

## The complaint

Mr W has complained that Lloyds Bank PLC (“Lloyds”) gave him a loan he couldn’t afford to repay. He’s also unhappy at the impact the first loan had on the balance on a second loan. Mr W has also said he is unhappy with the time it took to investigate the complaint and he didn’t feel his complaint was investigated correctly.

## What happened

A summary of Mr W’s borrowing relevant to the complaint can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	APR	highest repayment per loan
1	£4,800.00	21/11/2017	09/09/2022	84	25.1%	£114.24
2	£10,204.89	09/09/2022	25/07/2023	36	12.3%	£337.24

There was also a third loan advanced in July 2023, but Mr W hasn’t complained about that one or mentioned it as part of his complaint so it hasn’t been investigated. And Mr W has made it clear that he is only concerned with the lending decision for loan 1 and then how any compensation for loan 1 may impact loan 2.

Mr W’s complaint stems from concerned he had with Lloyds in relation to an overdraft. Mr W says due to a change in charging structure of the overdraft in November 2017, he approached Lloyds for assistance, at this point loan 1 was granted and the funds were used to clear Mr W’s overdrawn balance.

Following Mr W’s complaint Lloyds issued its final response letter on 28 November 2023. Lloyds explained that Mr W was due compensation because of the way Lloyds managed his overdraft from 1 December 2014 – it refunded interest, fees and charges, added 8% simple interest and also paid Mr W a further £75 compensation for “....*inconvenience caused.*” However, in relation to the loan, Lloyds didn’t uphold Mr W’s complaint.

Unhappy with this response, Mr W referred the complaint to the Financial Ombudsman because he wasn’t happy that Lloyds had accepted there were failings in dealing with his overdraft and so that should be the loan ought to be upheld as well.

The complaint was then considered by an investigator, who upheld the complaint and concluded loan 1 shouldn’t have been granted. He said the checks conducted by Lloyds before advancing the loan didn’t go far enough. Had further checks been carried out Lloyds would’ve likely discovered that Mr W’s living costs and rent were greater than his income and so he couldn’t afford to make the repayments towards the loan.

Mr W agreed with the investigator that loan 1 ought to not have been granted. However, Mr W had concerns about the second loan because by the time the second loan had been granted Mr W had already paid enough to Lloyds to repay the capital he had borrowed for loan 1. So, Mr W asks for a refund of the final payment made to settle the first loan.

Lloyds didn't agree with the investigator's assessment, and it provided its reasons. The investigator explained to Lloyds why these points didn't change his mind and as no agreement could be reached the complaint has been passed to me to decide.

### **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.

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. And I've used this approach to help me decide Mr W's complaint.

Lloyds needed to make sure it didn't lend irresponsibly. In practice, what this means it needed to carry out proportionate checks to be able to understand whether Mr W could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

Having looked at everything I have decided to uphold Mr W's complaint and I've explained why below.

This decision isn't looking at anything to do with Mr W's overdraft as it has already accepted that it didn't act fairly and reasonably towards Mr W from December 2014 and has paid Mr W compensation to reflect this. That said, while I won't be looking at the overdraft complaint per se, I am required to consider what is fair and reasonable in all the circumstances of Mr W's loan complaints. And this does take into account the effect of any compensation Mr W has received for his successful overdraft complaint.

I now turn to Mr W's loans themselves. Loan 1 was applied for in branch and was effectively provided to repay the outstanding balance on Mr W's overdraft. For the avoidance of doubt, I wish to make it clear that it doesn't automatically follow that Mr W's complaint about loan 1 should be upheld because his complaint about his overdraft has. Moving an overdraft balance which a customer is proving unable to clear onto a loan can be a fair and reasonable way of a bank helping a customer deal with an unsustainable balance on a revolving credit facility. And, reality, one of the reasons Mr W's overdraft complaint will have been upheld is because the potential solution offered in 2017 should have been offered earlier.

It's also worth adding, that Lloyds has already compensated Mr W for what happened while he had the overdraft – which included refunding any interest applied since December 2014. So, while his overdraft balance, at the point the loan was approved, may have been larger as a result of Lloyds actions in relation to the overdraft – Lloyds has already paid compensation to reflect this.

Furthermore, while there isn't anything precluding a bank from charging interest when restructuring a debt that is owed, given the circumstances that this loan was being provided in (as a forbearance measure to an unaffordable debt), I would have expected Lloyds to have taken reasonable steps to ensure the loan was affordable. I've kept this in mind when considering whether Lloyds acted fairly and reasonably when providing loan 1 to Mr W.

I can see from the information provided by Mr W that there were a number of applications made on the same day – some of these were declined, but it does seem the declined applications were to repay the loan over a shorter period of time – 36 months. So, it is clear to me that it wasn't a case of Lloyds simply transferring Mr W's overdraft debt to a loan. And while a loan with the same term and repayment was declined, Lloyds has explained that this meant that the initial application triggered a manual review. I don't think that is unreasonable and so I don't read too much into the declined applications or that they in themselves meant that the loan repayments were unaffordable.

Lloyds, as part of application used a monthly income of £1,172 per month after tax for Mr W. It doesn't appear at the time that Lloyds checked to see whether Mr W's income was accurate, even though it had access to his bank statements.

Both Lloyds's screen shots as well as the information given to the Financial Ombudsman by Mr W show that Lloyds was aware of Mr W's rent of £625 per month. But it doesn't look like it had an understanding of Mr W's other living costs.

Indeed, Lloyds has explained that as part of the application it would've asked Mr W details of his outgoings including his existing credit commitments and Lloyds has explained that the results of this additional check aren't available. But given the application data it has provided I am satisfied it likely did more than just relying on Mr W's income and rent payments because it considered that the most Mr W could afford each month was £148 and this is significantly less than the amount of Mr W's income less his rent.

System notes provided by Mr W from Lloyds – which he received as part of a data subject access request suggest that some sort of credit scoring exercise was conducted which would support Lloyds' assertions above. But what is also clear, from the notes is that no external credit search was conducted. Regardless, of the type of credit search conducted – given there wasn't a requirement to do one, Lloyds concluded, following a manual underwriting of the application, that the loan was affordable for Mr W and it would leave him in a better financial position.

However, like the investigator I do think further checks ought to have been carried out and I say this given, Mr W was using the loan capital to repay an overdraft. This was being offered as a potential solution to it so it's clear Mr W's application warranted closer scrutiny and Lloyds's actions here appear to support this. So, I think it would be entirely fair and reasonable to expect Lloyds to have considered Mr W's bank statements, for the account which the overdraft was attached too, in order to cross check his rent and living expenses.

As I've not seen anything to indicate that Lloyds did do this, I've therefore considered what further checks are likely to have shown Lloyds. Copy bank statements have been provided from the time Mr W applied for this loan – and which, at the very least, it's fair to say Lloyds had access to at the time.

To be clear, I'm not saying that Lloyds needs to forensically analyse the bank statements of all its current account customers who make a loan application. But given what I've highlighted about this particular application, I do think it fair and reasonable for Lloyds to have considered, at a high level at the very least, what Mr W's bank statements indicated about his headline non-discretionary expenditure.

I also think it's important for me to set out that Lloyds was required to establish whether Mr W could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I can see in the months before the loan was approved Mr W's income from his employer varied – it was as low as £557 in September 2017 and as high as £1,175 in October 2017. The investigator averaged this income out across a three-month period which meant Mr W's average income was around £1,200 per month – which broadly speaking is the amount used by Lloyds as part of its affordability assessment.

I have then thought about the expenditure that is obviously visible, without a detailed forensic analysis being carried out, in Mr W's bank statements – I've not included any overdraft charges, because the purpose of the loan was to repay it. So those costs would cease and, in any event, as they have since been refunded to Mr W it wouldn't be fair and reasonable for me to now double count them by also including them as costs he had to make going forward. But it is worth noting that the change in Lloyds' overdraft charging structure saw him having already spent £122 on daily overdraft charges.

Mr W's direct debits and standing orders alone came to at least £1,000 each month. Of course, on top of this he had other costs such as food and travel costs – and I can see in the statements where Mr W had paid for petrol and it also seems that he also had food costs that were paid for at his place of work. So, Mr W's actual non-discretionary expenditure was higher than this.

In reaching my conclusions on this matter, I do accept that the monthly repayment of £114.24 was lower than the overdraft charges Mr W had incurred in November 2017. Equally, this lower monthly payment would result in Mr W reducing what he owed in a way that paying the overdraft charges alone wouldn't. However, I don't think either of these things in themselves mean that the loan was affordable. In my view, rather than being affordable, the monthly payments for Mr W's loan were simply less unaffordable than the overdraft charges Mr W would have had to pay.

I would also add, that in response to the investigator, Lloyds provided a detailed breakdown of what it considers to be Mr W's income and expenditure at the time. And it concludes that he had around £34.85 per month after the loan repayment was considered. – But even if I were to accept this figure, the low amount left over shows that the margin for error in the estimates used was low. And, in my view, this ought to have prompted further cross-checking or verification.

For the avoidance of doubt, I wish to make it clear that I have considered the fact that the loan was used to repay an overdraft balance which Mr W had already accrued. But there were a number of ways Lloyds' could have assisted Mr W. And I don't think that providing an, albeit less, unaffordable repayment method was a fair and reasonable option.

Equally, if there was no affordable way that Mr W could repay his overdraft balance then Lloyds could and probably should have taken corrective action. I don't think the fact Mr W might have been unhappy with that course of action means that it was fair and reasonable for Lloyds to have provided with a loan that was unaffordable.

I'm therefore satisfied that Lloyds shouldn't have provided Mr W with loan 1 and it follows that Mr W paid interest, fees and charges on a loan that he shouldn't have had. So, I'm satisfied that Mr W has lost out and Lloyds should put things right for him as set out below.

I know Mr W is unhappy with the way his complaint was investigated including the time it took to review it as well as the fact he doesn't feel enough attention was paid to the loan application. However, as the investigator explained in their view, complaint handling isn't a regulated activity which means I can't award compensation for any delays that may have occurred.

### **Putting things right**

The investigator recommended that Lloyds needed to refund amount paid by Mr W towards loan 1 which was above the capital that was lent – in effect the interest, fees and charges paid. To these overpayments Lloyds then needed to add 8% simple interest before removing any adverse payment information from Mr W's credit file.

But Mr W is unhappy with the investigator's proposed settlement. He says that the investigator's method does not account for the fact that the sum borrowed to repay the overdraft - was already larger than it ought to have been due to the way Lloyds managed his overdraft.

And his loss was in effect rolled into the second loan that he was advanced and had loan 1 not been advanced or repaid on an interest free basis the capital he would've needed for loan 2 would've been less – and he also had to pay interest on loan 2 for the refinance amount of loan 1.

Mr W also says that he didn't benefit from the loan because had Lloyds taken the action that it already accepts it needed to have done in December 2014 than his overdraft wouldn't have increased in value to £4,800 – it would've likely been around £2,000. I've thought about what Mr W has said.

I think that it might help for me to start by explaining that where or when we decide (or a business accepts) it did something wrong, as a general starting point we'd look to the business putting the consumer, as close as practically possible, to the position they would be in if that wrong hadn't taken place.

In an ideal world, this would mean us expecting a business to put a consumer in the position they'd now be if what has been complained about hadn't happened. However, in cases concerning irresponsible lending that's simply not possible as the funds that shouldn't have been advanced were lent. As the lent funds will have been used and spent it's effectively too late to wind things back. Mr W's case is further complicated by the fact that he's been compensated for some parts of his complaint and his circumstances did appear to improve by the time he chose to borrow further funds from Lloyds – with loan 2.

I can see why Mr W says that he borrowed more for loan 2 as a result of having to repay the outstanding balance on loan 1 and therefore what has been recommended doesn't place him in the position he would be in nor fully addresses his loss. However, while I appreciate why Mr W might believe this, I think that such an analysis is far too simplistic.

I say this because Mr W's argument takes no account of the fact that he's already had all of the interest that he paid on the overdraft from December 2014 onwards back and he will now also have all of the interest that he will have paid on loan 1 too. So, he's effectively had back the funds he's now complaining shouldn't been capitalised into loan 2. Mr W would never have been in a position where he would have had a refund on his overdraft, loan 1 and part of loan 2 plus interest.

Furthermore, I also think it fair and reasonable to take into account that it was Mr W who chose to take out loans 1 and 2 at the times that he did, rather than make a complaint about

Lloyds. And Lloyds providing Mr W with loan 1, when it did, meant that it did not default his overdraft or take any other action, which in itself prevented Mr W from having to deal with additional adverse consequences which are not reflected in his assessment of the loss.

I don't think it would be fair and reasonable for me to now require a restructure of a loan where there is no dispute is affordable for Mr W, to address a possible unquantified loss – and any loss won't be able to take into account the fact that Mr W settled loan 2 early and possibly, then took further borrowing for loan 3. When Mr W will then have been refunded interest, fees and charges on his overdraft and will be refunded this for loan 1. In my view, requiring such a course of action could place Mr W in a far more advantageous position that he would be in but for Lloyds's actions and wouldn't be fair and reasonable.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr W in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

So overall and having thought about everything, Lloyds should put things right for Mr W by:

- Lloyds should refund any payments Mr W has made in excess of the amount original amount lent for loan 1 - £4,800. Lloyds should then add 8% per year simple interest on any overpayments, from the date they were made by Mr W to the date of settlement†
- Lloyds should also remove any adverse information about loan 1 from Mr W's credit file.

† HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Mr W a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons given above, I uphold Mr W's complaint.

Lloyds Bank UK Plc should put things right for Mr W as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 October 2024.

Robert Walker  
**Ombudsman**