending was broadly similar to that at the time of loan 1, so similar problems should have arisen over lending him more money. This loan was additional to loan 1 so Mr R would have had to find the extra payments for this.

So I think that Lloyds shouldn't have provided loan 2.

In respect of both loans I don't think Lloyds made fair lending decisions.

Putting things right

Mr R has had the capital payment in respect of the loans, so it's fair that he should repay this. So far as the loans are concerned, I think Lloyds should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loans.

- Treat any payments made by Mr R as payments towards the capital amount.

- If Mr R has paid more than the capital, refund any overpayments to him with 8% simple interest* from the date they were paid to the date of settlement.

- But if there's still an outstanding balance, Lloyds should come to a reasonable repayment plan with Mr R.

- Remove any adverse information about the loans from Mr R's credit file.

*HM Revenue & Customs requires Lloyds to deduct tax from this interest. It should give Mr R a certificate showing how much tax it's deducted if he asks for one.

My final decision

I uphold the complaint and require Lloyds Bank PLC to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 October 2022.

Ray Lawley
Ombudsman