DRN-4779394

The complaint

Mr T is complaining about Lloyds Bank PLC because he says it lent irresponsibly in granting him an overdraft he couldn't afford.

What happened

Mr T had a current account with Lloyds. In 2019, it accepted his application for an overdraft facility with a limit of £500. Lloyds increased the limit to £1,000 in January 2020 and again to £2,000 in August 2020.

Lloyds upheld Mr T's complaint in part. While it concluded its decision to grant the overdraft initially was reasonable, it felt it shouldn't have renewed it or increased the limit in January 2020. Accordingly, it refunded all interest, fees and charges arising from the overdraft from that date. It also said it would amend Mr T's credit file.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be upheld. My reasons were as follows:

> *An overdraft is a form of running credit that's repayable on demand. This means a bank can ask its customer to repay the full balance at any time. Overdrafts can be an expensive form of credit and are for short-term emergency borrowing needs. They're not intended to be an appropriate means of long-term borrowing. As an overdraft is a form of lending, banks are required to ensure they don't lend irresponsibly.*
>
> *Before offering Mr T an overdraft facility in 2019, Lloyds was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:*
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> - *Did Lloyds complete reasonable and proportionate checks to establish that Mr T would be able to repay the credit in a sustainable way?*
> - *If so, was the decision to lend fair and reasonable?*
> - *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*
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> *The rules, regulations and good industry practice in place at the time the credit was approved required Lloyds to carry out a proportionate and borrower-focused assessment of whether Mr T could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Lloyds had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr T.*

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- *the lower the customer's income, reflecting that it could be more difficult to make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and*
- *the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.*

There may also be other factors that could influence how detailed a proportionate check should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Lloyds has described the information it gathered to assess whether the overdraft was affordable for Mr T before it was approved. This included:

- *information contained in his application, including his income;*
- *information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements; and*
- *an expenditure assessment using a combination of his declared income and housing costs, actual credit commitments obtained from the CRA and an estimate of his other essential expenditure.*

In principle, the checks described by Lloyds may be proportionate in view of the fact the overdraft limit offered was relatively modest. But after reviewing the information that was available to Lloyds at the time, I think there were signs of financial difficulty and poor account management that it should have taken into account in reaching its decision.

Unfortunately, Lloyds hasn't provided details of what it saw from the CRA. But Mr T has provided a copy of his credit report, which shows the information Lloyds was likely to have seen at the time. In particular, this shows Mr T's account with his water company defaulted in September 2019, only three months before the overdraft was given. This is a priority bill and the fact it hadn't been paid was a significant sign of potential financial difficulty.

Lloyds has also provided statement information for Mr T's account (to which the overdraft was applied) in the months prior to the overdraft being agreed. These show a history of extensive gambling. In the three months before the overdraft application, I counted 70 different gambling transactions worth a total of more than £1,250.

In view of this information, which should have been available to Lloyds at the time, I don't think it was a fair or responsible decision to grant him an overdraft facility when it was first approved in 2019. It's for this reason that that I'm currently proposing to uphold this complaint.

Mr T didn't provide any further evidence for me to consider but did outline the difficulties this situation has caused him. Lloyds accepted my 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.

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As neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

To clarify two points in Lloyds response to my provisional decision:

- I understand Mr T's account is now with a debt collection agency. If the account reworking shows there's an outstanding balance owed, it's for Lloyds to arrange an affordable repayment plan with Mr T and not the debt collection agency. This would most appropriately be achieved by Lloyds repurchasing the debt.

- Once any outstanding balance has been paid, this decision requires Lloyds to remove all adverse credit information relating to this overdraft, including the default, not to backdate it.

Putting things right

The principal aim of any award I make must be to return Mr T to the position he'd now be in but for the errors or inappropriate actions of Lloyds. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Lloyds should have lent to Mr T, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, I Lloyds now needs to take the following steps:

- Rework the account to remove all interest, fees, charges (not already refunded) that have been applied since the overdraft was first approved.

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance on the overdraft, then any extra should be treated as overpayments and returned to Mr T, with the addition of simple interest at 8% per year from the date of each payment to the date of settlement.

- Or, if an outstanding balance remains on the overdraft after the reworking, Lloyds should arrange an affordable payment plan with Mr T for the shortfall.

- Remove any adverse information recorded on Mr T's credit file relating to this overdraft, once any outstanding balance has been repaid.

If Lloyds no longer owns the debt, it should liaise with whoever does to ensure any payments Mr T has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mr T's complaint. Subject to his acceptance, Lloyds Bank PLC should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 31 May 2024.

James Biles
Ombudsman