

Complaint

Mr M has complained that Lloyds Bank PLC (“Lloyds”) irresponsibly provided him with an unaffordable credit card and unaffordable loans.

Background

Mr M also has a complaint about an overdraft he jointly took out with his wife. And Mr M’s wife has her own complaint about loans in her sole name. We’ve looked at those complaints separately and I won’t be offering any opinion on whether those credit facilities should have been provided. That said, I will be referring to facts of those products insofar as they are relevant to Mr M’s application for his loans and credit card.

Lloyds initially provided Mr M with a credit card in October 2008. This card was provided with an initial credit limit of £4,000.00. In June 2013, the limit was decreased to £1,000.00 and in April 2016, the limit was once again reduced to £850. In June 2018, the limit was increased to £5,000.00 before it was finally reduced to £3,000.00 in December 2018. Mr M has confirmed he’s only complaining about the limit adjustments from June 2018 onwards.

Lloyds provided Mr M with a loan for £10,000.00 in June 2015 (“loan 1” for the purposes of this decision). The loan was due to be repaid in 36 monthly payments of £371.04. Mr M repaid this loan with some of the proceeds from a loan for £17,104.10, which was taken in August 2016 (“loan 2” for the purposes of this decision). This loan was also due to be repaid in 36 monthly payments but this time of £577. Loan 2 was settled with some of the proceeds from a loan provided to Mr M’s wife in February 2017. Finally, Mr M was provided with a third loan in November 2017 (“loan 3” for the purposes of this decision). This loan was for £15,000.00 and due to be repaid in 60 monthly payments of £399.09.

When it investigated Mr M’s complaint, Lloyds agreed to refund the interest and charges added to loan 3 as a gesture of goodwill. But it didn’t think it had done anything wrong when providing loans 1 and 2, or increasing Mr M’s credit card limit. Mr M remained dissatisfied with Lloyds’ offer and referred his complaint to our service.

One of our investigators looked into Mr M’s complaint. She thought that Lloyds shouldn’t have provided Mr M with any of his loans or the credit card increase in June 2018. Lloyds disagreed with our investigator and so the case was passed to an ombudsman.

As Lloyds has already agreed to refund all the interest, fees and charges on loan 3 and this is what I’d normally tell a lender to do in circumstances where I were to uphold a complaint, I’ve not looked at this loan as part of this decision.

My findings

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 approach to unaffordable/irresponsible lending complaints on our website and I’ve considered this while provisionally deciding Mr M’s complaint.

Having carefully considered everything provided, I think that there are three overarching questions that I need to consider in order to provisionally decide what’s fair and reasonable in all the circumstances of Mr M’s complaint. These questions are:

- Did Lloyds carry out reasonable and proportionate checks to satisfy itself that Mr M would be able to repay any credit advanced in a sustainable way?
- Bearing in mind the circumstances, at the time of each application, was there a point where Lloyds ought reasonably to have realised it was increasing Mr M's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?
- Did Lloyds act unfairly or unreasonably towards Mr M in some other way?

I'll consider each of these questions in turn.

Did Lloyds carry out reasonable and proportionate checks to satisfy itself that Mr M would be able to repay any credit advanced in a sustainable way?

The rules and regulations throughout the period Lloyds lent to Mr M required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Lloyds had to think about whether sustainably repaying any amounts lent would cause difficulties or adverse consequences *for Mr M*. In practice this meant that Lloyds had to ensure that making the repayments wouldn't cause Mr M undue difficulty or adverse consequences. In other words, it wasn't enough for Lloyds to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr M.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Lloyds did what it needed to before providing Mr M with his loan.

Were Lloyds' checks reasonable and proportionate

Lloyds' final response told Mr M that it used a process credit scoring to assess a customer's application. It said credit scoring helped it to decide whether to lend money and it worked by awarding Mr M points based on the information he provided about himself and information held on his credit file at the credit reference agency.

It used this information to predict how big a risk it was taking by lending Mr M money. If Mr M scored enough points, it took his application to the next stage. Based on the information it had available, it was satisfied all of Mr M's loans and credit card limit increases were affordable. However, as loan 3 left Mr M's finances tight it agreed to refund the interest, fees and charges added to this loan.

I've carefully thought about what Lloyds has said. I want to start by saying that it doesn't automatically follow that a lender will have acted fairly and reasonably when providing a loan simply because it acted in line with its policy. I think it is important for me to point this out here.

Secondly, while Lloyds has referred to its general processes in relation to what it would usually do during an application process, it hasn't said anything at all about what the information it obtained showed other than it was prepared to take the lending risk here. Furthermore, I've already explained that Lloyds was required to do more than simply assessing the risk of default – in other words the credit risk it was taking - it also had to consider the impact of the repayments to the credit on Mr M.

It's also worth pointing out that simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan. And it seems to me that Lloyds treated each of Mr M's applications in isolation with little regard to what had happened previously or how his circumstances were evolving. In my view, this approach failed to take into account Mr M was a repeat borrower and assess the plausibility of any disposable income amount arrived at against what was happening on Mr M's various accounts with Lloyds.

To explain, I'm concerned that Lloyds appears to have agreed to loan 1, via an online application, based on a declaration of Mr M's disposable income. This is even though Lloyds will have been aware that the balance on Mr M's credit card was over his agreed credit limit and this had been the case for a number of months. Mr M's joint overdraft was also over its agreed limit at the time of this application too and he'd been incurring unarranged overdraft and returned item fees too. In my view, Mr M being over his credit card limit for as long as he had been and struggling to manage a £4,500.00 overdraft suggested that he might have had difficulties and it was incumbent upon Lloyds to have verified this wasn't the case before agreeing to advance further credit.

For loan 2, I'm concerned that it appears to have been agreed even though the notes on Mr M's account suggest the application had been declined a week previously and this decision couldn't be overturned even though there was an accepted loan previously. The notes do not say what it was that persuaded Lloyds to change a decision which couldn't be overturned. And while Mr M wasn't over his credit card limit at this stage, he was once again at the limit of his joint overdraft, even though the loan provided a year earlier was supposed to have cleared these balances. Indeed, Mr M would in fact have been well over his overdraft limit had it not been for a money transfer being made from a credit card with another provider.

For the credit card limit increase in June 2018, Mr M's limit was increased by over 5 times its previous amount even though he'd been provided with a loan for £15,000.00 a mere matter of months earlier. And this increase was provided at a time when Mr M's joint account was starting to have direct debits returned too. So notwithstanding what may have been determined during the 'credit scoring' in the individual applications, it seems to me that there were a number of warning signs suggesting Mr M might have been struggling at the time he was provided with this further credit. And I think that Lloyds failed to take into account the whole picture of its overall lending history with Mr M, in favour of a narrower focus on the individual applications, which presented a more favourable picture of a deteriorating position.

As there's no evidence that Lloyds asked for, or considered, further information to properly scrutinise and address the warning signs I've highlighted, I find that it didn't complete fair, reasonable and proportionate affordability checks before providing Mr M with either of his loans or his credit card limit increase.

Bearing in mind the circumstances, at the time of each application, was there a point where Lloyds ought reasonably to have realised it was increasing Mr M's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

As reasonable and proportionate checks weren't carried out before Mr M's loans and credit card limit increase were provided, I can't say for sure what they would've shown. And ordinarily I'd need to decide whether it is more likely than not that reasonable and proportionate checks would have told Lloyds it shouldn't have provided this further credit. However, I don't think that it is necessary for me to do this here.

I say this because I'm mindful that the relevant rules and guidance make it clear that a lender shouldn't continue offering credit where the borrowing is unsustainable or otherwise harmful and/or where it's apparent the borrower may be experiencing financial difficulties. So in addition to assessing the circumstances behind each *individual* lending decision, I also think it's fair and reasonable to look at what unfolded during the course of Mr M's relationship with Lloyds.

Lloyds' response to our investigator acknowledged that Mr M had displayed signs of struggling to manage at the time of loan 1. And this loan was provided to put Mr M in a stronger financial position by repaying his credit card and overdraft. It argues that had it not attempted to assist Mr M at this stage his financial difficulties would have occurred sooner and without any support or help which gave him the opportunity to resolve his position at the time.

It further says that, at the point of application, it wasn't to know Mr M would then go on to use the overdraft and credit card again, thus causing him to take out a further loan in 2016. In Lloyds view, Mr M chose to use his credit card and overdraft again after the 2015 loan, and he must take responsibility for this. But while this was Mr M's first consolidation loan in his own name, it appears as though Mr M's wife was provided with a loan in 2013. And some of the funds, were used to clear the joint overdraft and Mr M's existing credit card debt. So it's clear that this wasn't the first consolidation loan Mr M's household had been provided with, or the first time Mr M had repaid what he owed with further borrowing.

Loan 1, was the second time Lloyds was consolidating existing debts for Mr M's household and Lloyds was again lending to clear balances on the same accounts that had been consolidated 2 years earlier. So, in my view, Lloyds ought to have been on notice that Mr M

might have gone on to use his overdraft and his credit card in the way he did after the 2015 loan. After all Mr M returned to Lloyds in 2015, owing more than he did in 2013 despite his household having been provided with funds, in order to reduce and clear what he owed. I'd also add that even though Lloyds is saying it provided the 2015 loan to help Mr M out of a difficult situation, I can't see that it took any action to reduce the overdraft limit or credit card limit in 2015 either. And all of this was done at a time when it also advanced additional funds, over and above the amount to be consolidated, when providing this loan.

Furthermore, if I take Lloyds' argument to its logical conclusion, I see it as being even if these further advances of credit were unsustainable, it still wasn't unfair to lend because this credit was less unaffordable than Mr M's existing credit. And as this allowed Mr M to delay dealing with his difficulties he, in any event, didn't lose out as a result of having been provided with these loans and his credit card limit increase. I have concerns with this argument for a number of reasons.

Firstly, I think that Lloyds is presenting a false dichotomy here as it somehow suggesting that Mr M was faced with choosing between paying his existing creditors an unaffordable amount, or paying Lloyds perhaps less unaffordable amounts. But this ignores the fact that Mr M could have attempted to reach arrangements with his existing creditors to repay what he owed – after all his existing creditors (including Lloyds itself which appears to have been owed a significant amount) owed a regulatory obligation to exercise forbearance and due consideration in the event that he was struggling to repay what he already owed. I'm not suggesting that Lloyds was required to provide Mr M with debt advice in relation to his existing debts. What I'm saying here is that Mr M's choice wasn't as binary as Lloyds appears to be suggesting. And that it doesn't automatically follow that Mr M won't have lost out simply because his loans might have had lower APRs than his existing debts.

Secondly, Lloyds advanced Mr M additional funds over and above what he owed elsewhere. So while it might have reduced his monthly payment (once again perhaps to a less unaffordable payment), it was nonetheless increasing Mr M's overall indebtedness. These were Mr M's second and third consolidation loans and the amount he owed was increasing.

Equally, it ought to have been apparent that Mr M's indebtedness was increasing in circumstances where he (and the household) was only repaying what he owed by borrowing further. Indeed the June 2018 credit card limit increase to £5,000 was provided in circumstances where Lloyds ought to have realised that Mr M had only been able to make any inroads into his revolving credit balances as a result of consolidation loans. And this in itself is highlighted as unsustainable within the regulator rules. I don't think it's fair and reasonable for Lloyds to argue about Mr M's responsibilities, while also failing to acknowledge its shortcomings in Mr M's adoption of repayment strategy where he was continually borrowing to repay.

Finally, I'm also concerned at Lloyds' argument that advancing the credit it did meant that it prevented Mr M experiencing difficulties sooner. In my view, it was clear that Mr M was already struggling to repay what he owed in 2015. And he ended up paying significant amounts of interest for the privilege of Lloyds allowing him to delay dealing with what had already become an unsustainable debt. Lloyds actions in continuing to provide further funds, while ignoring the evidence suggesting he couldn't afford to repay, worsened Mr M's problem rather than helped him. And I don't think that this was fair and reasonable.

Given all of Lloyds' obligations and what I think is fair and reasonable taking into account the circumstances and everything I've covered in this section, I find that Lloyds ought fairly and

reasonably to have realised it was increasing Mr M's indebtedness in a way that was unsustainable or otherwise harmful. And so it shouldn't have provided him with the June 2015 and August 2016 loans (as well as the November 2017 one) and the credit card limit increase in June 2018.

Did Lloyds act unfairly or unreasonably towards Mr M in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything to suggest that Lloyds acted unfairly or unreasonably towards Mr M in some other way.

Conclusions

Overall and having carefully thought about the three overarching questions, set out on page one of this decision, I find that:

- Lloyds *didn't* complete reasonable and proportionate checks on Mr M to satisfy itself that he was able to sustainably repay loans 1 and 2 and the credit limit increase on his credit card in June 2018;
- Lloyds ought fairly and reasonably to have realised that loans 1 and 2 (as well as loan 3) and the credit limit increase on his credit card in June 2018 were unsustainable or otherwise harmful for Mr M and was unfairly and excessively increasing his overall indebtedness;
- Lloyds didn't also act unfairly or unreasonably towards Mr M in some other way.

The above findings leave me reaching the overall conclusion that Lloyds unfairly and unreasonably provided Mr M with loans in June 2015 and August 2016 (as well as November 2017) and a credit card limit increase to £5,000.00 in June 2018.

Did Mr M lose out as a result of Lloyds' shortcomings?

Mr M has paid and is being expected to pay additional interest and charges as a result of being unfairly provided with the credit he shouldn't have been provided with. I've considered Lloyds' argument that Mr M had other more expensive credit and the credit advanced did at least delay any difficulties. But I've already explained that I don't think this is automatically the case, as it's entirely possible that Mr M would have reached arrangements to repay what he owed his existing creditors.

And it's perfectly possible these arrangements wouldn't have accrued further interest. In effect Lloyds providing Mr M with the additional loans and credit card borrowing it shouldn't have meant that he had to pay Lloyds additional interest for the privilege of it allowing him to delay dealing with what, in my view, had already become an unsustainable debt position.

Mr M had to pay this additional interest at a time when he was already finding it difficult to repay what he owed. So I'm satisfied that Mr M has lost out because of what Lloyds did wrong and Lloyds needs to put things right.

Fair compensation – what Lloyds needs to do to put things right for Mr M

I've given a lot of careful thought to what fair compensation should look like in this case.

I've already explained that Mr M's real loss here is the interest that Lloyds added to his loans and his credit card account as a result of the credit limit increase. So I'm satisfied that Lloyds needs to take the steps I've set out below to put things right.

Mr M's loans

I'm satisfied that Lloyds should refund the interest and charges Mr M paid on loans 1 and 2. As loan 1 was only repaid with funds from loan 2 and loan 2 was only repaid with funds from loan 3, I'm satisfied Mr M was always in a position where he owed Lloyds money. So I don't think that Mr M was ever deprived of money on these loans and Lloyds doesn't need to add interest to any refund due on loans 1 and 2. This refund can then be used to reduce what Mr M owes on loan 3.

Should the interest refunds from the all the loans (including loan 3 which Lloyds has agreed to refund) as well as Mr M's payments be enough to clear the outstanding balance on loan 3 then any extra should be treated as overpayments and refunded to Mr M. Interest at 8% simple per annum should be added to any refunded payments, if there are any, from the date of payment to the date of settlement.

Ordinarily, where I find that a lender unfairly provided a borrower with loans, I'd tell the lender to remove any adverse information recorded about that loan from the borrower's credit file. However, I'm mindful of the circumstances of this case and in particular my reasons for upholding the complaint. I've upheld Mr M's complaint on the basis that his existing debts, at the time of these applications, already appear to have been unsustainable and that Lloyds providing him with potentially less unaffordable credit didn't take into account that Mr M may have reached arrangements with his existing creditors. And that Lloyds unfairly providing Mr M with these loans simply delayed him dealing with the consequences of his unsustainable debt.

This is the reason why I think Lloyds should refund the interest it added to loans 1 and 2 as well as remove the interest it added to the loan 3 and deduct this from what Mr M now owes. That said, it would be unreasonable for me to reach this finding in relation to the balance owed, but depart from it in terms of Mr M's credit file going forward. I think that removing adverse information in circumstances where it was more likely than not Lloyds would have recorded this on another product would place Mr M in a more advantageous position.

In my view, this would be counterproductive and arguably not in Mr M's best interests, or those of any potential lender. So having carefully thought about everything, including everything Mr M has told us, I'm not asking Lloyds to amend Mr M's credit file to remove any adverse information as result of these loans.

Mr M's credit card

Mr M's credit limit shouldn't have been increased in June 2018. So Lloyds should rework Mr M's credit card account to ensure that any interest, fees and charges added as a result of the credit limit increase should be removed. This means that Mr M's account should be reworked so that interest is only ever charged on the first £850 of any balance.

All of this means that I'm intending to tell Lloyds to do the following to put things right.

- Refund all interest fees and charges Mr M paid as a result of the June 2015 and August 2016 loans (loans 1 and 2);

- Removing all interest, fees and charges applied to the November 2017 loan (loan 3) from the outset. The refunded interest, fees and charges for loans 1 and 2 together with the payments Mr M made should be deducted from the new starting balance – the £15,000.00 originally lent. Lloyds should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Mr M;
- Adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr M to the date of settlement†;
- If an outstanding balance remains on loan 3 once these adjustments have been made, Lloyds should contact Mr M to arrange a suitable repayment plan for this.
- Rework Mr M's credit card account to ensure that from June 2018 onwards interest is only charged on the first £850.00 outstanding to reflect the fact that no credit limit increases should have been provided from then. All late payment and over limit fees should also be removed;
- Remove any adverse information recorded on Mr M's credit file as a result of his credit card limit being increased over £850.

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

My final decision

For the reasons explained, I'm upholding Mr M's complaint. Lloyds Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 October 2021.

Jeshen Narayanan
Ombudsman