

## The complaint

Mrs H is complaining about Lloyds Bank PLC because she says it lent irresponsibly by providing her with a credit card and credit limit increases that she couldn't afford.

## What happened

In 2000, Mrs H took out a credit card with an initial credit limit of £4,000. The limit was increased to £5,000 in 2003 and again to £8,000 in 2004. I understand the card subsequently defaulted and the debt was sold to a third party in 2012.

Lloyds originally objected to us considering this case, saying Mrs H complained too late. One of my colleagues has already considered this point and issued a decision explaining why we can investigate.

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

*Before lending to Mrs H, 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 in respect of each lending decision are:*

- *Did Lloyds complete reasonable and proportionate checks to establish Mrs H 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?*

*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 Mrs H 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 her making payments, it had to consider the impact of the repayments on Mrs H.*

*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.*

*Lloyds has described the information it would have gathered before approving Mrs H's original application and offering credit limit increases, although says it can't provide this due to the time that's passed and that's not necessarily unexpected in view of the amount of time that's passed. But, without sight of this information, I can't reasonably conclude it carried out proportionate affordability checks.*

*Turning to whether the credit was actually affordable, an appropriate way to assess this in the absence of evidence from Lloyds would be to review Mrs H's bank statements showing her income and expenditure. Unfortunately this information isn't available either.*

*Mrs H has provided her recollection of her circumstances during the time she held the card. But on its own and without supporting evidence from the time, I don't think this information is sufficient for me to conclude Lloyds' initial decision to offer the card or to increase the limit in 2003 was inappropriate.*

*With regard to the limit increase in 2004, Mrs H has provided extracts of a credit report from the same year and I think this offers a more conclusive insight into her circumstances at that time. This shows she was heavily indebted, with multiple credit cards and mail order accounts with balances totalling over £40,000. Mrs H has also provided a copy of her employer's pay scale that indicates her annual gross salary was around £25,000.*

*On balance, I think this evidence shows it's likely that any further credit was unaffordable and that the limit increase in 2004 shouldn't have been offered. Lloyds offer to uphold the complaint from this point indicates that it agrees with this conclusion.*

*It's for these reasons that I'm currently proposing to partly uphold Mrs H's complaint. I realise this outcome will be disappointing for Mrs H as she doesn't think Lloyds should have lent to her at all. But as I've explained, I don't think there's sufficient evidence prior to 2004 to support that conclusion.*

Lloyds told us it had nothing to add in response to my provisional decision. Mrs H referred to another case that she believes shows the balance of her debt should be written off in addition to the outcome I've proposed.

### **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.

Having done so, my findings haven't changed from those I set out previously. Neither party has objected to the reasons I've given for upholding the complaint. The only issue that needs further consideration is whether Lloyds should also write off the outstanding balance of the debt.

In deciding what constitutes fair redress, I've given careful consideration to Mrs H's view that the remaining balance should be written off. But we must consider each case on its own individual merits and I'm not making that award here. This notwithstanding, part of the remedy I've proposed is that Lloyds should agree an affordable repayment plan with her for any outstanding balance after redress has been applied. I anticipate that would involve it reviewing her income and expenditure in detail to assess what she may be able to afford to pay. If it turns out she really can't afford to make any contribution to the amount owed, writing off some or all of the capital is something I'd expect Lloyds to consider at that stage.

When considering what represents an affordable repayment plan, or if Mrs H can afford to pay anything at all, Lloyds should take the following points into account:

- Mrs H has told us she entered a debt management plan with a national charity in 2006 covering over £150,000 of debt, some of which was shared with her partner, and she's provided a lists of creditors included in the plan. I don't know what the current outstanding balance is or the current total debt Mrs H is liable for. But she's told us the charity estimated she wouldn't become debt-free until 2073.
- Mrs H has also shared with us that she was diagnosed with a serious life-limiting health condition over ten years ago. She said she was medically retired from her employment and is reliant on disability benefits to assist with her living costs. The award letter she's provided from 2019 shows her payments will continue until 2030. Mrs H has also said her condition is deteriorating and she's experiencing considerable stress due to the extreme levels of debt.

### **Putting things right**

The principal aim of any award I make must be to return Mrs H to the position she'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 increased the credit limit on Mrs H's card above £5,000, I don't think it's fair for her to pay interest or charges on any additional amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, Lloyds should now take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the limit increase in 2004 on balances over £5,000.
- If the reworking results in a credit balance, this should be paid to Mrs H with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Lloyds to deduct tax from any interest. It must provide Mrs H with a certificate showing how much tax has been deducted if she asks for one. If Lloyds intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance in excess of £5,000, Lloyds should arrange an affordable payment plan with Mrs H for the shortfall and any other outstanding balance on the account.
- Remove any adverse information recorded on Mrs H's credit file after the limit increase in 2004 relating to this credit, once any outstanding balance over £5,000 has been repaid.

If Lloyds no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs H has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the

redress I have directed above results in fair compensation for Mrs H in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **My final decision**

For the reasons I've explained, I'm partly upholding Mrs H's complaint. Subject to her 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 Mrs H to accept or reject my decision before 5 September 2024.

James Biles  
**Ombudsman**