

The complaint

Mr H complains that Lloyds Bank PLC (Lloyds) lent to him irresponsibly.

What happened

In October 2001, Lloyds agreed to provide a credit card to Mr H. The limit was said (by Mr H) to be £6,000. In 2006, Mr H entered a Debt Management Plan (DMP). In August 2012, Lloyds sold their debt to a debt collection agency. Mr H was then paying £5 per month towards the debt.

Mr H complained. He said he had unsecured debts of £60,000 at the time, plus a mortgage of £259,000. His annual salary between 2001 and 2005 was between £21,000 and £25,000. So – he said Lloyds couldn't have carried out sufficient checks when they issued the card. The DMP (2006) showed 11 credit agreements in his name. He has been paying off the various debts at the agreed rate in the DMP – but he won't be debt free until 2073. His wife has suffered poor health and he became her full time carer in 2008. Their monthly income is £3,863 and outgoings £3,583 – the remaining £280 is split between 35 creditors (his and his wife's). So – he and his wife continue to be in extreme financial hardship, and this is affecting his mental health.

He says Lloyds should consider writing off the debt and refund all interest and fees paid on the card, plus statutory interest.

Lloyds initially argued that Mr H's complaint was out of time – as it was made after six years had elapsed since the card was issued. They also said Mr H should've complained within three years of when the debt was sold in 2012 - as that was when he ought reasonably have realised he had cause to complain - as that was when Lloyds would've made demand and defaulted the account.

Mr H brought his complaint to us and our investigator issued a view which said this was a complaint we could look into – as Mr H argued he only became aware in 2023 that Lloyds had to undertake checks to lend responsibly. Lloyds agreed with this and said Mr H's complaint could be looked at.

But in doing so, Lloyds said they had no records at all going back to 2001 – so there wasn't any information they could give us about the issue of the credit card, or the checks made at the time.

Mr H put more information to us - he showed us:

- A salary slip dated April 2001 – this showed his annual salary as £13,540.
- He said he had 11 lenders (for debts in his name) at the time the card was issued in 2001. The limits were said to total £78,000, and the current balances (as at October

2023) were £37,889. He said the balances had reduced from 2001 as payments had been made in accordance with the DMP since 2006.

- He put together some historical information (from his memory) which showed that in 2001, monthly income was £1,550 and outgoings were £2,386 – so he said it was clear he couldn't afford the debts he took on.

Our investigator then looked at the merits of Mr H's complaint. He said the rules and guidance regarding responsible lending in 2001 were set out by the Office of Fair Trading (OFT). These said that lenders needed to check repayments could be afforded; and the checks needed to be proportionate.

But - Lloyds had only very limited records going back to 2001. This was reasonable, given the passage of time. Therefore, he was unable to say what checks were completed, and whether they were proportionate. He'd asked Mr H for information such as bank statements, salary slips or his credit file - but Mr H couldn't provide these. Mr H had said what his debts were at the time of the DMP in 2006 but this didn't mean to say his situation was the same in 2001 – when Lloyds issued the credit card.

Because of the lack of information, our investigator couldn't say that Lloyds acted unfairly and didn't uphold Mr H's complaint.

Mr H didn't agree. He quoted the current guidelines for responsible lending. He said Lloyds hadn't provided any evidence to show the lending was affordable, and so the complaint should be decided in his favour. He said he had two loans for £20,000 and six credit cards at the time – and so the lending must have been irresponsible. He asked that an ombudsman look at his complaint.

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.

Let me say at the outset that we are not a consumer group – we don't take sides. We are independent and impartial and our role is to listen to both sides of a complaint, take evidence from both parties, and then decide on a fair and reasonable outcome. So - it's important that we must see evidence from both the customer and the firm concerned to do this. And here, clearly we are lacking credible information relating to what happened in 2001.

Guidance for how lenders assessed lending was the responsibility of the OFT when the credit card was issued to Mr H in 2001. The guidance was, as our investigator says, to ensure borrowers could afford to make the repayments to a loan or credit agreement. Responsibility for setting down guidance was passed to the Financial Conduct Authority (FCA) in 2014 – after which the FCA issued new guidance.

In order to check whether Lloyds carried out reasonable and proportionate checks on the lending in 2001, I need to see evidence of what checks they carried out. Typically, a firm would show us the assessment they did when agreeing to lend – this might include (for example) a customer's credit history with the lender; a picture of his/her other debts with other lenders; whether they were making payments on time; and a borrower's overall financial situation - his/her salary; other household income (e.g. from a partner); time in employment; whether a homeowner or tenant. We then look at the information the firm had and come to a decision as to whether proportionate checks were carried out.

For me to come to a decision as to whether Lloyds lent responsibly, I need to see the

information they had at the time for Mr H. And given the passage of time, this just isn't available. Firms are only required to keep records for six years – and so it's reasonable for Lloyds to say they don't have any records to show us.

I know Mr H has come forward with his arguments as to his financial situation. But most of this is taken from the position when the DMP was agreed in 2006 – we don't have any confirmed or authenticated evidence for the time when the card was agreed in 2001. And in all honesty, even if we did have this – I would still need to see what, for their part, Lloyds did in 2001 to come to a balanced and reasonable decision about the merits of this complaint. And as that isn't possible – I'm unable to say that Lloyds lent irresponsibly at that time.

I was sorry to learn of Mr H's situation and how difficult things have been for him over the years. I know he will be disappointed by my decision, but I hope he can see why I've come to it.

Apart from this decision - and this is not part of this complaint - some lenders might be willing to consider a goodwill, hardship or medical write off of debts. Given Mr H's situation, it might be worth him taking some advice from a debt advice charity to see if this is something to be considered. Each lender would need to be approached. But it would be down to the individual lenders to make a decision – and it's not something our service can be involved with.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 March 2024.

Martin Lord
Ombudsman