

## **The complaint**

Mr W complains, on behalf of the estate of his late mother Mrs P, that Lloyds Bank Plc lent the late Mrs P a personal loan irresponsibly.

## **What happened**

Mrs P took out a personal loan with Lloyds in 2010. The loan was for £7,500.00 over 84 months, with an APR of 11.5% and monthly payments of £131.88.

Unfortunately, the loan fell into arrears from around 2014 onwards. In 2016, Lloyds defaulted the loan and sold it to a third party debt collector.

Sadly, Mrs P passed away in 2020. Her son, Mr W, raised a complaint as he believed the loan had been lent irresponsibly. He said that Mrs P had been in poor health at the time the loan had been taken out – including abusing alcohol – and she had lost her employment in 2009. He said that Mrs P had been diagnosed with dementia in 2014 and moved to an assisted living facility, where she lived until she passed away.

Mr W didn't think Lloyds had conducted proportionate checks to ensure the loan was sustainably affordable for Mrs P. He also thought Mrs P should have been treated as a vulnerable customer, and Lloyds should have realised she didn't have the capacity to decide whether to take out the loan.

In its final response letter, Lloyds said it thought the complaint had been brought outside the time limits set by the regulator. Our Investigator initially agreed, but ultimately said she thought the case had been brought in time as Mrs P's poor health meant it was unlikely she ought reasonably to have become aware she had cause for complaint more than three years prior to Mr W raising the complaint. Lloyds accepted her opinion that we could consider the complaint.

Our Investigator thought there wasn't enough evidence for her to reasonably conclude that Lloyds had acted unfairly in lending. Lloyds was then able to supply further information from around the time Mrs P had taken out the loan, and made an offer to resolve the complaint. Following our involvement, Lloyds offered to refund half the interest that would have been applied to the loan during the period it was open, which it calculated to be £1,959, proposing to pay that amount to the debt collector.

Mr W was unhappy with the offer. Having looked at Mrs P's bank statements from around that time, he thought that Lloyds should investigate the sources of Mrs P's income. He thought Lloyds should write off the remaining debt as he didn't think Lloyds had shown it had conducted an affordability assessment, nor seen evidence of Mrs P's income. He also thought Lloyds had failed to treat Mrs P as a vulnerable consumer.

As the case couldn't be resolved, it came to me to decide. I issued a provisional decision. In summary, I said I thought Lloyds' offer didn't go far enough to put things right. I said I

thought the loan had been lent irresponsibly, and Lloyds should buy back the debt and reduce the balance by the amount Mrs P had paid towards it.

Lloyds accepted my provisional decision. In summary, Mr W said he maintained the loan should never have been granted and asked that I consider this.

### **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.

In my provisional decision, I said:

*"Firstly, I agree with our Investigator that the complaint has been brought within the time limits set by the regulator, and the complaint is one I am able to consider. I'm sorry to hear about Mrs P's poor health and the difficult time she experienced.*

*I've considered the relevant rules and guidance on responsible lending set by the regulator at the time, the Office of Fair Trading. In summary, these say that Lloyds needed to complete proportionate checks to satisfy itself that Mrs P would be able to repay the debt in a sustainable way.*

*Lloyds has explained it holds very little information about the loan, due to the time that's passed since the loan was defaulted. For that reason, it says it doesn't hold the loan statements. I think it's reasonable that Lloyds only has limited information about the loan. I wouldn't expect it to keep records indefinitely, particularly where – as is the case in this instance – the account has been closed on its systems for several years.*

*However, since our Investigator issued her opinion, Lloyds has been able to provide further information. This includes the transaction history for Mrs P's current account in the three months preceding the application, and some limited notes from the loan application.*

*The notes show that Lloyds conducted credit checks, though the information found doesn't survive. On balance, I think it's likely that Lloyds completed checks on Mrs P's credit history. I also think it's likely there was some discussion about Mrs P's income and expenditure, as the notes go on to say:*

*"Agreed loan for [Mrs P] ... loan for removal pur and clear o/d – [Mrs P] also needs some new furnt. pension due to start in sept – self employed on ave £250 per week – loan over 84 mths to keep payments as low as poss"*

*I think this indicates Mrs P – and potentially Lloyds' agent – had concerns about the loan repayments long term. In any case, given the relatively large amount of the loan, and the relatively long loan term, I don't think the checks it appears it conducted were proportionate. I think it would have been proportionate for Lloyds to also consider the information it held as Mrs P's current account holder to verify her income and expenditure.*

*I've therefore considered the information in the bank statements Lloyds has provided. These show that Mrs P's spending on essential living expenses (such as food, utilities, council tax and rent) as well as her existing credit commitments was around £1,100. Mrs P had told Lloyds her income was around £250 a week – so around £1,000 a month. This would mean that at the time she applied for the loan, her expenses were outstripping her income. She would soon be receiving her state pension of around £97 per week, but that would still mean her income was just under £1,400 and her committed expenses – along with the loan*

payment – would leave her with little disposable income. So it appears the loan payments of £137 weren't affordable for her.

I also think Lloyds should have had concerns the payments were sustainable. I say that because the funds Mrs P received into her account were all cash deposits. These deposits were irregular, and the amount varied significantly. It's not clear whether these were funds she'd been paid for self-employed work, or came from other sources such as savings or friends and family.

I don't think it's reasonable to ask Lloyds to investigate the sources of the funds paid into Mrs P's account now, as Mr W has asked. I say that due to the time that's passed.

One of the purposes Mrs P gave for the loan was repaying the overdraft facility. Her account had entered the overdraft facility in early June – around two months prior to the application – and it was almost up to the £2,000 limit by early July. The account remained significantly overdrawn, including going over the agreed limit, until the drawdown of the loan. I think Lloyds should have had concerns about how quickly Mrs P had run up the overdraft, particularly given the sporadic nature of the funds being paid into the account.

So, on balance, I think that if Lloyds Bank had conducted proportionate checks including considering Mrs P's current account statements, it should have had concerns about whether the repayments would be sustainable and affordable for Mrs P, and it shouldn't have lent.

I'll therefore go on to consider whether the offer Lloyds has made is a fair way to resolve the complaint.

Our service has an established approach to putting things right where lending was unaffordable, which can be found on our website. We'd usually say the business should refund any interest and charges, applying all the payments made to the capital balance.

Mr W has said he thinks Lloyds failed to treat Mrs P as a vulnerable customer, and that he thinks the remaining loan balance should be written off.

I've not seen anything to show that Mrs P had let Lloyds know about her health issues at the time the loan was taken out. As I've explained, there's only limited information about the meeting between Mrs P and Lloyds' agent, but I've not seen anything to indicate Lloyds should have had any concerns that Mrs P didn't have the capacity to understand the loan agreement she took out in 2010. And, based on the evidence available to me, on balance I think it's more likely than not Mrs P had the capacity to understand the loan agreement when she entered into it. So, I can't reasonably conclude that Lloyds shouldn't have lent the loan on that basis.

I also can't reasonably ask Lloyds to write off the remaining balance of the loan, as Mrs P had use of the funds. I think Mrs P, and her estate, should be liable for the capital balance.

Lloyds has told us the loan statements don't survive. So, I've considered the statements from Mrs P's current account, and I was able to see she made 31 monthly payments towards the loan during the period it was with Lloyds, totalling £4,088.28. That would mean there would still be £3,411.72 outstanding – if no interest and charges had been applied.

The debt collection agency has sent us correspondence showing the balance of the loan was £5,417.92 when it was transferred to them. The difference between these two figures – which will be the interest and charges applied to the loan – is £2,006.20.

So, whilst I appreciate Lloyds' offer of £1,959 to put things right was based on limited

*information, I don't think it goes quite far enough. I think the fairest way to put things right is for Lloyds to buy back the debt from the debt collection agency, and reduce it to £3,411.72, plus any payments made to the debt during the period it was owned by the debt collection agency."*

I've read the full file again and considered what Mr W has said.

As I explained in my provisional decision, I do not think that Lloyds should have lent the loan.

But that does not mean I can reasonably conclude Lloyds should write off the remaining balance. Our service has a longstanding approach to complaints about unaffordable lending, including how businesses should put things right where lending was unaffordable. Mr W can find this on our website.

Mrs P received the capital of the loan, and had use of those funds. So I think it's reasonable that Mrs P, and her estate, be held liable for the amount she borrowed - £7,500 – less the payments made toward that balance.

For these reasons, I continue to think the redress in my provisional decision is a fair way for Lloyds to resolve the complaint.

### **Putting things right**

To resolve this complaint, Lloyds should buy back the debt from the debt collection agency, and reduce it to £3,411.72, plus any payments made to the debt during the period it was owned by the debt collection agency.

### **My final decision**

My final decision is that I uphold this complaint. To resolve things, Lloyds Bank Plc should buy back the debt from the debt collection agency, and reduce it to £3,411.72, plus any payments made to the debt during the period it was owned by the debt collection agency.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs P to accept or reject my decision before 22 April 2024.

Frances Young  
**Ombudsman**