DRN-3822067

The complaint

Mr S complains that Lloyds Bank PLC irresponsibly lent to him.

What happened

Mr S originally took out a loan with Lloyds in February 2015, for £8,500 with repayments of £323.32 a month over a 38 month term. In June 2015, he says he contacted Lloyds for advice and support to increase his overdraft. He says the call handler stated that he was eligible for a personal loan and told him the maximum amount he was entitled to. He says that he was approved for the maximum amount of the loan (£12,900, with repayments of £249.80 over a term of 86 months) and this was far more than he required. Mr S made a complaint to Lloyds that they irresponsibly lent to him.

Lloyds said that as Mr S hadn't complained to them within six years of him taking out the loan in June 2015, or within three years of him realising he had reason to complain (which they said this should have been in January 2016 when his loan closed due to a default), then they weren't taking his complaint further. Mr S brought his complaint to our service.

Our Ombudsman said that we could look into Mr S's complaint as he brought it within the timeframe he was allowed to have his complaint considered, so our adjudicator looked into the merits of the complaint.

Our adjudicator did not uphold Mr S's complaint. He said he thought Lloyds should've taken steps to build a more detailed picture of Mr S's financial situation. But he was unable to determine what Lloyds would've seen if they had conducted proportionate checks.

Mr S asked for an Ombudsman to review his complaint. He said it's clear from his bank statements about his gambling, his compulsive spending and his bad management of his account. He said Lloyds should have a responsibility to have considered this information before lending to him.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"There were two loans that Mr S took out in 2015. One was in February 2015 and the other one was in June 2015. In his complaint to Lloyds and to our service, he only mentions the circumstances which relate to the June 2015 loan. Our adjudicator's view of his complaint was focused solely on June's loan. So my decision will also only cover this loan. This is because if Mr S wants to complain about his February 2015 loan, he will need to raise a complaint directly with Lloyds about this before he can bring this to our service.

As the loan Mr S is complaining about was approved in June 2015, there is not a great deal of available evidence for me to consider here, due to the time that's passed. Lloyds have explained that they are only required to hold records for six years. So it's understandable why there mightn't be as much information retained by them here. But that means I have to consider the evidence I do have available to me.

Before agreeing to approve the credit to Mr S, Lloyds needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Lloyds have done and whether I'm persuaded these checks were proportionate.

Lloyds have already confirmed to our service that there isn't much more information they can provide us about the lending apart from their system notes and Mr S's bank statements around the time the loan was approved. So I'm unable to see what any credit checks they completed would have shown. And I haven't asked Mr S to provide his credit file as this would only show his credit history for six years.

From the information available to me, I can see that Mr S's net income was a little over £1,400 a month at the time he was approved for the loan. The loan was to refinance his existing debts with Lloyds. His February 2015 loan had a monthly payment of £323.32 a month. On 8 June 2015, he incurred overdraft fees and interest of £51.10. And on 27 May 2015, he made a payment to what appears to be his Lloyds credit card for £14.86. So immediately prior to him being approved for the refinancing loan in June 2015, Mr S was paying Lloyds (£323.32 + £51.10 + £14.86) £389.28 a month to service his borrowings with them.

The refinancing loan aimed to replace this monthly payment with a lower monthly payment. As the new loan repayment was for £249.80 a month, on the surface, Lloyds reduced Mr S's outgoings by (£389.28 - £249.80) £139.48 a month.

The loan was for £12,900. I've considered what Mr S has said about Lloyds lending him more than he needed. But as the purpose of the loan was to refinance all of his Lloyds borrowings, it appears Lloyds lent him roughly what he needed to pay off these debts and I'll explain why.

I can see that £8,511.65 repaid the loan he took out in February 2015 with Lloyds. On the day in which the loan funds credited his account, there was a payment made for £1,014.04, which appears to be a payment to settle Mr S credit card outstanding balance, based on a call note on Lloyds system on 1 July 2015 where he is advised his credit card will close on 17 July, and that his balance is £0. There is also a payment made on the same day, to the same reference for £36.88 which the evidence shows he paid towards his newly opened loan. And he was overdrawn by £3,092.43 immediately prior to the funds crediting his bank account.

So Mr S had (£8,511.65 + £1,014.04 + £36.88 + £3,092.43) £12,655 paid off his Lloyds borrowings here. This left (£12,900 - £12,655) £245 surplus funds. So I'm not persuaded that the surplus funds lent to him were excessive and they may have provided him a buffer to any unbilled interest/charges yet to be applied to his accounts.

So I've considered whether Lloyds have made a fair lending decision here. And despite Lloyds reducing the monthly payments by £139.48 a month and them lending him enough money to refinance his debt with them, I'm persuaded that Lloyds had information available to them which may suggest the refinancing of his existing Lloyds debt still may not have been affordable or sustainable for Mr S.

Mr S has told us that his bank statements show gambling problems and compulsive spending. And based on his circumstances at the time and what he told Lloyds around this time, it would have been proportionate for them to look at how he was managing his finances *within his Lloyds bank account, considering the June loan was to refinance his Lloyds borrowings, including his bank account overdraft. So I've looked at his Lloyds statements in detail prior to him being approved for the June loan. And they show a pattern of when money credits the account, that Mr S will make several large transactions to betting companies or he transfers money through a third party payment provider which could be also used to make payments to gambling companies indirectly.*

Mr S's bank statements show that immediately prior to February's loan being paid into his account, he was overdrawn by £3,206.58. When the funds credited his account he was £5,293.42 in credit. Mr S statements also show that on 11 February, £5,094.82 credits his account. So as Mr S's income was roughly £1,400 and the credit was not from his employer, then I'm persuaded that this is something which Lloyds should have looked into. The credit is from a third party payment processor and it appears to be from gambling activity, which this type of activity may not be sustainable in helping Mr S meet his monthly repayments for the loan.

Despite this credit to Mr S's account, he is in his overdraft again just eight days later after making a number of substantial payments through a third party company. Mr S also has £2,000 credited to his account in March, which also wasn't from his employer (it again appears to be from gambling activity), which brings him into a positive balance. But later that day he goes back into his overdraft.

There are other factors which I'm persuaded which may have indicated the loan should not have been approved. Mr S's bank statements showed he had a £3,000 overdraft. But prior to the refinancing loan, and even after his loan in February 2015, he often exceeds his authorised overdraft limit due to his spending. And Mr S has direct debits returned on several occasions due to a lack of funds in his account. Mr S's bank statement also shows that he is making payments to other borrowers.

I've considered whether Lloyds should have been aware of the issues I've mentioned above, especially with Mr S's gambling and spending. I've looked at their system notes to see what they would have been reasonably aware of when they approved the refinancing loan. The notes show that only a month after Mr S had been approved for the loan in February, that he opened a credit card with them. So he had increased his borrowings even after the February loan.

The system notes show that after the credit card is opened for Mr S that he requests a payment holiday on his loan (which he had only set up on the previous month). He also is accepted for another payment holiday two months after this (and one month prior to the new loan being set up). So it should have been apparent to Lloyds that Mr S may have been struggling here with his finances.

The system notes on 15 June 2015 give the clearest indication of how Lloyds were aware Mr S was struggling. They show that "customer in difficulty due to reduced income" and "overcommitted/overspending". The notes show that a budget planner was completed with him. And although the notes don't show the figures of the budget planner, there are notes to say "referred to (a debt management charity) due to no affordability". The notes show that Lloyds added a 30 day breathing space to Mr S's current account, credit card and loan.

So as Mr S had been referred to a debt management charity because he had no affordability, especially as the notes show Mr S was overcommitted/overspending, then the evidence would suggest that another loan may not be sustainable or affordable for Mr S. And that because of his overspending, which Lloyds were aware about, as it was on their notes, it would be highly likely that Mr S would repeat the pattern that he had been in since his February loan had been approved.

While the new loan would have reduced his outgoings by £139.48 a month, the length of the loan was significantly longer than the existing loan – four years longer. So Mr S would have been paying these repayments for a far longer period of time and therefore the total amount payable with the interest included could have been at a significantly higher cost to Mr S despite the lower monthly payment.

Despite Lloyds adding a 30 day breathing space to his February 2015 loan, credit card and current account, the system notes showed that they agreed the refinance loan on the same day they gave him the breathing space. The new loan agreement appears to have been sent out on the following day, and the remaining loan funds (after the previous loan had been repaid), had been credited to his current account just 14 days into the 30 day breathing space. So I'm not persuaded that it was fair for Lloyds to approve a new loan for Mr S on the same day they referred him to a debt management charity and gave him breathing space, as he wasn't able to take the time given to him by Lloyds to consider his options, which the breathing space might have allowed him to do.

So for the reasons I've mentioned above, based on all of the evidence available to me, and what Lloyds should have known about how Mr S was managing his existing accounts prior to being accepted for the loan, I'm persuaded that Lloyds did not make a fair lending decision by approving the June 2015 loan. So I intend to ask them to put things right."

I invited both parties to let me have any further submissions before I reached a final decision. Lloyds accepted the provisional decision. Mr S accepted the provisional 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.

As neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.

Putting things right

In my provisional decision I said I intend to uphold this complaint. I said I intend to ask Lloyds Bank PLC to do the following:

Lloyds should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent;

End the agreement and rework the account removing all interest and charges that have been applied;

If the rework results in an overpayment, this should be refunded to Mr S along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Lloyds should also remove all adverse information regarding this account from Mr S's credit file;

Or, if after the rework there is still an outstanding balance, Lloyds should arrange an affordable repayment plan with Mr S for the remaining amount. Once Mr S has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

**If Lloyds considers that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr S how much they've taken off. They should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

I uphold this complaint. Lloyds Bank PLC should settle the complaint in line with the instructions in the *"putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 December 2022.

Gregory Sloanes
Ombudsman