DRN-3817050

The complaint

Mr H says Lloyds Bank PLC irresponsibly lent to him.

What happened

Mr H took out a fixed sum loan in one of Lloyds' branches in August 2015. The loan was for £12,000.75 to be repaid over 60 months. The monthly repayment was £225.33 and the total amount repayable was £13,519.80. The loan was used in part to repay an existing Lloyds loan.

Mr H says Lloyds targeted him as a financially vulnerable customer and the loan was mis-sold. It led him to suffer financial difficulties. And Lloyds passed the debt to another company that did not pause its recovery action during this complaint.

Lloyds maintains it carried out suitable affordability and creditworthiness checks before lending.

Our investigator upheld Mr H's complaint. She said Lloyds' checks were not proportionate and better checks would most likely have shown there was a risk this loan would not be sustainably affordable for Mr H. She said it must refund all interest and charges and she explained how any outstanding balance or overpayments should then be treated.

Mr H agreed with this assessment in part. But he wanted to re-iterate what he sees as aggravating factors that mean all his repayments should be refunded. In summary, he says this loan has led to other financial problems and this has impacted his mental health. He says Lloyds sold him a product it knew to be unsuitable and it has not satisfactorily addressed his concerns about its sales practices. Then he says Lloyds passed his debt to a third-party who has repeatedly harassed him, even though the debt was the subject of a complaint.

Lloyds disagreed with the assessment. It said bank statements from the five months prior to Mr H's application showed his income was in fact higher than he declared and so the loan was clearly affordable. Our use of three months' statements is not representative.

Our investigator responded explaining some of that income was informal family borrowing and so could not be included. She said she had asked Mr H what his net annual salary was to take into account payments he received at irregular intervals given his sources of income, and one-off payments. This meant his average monthly income that should've been used for the affordability assessment was £2,345.74. As she had calculated his living expenses to be £2,436.94 she maintained Mr H did not have the disposable income to take on this loan.

Lloyds again challenged this assessment, saying we cannot rely on three months' data, nor really five months, and that to get a more certain view of Mr H's income, given he was self-employed, we should ask for three years of tax returns prior to his loan application.

As an informal agreement was not reached the complaint was passed to me to make a final decision.

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.

I want to reassure Mr H that I have reviewed, and thought carefully about, all the points he has raised. In keeping with our role as an informal dispute resolution service, and as our rules allow, I will focus here on the issues I find to be material to the outcome of his complaint – and that we have the powers to consider.

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

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr H's complaint. These two questions are:

1. Did Lloyds complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the loan without experiencing significant adverse consequences?
- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr H would've been able to do so?
2. Did Lloyds act unfairly or unreasonably in some other way?

The rules and regulations in place required Lloyds to carry out a reasonable and proportionate assessment of Mr H's ability to make the repayments under this agreement. 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 loan would cause significant adverse consequences for Mr H. In practice this meant that the business had to ensure that making the payments to the loan wouldn't cause Mr H undue difficulty or significant adverse consequences.

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 H. 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.

In light of this, I think that a reasonable and proportionate 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 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've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr H's complaint.

Lloyds says its checks included looking at Mr H's main financial commitments. I can see it asked about his income (£3,081) and his housing costs (£1,147). It did not ask about his living costs or other credit commitments. It says it was aware of any debts Mr H held with Lloyds, though I can't see what they were or how/if they were reflected in its affordability assessment. It says it completed a credit check but no longer has the results. This is not unreasonable given the time since his application. Based on the results of all its checks Lloyds found this new loan would be affordable for Mr H.

I don't think these checks were proportionate given the value and term of the loan. I think Lloyds needed to better understand Mr H's financial position, as well as validating his declarations. As Mr H's current account was with Lloyds it already had access to the data it needed to review his actual incomings and outgoings. It could already see Mr H was persistently reliant on his overdraft which should have been another reason to carry out better checks.

Our investigator reviewed the bank statements for the three months prior to Mr H's application and concluded Mr H did not have the disposable income needed to take on this loan. He in fact had a £92.10 shortfall each month after paying for his essential costs.

Lloyds challenged this approach, arguing three months was not representative of Mr H's financial position. But as it knows that is the approach we take to try to recreate what proportionate checks would most likely have shown a lender. We do of course flex the analysis where we have additional information – and the investigator explained what that meant in this case: informal borrowing from family has not been included as income, but things like advance payments have, and spread across a 12-month period. I am satisfied this is a reasonable approach in the circumstances. I am surprised Lloyds is now saying the only fair income analysis would be to obtain three years of tax returns, when it accepted solely Mr H's declaration at the time of the application.

This means I agree with the finding that as Mr H most likely had no disposable income in some months (without relying on family) the loan was irresponsibly given.

Mr H was unhappy that the proposed redress did not include refunding all payments he has made. But as he had the benefit of the loan we would expect the capital to be repaid. I will lay out what this means in more detail later.

Did Lloyds act unfairly or unreasonably in some other way?

Mr H has raised a number of issues about Lloyds' sales practices, but it is not our role to review the processes, systems or policies of a bank. That is the role of the regulator, the Financial Conduct Authority.

Mr H is also unhappy that his debt was passed to a third-party during this complaint process. Lloyds did this in May 2020, after it had issued a final response letter in January 2020. The terms of Mr H's loan account allow it to do this. Mr H brought his complaint to this service in October 2020, so after the debt was transferred, and whilst we can request for collections activity to be put on hold we cannot order it. And more relevant in this case, the debt was no longer within the control of Lloyds at this stage. I note Mr H is unhappy with the conduct of the third-party but they are not party to this complaint. Mr H might be able to bring a separate complaint about them.

So in summary I do not find Lloyds acted unfairly or unreasonably in some other way. It follows I am not awarding any additional compensation. I am sorry Mr H has suffered during his financial hardship and that this has impacted his mental health. If he has not already done so, Mr H may wish to approach an organisation like StepChange or Citizens Advice for free debt advice.

Putting things right

I think it's fair and reasonable for Mr H to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

Lloyds has sold the debt but I understand it is able to buy it back so it should first do this. I know Mr H would prefer for the redress to be managed differently, but I can see no grounds to move away from our standard approach in these types of complaints.

So Lloyds must then:

- Refund all interest, fees and charges from the loan and treat all the payments Mr H made as payments towards the capital.
- If reworking Mr H's loan account results in him having effectively made payments above the original capital borrowed, then Lloyds should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking Mr H's loan account results in an outstanding capital balance Lloyds must try to agree an affordable repayment plan with Mr H.
- Remove any adverse information recorded on Mr H's credit file in relation to the loan once any capital balance is repaid.

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

My final decision

I am upholding Mr H's complaint. Lloyds Bank PLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 December 2022.

Rebecca Connelley
Ombudsman