

The complaint

Miss M says Lloyds Bank PLC irresponsibly lent to her.

Her complaint has been brought through a representative but for ease I will refer solely to Miss M in this decision.

What happened

Miss M took out a loan for £1,000 in August 2023. She says the lending was irresponsible as Lloyds was on notice of her vulnerabilities, and she could not afford to repay it.

Lloyds offered to refund all interest and charges and apply this refund to reduce her outstanding balance. It said it would backdate the default to 8 August 2023. But Miss M needed to agree a repayment plan for the capital outstanding.

Our investigator said this was a fair settlement offer.

Miss M disagreed and asked for an ombudsman's review. She said she cannot repay the debt: she has no regular salary. This should have been very easy for Lloyds to check and therefore decline her loan application. Lloyds failed in its duty of care, she was extremely mentally ill in August 2023 and was eventually sectioned until late March 2024.

And Lloyds was aware of an earlier related incidence in 2020 - at that time her account was flagged with a lending block to protect her. When she made this complaint all the details of her illness and vulnerabilities were provided to Lloyds and it has made no allowance for her circumstances in its settlement offer.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments or new information by 2 October 2024.

Extract from my provisional decision

The parties now agree that the loan should not have been given to Miss M. What remains in dispute, and therefore what I will focus on, is what Lloyds needs to do to put things right. What it has proposed is, in part, in line with our standard approach. But as it knows we review each case on its individual merits, and in the circumstances of this case I don't think this resolution fully reflects either the impact that the lending decision had on Miss M, or her current situation which seems unlikely to improve in the near-term.

I would remind Lloyds that where it knows, or reasonably suspects, that a customer has one of the conditions set out in CONC 2.10.6G its checks ought to be more thorough. CONC 2.10.6G states "Amongst the most common potential causes of mental capacity limitations are the following examples, a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication." Given the 2020 lending block I find it had reason to ensure it checked Miss M's mental capacity before lending in 2023. I cannot see it did this.

In addition, CONC 7.10.1R states that a lender must suspend the pursuit of recovery of a debt from a customer when:

- 1. the firm has been notified that the customer might not have the mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time; or*
- 2. the firm understands or ought reasonably to be aware that the customer lacks mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time.*

[Note: paragraphs 3.7r of DCG and 7.13 of ILG]

The DCG refers to the OFT's Debt Collection Guidance and both the DCG and ILG paragraphs reiterate the above extracts from CONC. They also go on to explain that: "... creditors should consider writing off debts where a borrower lacked the mental capacity to make the relevant financial decision at the time that he entered the credit agreement with the creditor. The legal position in England and Wales is that a contract is voidable where the creditor knew of the incapacity or must be taken to have known of it."

Bearing this in mind and taking everything into account, in the context of this case, I currently think the fairest thing to do to put Miss M back into the position she would have been in had she not been granted the loan by Lloyds is for it to write-off the full balance of the outstanding debt.

In summary, Lloyds should:

- a) write-off the outstanding balance, including the capital, on Miss M's loan; and*
- b) remove any adverse information from her credit file in relation to this loan.*

Finally, 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 Miss M 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.

Both parties responded before the deadline of 2 October 2024. Lloyds accepted my provisional decision. Miss M's representative asked that I reconsider his request for compensation as he has been considerably inconvenienced and distressed corresponding for Miss M on this matter.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I followed it here.

Neither party sent any comments for me to consider with regards to my planned redress so it follows I have no reason to change what I suggested.

Miss M's representative asked that I consider the distress and inconvenience he has suffered but I cannot do this. We do not have the power to award compensation to representatives, professional or personal, only to eligible complainants. I know Miss M's

representative is also customer of Lloyds but he is not the eligible complaint in this complaint. That is Miss M. This means I am unable to consider the impact that bringing this complaint has had on him.

Putting things right

Lloyds must now:

- a) write-off the outstanding balance, including the capital, on Miss M's loan; and
- b) remove any adverse information from her credit file in relation to this loan.

My final decision

I am upholding Miss M's complaint. Lloyds Bank PLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 29 October 2024.

Rebecca Connelley
Ombudsman