

## **complaint**

Mr P complains that Lloyds Bank Plc (Lloyds):

- Charged him twice for the payment protection insurance (PPI) premium in relation to his second loan.
- Irresponsibly increased overdraft facilities and provided him with loans despite being aware that he was facing financial difficulties.
- Unfair charges were applied to his accounts.

## **background**

I issued a second provisional decision in this case in April 2017 explaining why I intended to uphold Mr P's complaint in part. A copy of my provisional decision is attached and forms part of my final decision.

I asked both Mr P and Lloyds to provide me with any other comments and evidence they would like me to consider before I issued my final decision.

Mr P has provided some further comments. I've considered these below. Lloyds haven't responded to my second provisional 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.

Mr P says that, although disappointed, he understands the reasons why I changed the date from which Lloyds should compensate Mr P. However, Mr P is still certain that Lloyds charged him twice for PPI.

I've again looked very carefully at why Mr P thinks he was charged twice for PPI but unfortunately this still doesn't change my mind. I still think he was charged only once. I say this for the same reasons as those set out in my provisional decision.

As I understand it Mr P has the cheque for the refunded PPI amount including interest but hasn't cashed it. It is for Mr P to decide whether or not he would like to cash this cheque. I don't think it's fair for me ask Lloyds to add further interest to the amount on the cheque as I don't think that Mr P was charged twice for PPI. And I haven't added the PPI refund amount under the compensation heading because Mr P has already received this amount.

Mr P has also asked me to clarify the use of my words "third party". When I say "third party", I'm referring to the company the debt was eventually sold on to. Both Mr P and Lloyds are aware of who the debt was sold on to.

Having reconsidered all the information available to me, I uphold Mr P's complaint in part for the same reasons as those set out in my provisional decision.

## **fair compensation**

Lloyds should:

- refund Mr P any overdraft fees, charges and interest he incurred on his business accounts from 17 December 2002 to when his loan account was sent to recoveries in 2009.
- recalculate the outstanding amount Mr P has left to pay by restructuring the December 2002 and 2004 loans as if no interest was payable on them (reconstructed debt).
- Lloyds should take back the debt from the third party and amend the outstanding amount to what it should be as calculated in the point above.
- If Lloyds can't take back the debt, then they should pay the third party the difference in the amount requested by the third party and the reconstructed debt.

Lloyds should set out clearly for Mr P how it has arrived at its calculations.

### **my final decision**

I uphold Mr P's complaint in part and require Lloyds Bank PLC to pay Mr P the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 June 2017.

Navneet Sher  
**ombudsman**

copy of my provisional decision

### **complaint**

Mr P complains that Lloyds Bank Plc (Lloyds):

- Charged him twice for the payment protection insurance (PPI) premium in relation to his second loan.
- Irresponsibly increased overdraft facilities and provided him with loans despite being aware that he was facing financial difficulties.
- Unfair charges were applied to his accounts.

## **background**

I issued a provisional decision in this case in January 2017 explaining why I intended to uphold Mr P's complaint.

In summary I didn't think Mr P had been charged twice for PPI. But I found that Lloyds could've done more to help Mr P as they should've been aware he was in financial difficulties and they should've assisted him by freezing the interest on his loan accounts and refunding him overdraft charges instead of continuing to consolidate his loans while still allowing his account to be overdrawn. I said Lloyds should compensate Mr P for this by refunding the interest and charges Mr P incurred on his accounts from April 2001 onwards.

Mr P broadly agreed with my decision about the irresponsible lending/financial difficulties but is still certain he was charged twice for PPI.

Lloyds didn't add anything further in relation to the PPI element of the complaint but provided further comments and evidence as to why they disagreed with my decision to compensate Mr P. I've considered this below.

## **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr P has again explained in some detail why he believes he was charged twice for PPI in 2001. I've looked at this carefully. But this doesn't change my mind. I still think Mr P was only charged once for PPI.

Mr P was sold a single premium policy. This means that Mr P borrowed an additional amount to pay for PPI. The cost of the PPI was added to the main loan upfront and interest was payable on it. Lloyds then transferred the full amount – the main loan and the additional loan for PPI – into Mr P's current account. After this Lloyds deducted the amount it had lent to Mr P for the PPI to pay the insurer on behalf of Mr P. (Mr P is right in saying that when I mentioned clause 7c in my previous provisional decision I actually meant 7d).

The alternative would've been for Mr P to pay the insurer directly himself from the funds lent to him for this purpose. Either way the result would've been the same, the additional amount for PPI would've left his current account. So this doesn't mean Mr P was charged twice for the PPI just because it had been added to the loan amount and then deducted from his current account. If Lloyds had paid the insurer on behalf of Mr P and then also let Mr P keep the additional amount of loan for PPI, Lloyds would effectively have lost out as they would've paid out twice for PPI.

I appreciate what Mr P says about the wording of the loan document. But when the loan agreement gave Mr P a choice about whether to have the funds added to the loan or to pay the PPI from his current account, this was essentially a choice as to whether to deduct PPI from his existing funds (not loaned) in his current account or to use the transferred loan amount to pay for the PPI.

If Mr P didn't choose to have the PPI added to the loan then he would've only been lent the main loan amount and the PPI amount would've been deducted from his current account from his existing funds. But Mr P chose to take a loan to pay for PPI and so once the loan was made available to him, the amount for PPI was deducted to pay the insurer.

I hope this explanation satisfies Mr P that he wasn't charged for PPI twice in 2001. And it follows that I still don't intend to uphold this part of Mr P's complaint.

Lloyds have provided further comments about the irresponsible lending and financial difficulties. I've considered these below:

*Six year time bar/Disp rules*

Lloyds say that two of our adjudicators regarded the complaint about irresponsible lending as time barred and that I didn't provide any explanation as to why I took a different view.

It is right that I didn't write about the time bar in my previous provisional decision. But this is because as I understand it, the adjudicators hadn't actually concluded that the complaint was time barred. Instead they used the time bar rule to explain why they think Lloyds wouldn't now have the information available to be able to show that they had considered the steps that they took when providing Mr P with further loans. And anyway Lloyds hadn't raised a jurisdiction objection under the six and three year rule.

But as Lloyds have now raised this issue and consider this complaint to be time barred, I've considered it in this decision.

We are bound by certain rules known as the DISP rules. These rules set out the time limits for bringing complaints. DISP rule 2.8.2 says:

The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

1. (1)

more than six *months* after the date on which the *respondent* sent the complainant its *final response*, *511 redress determination* or *summary resolution communication*<sup>511</sup>; or<sup>3</sup>

2. (2)

more than:

1. (a)

six years after the event complained of; or (if later)

2. (b)

three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

It is clear that Lloyds had received a formal complaint from Mr P in a letter dated 8 June 2009 about his financial difficulties (for the purposes of this complaint, irresponsible lending and financial difficulties are inextricably linked). According to the rules this would allow for Mr P to complain about anything that happened from 8 June 2003 as this would've been within six years of the event complained of. It doesn't matter that the complaint wasn't referred to us within six years.

But I've considered the loans taken out from April 2001 onwards which under the six year time bar would not be allowed in if we consider June 2009 as the point at which Mr P complained. But actually the first evidence I've seen of Mr P complaining about irresponsible lending is in a letter dated 19 July 2006 where he raised his concerns about Lloyds' lending practices. I regard this as an expression of dissatisfaction, although Lloyds didn't respond to it as such. So I think Mr P complained as early as July 2006. This would bring the complaint within the six year rule.

But even if Lloyds don't agree that Mr P's letter in July 2006 was a "complaint" under the rules, the rules also allow us to consider complaints if they weren't brought within six years of the event complained of, so long as the complaint is brought within three years of the consumer being reasonably aware of a cause to complain.

So even if I regard July 2006 as the first occasion when Mr P became aware of a possible cause for complaint, it still falls within our jurisdiction as Mr P brought his formal complaint to Lloyds in June 2009.

It's also right that Mr P referred his complaint to us well after he received a response from Lloyds in September 2009. The DISP rules say that the complaint needs to be referred to us within six months of the final response letter. But the letter Lloyds refer to as their final response letter isn't a valid final response because it doesn't cover all of Mr P's complaint points and it doesn't provide Mr P with the time frame for referring complaints to this service.

So I consider that this service can look at the events that occurred from the start.

#### *financial difficulties/irresponsible lending*

Lloyds say they don't believe poor account conduct is, in itself, evidence of a customer being in financial difficulties, particularly for business accounts. And they say that Mr P hadn't advised them of his financial difficulties until 2009.

I agree that poor account conduct in itself doesn't always mean there are financial difficulties. But I also note the various letters from Lloyds to Mr P informing him that the accounts are overdrawn also contain a standard paragraph about financial difficulties. So Lloyds recognise that being overdrawn can be a sign of financial difficulties. And I would've expected Lloyds to be aware that this may be a cause in Mr P's situation in particular, because of his previous financial arrangement and priorities. Mr P was already subject to an ongoing IVA when Lloyds provided him with the facilities.

Lloyds file notes confirm that Mr P's account had issues from very early on – they mention 2002. Mr P's overdraft facilities were temporarily extended on a number of occasions in that year too. Almost immediately on consolidating his previous overdrafts and loans in December 2002, Mr P's account statements show that he was frequently unable to meet the repayments. So I can't fairly say that Lloyds properly considered Mr P's circumstances when they provided Mr P with a consolidation loan in December 2002.

The same thing happened in 2004 when Lloyds consolidated Mr P's 2002 loan and overdraft – he almost immediately started to miss the repayments. Lloyds should've been aware of this given Mr P had missed numerous payment on the 2002 loan which was eventually consolidated into the 2004 loan. If he couldn't meet the repayments on the 2002 loan, I can't see why Lloyds would've considered that Mr P would be able to meet the repayments for the 2004 loan.

In addition, I can see Mr P himself made Lloyds aware of his situation. I've seen a letter from Mr P in 2003 explaining to Lloyds that he had to prioritise secured loans, utility bills and life insurance. From the contents of this letter it doesn't appear that this was the first time Mr P had brought up this issue and so it's reasonable to assume that this issue pre-dated the letter and it ties in with the pattern seen in Mr P being unable to meet his repayments on his loans. As I understand it from the letter, Mr P had to cancel the other direct debits, including the loan repayment, to ensure his priority debts and bills got paid. There is also further communication between Mr P and Lloyds much earlier than 2009 where Mr P explains his financial situation.

So I don't agree with Lloyds when they say they that Mr P only made them aware of his financial difficulties in 2009.

I appreciate what Lloyds say about restructuring business loans being standard bank practice. And I understand that this may be the best way forward in some circumstances. And it may well have been appropriate in Mr P's circumstances to start with. I also appreciate Lloyds need to make commercial decisions about whether to continue to support a business in the hope that it improves or whether to place the accounts into recoveries, effectively causing the business to cease trading. I think it's reasonable to assume that Mr P would've liked for his business to be given a fair chance to succeed and that he used the funds, at least at the outset, for this purpose. And that is why I haven't asked Lloyds to write the full debt off. And I appreciate that may be this is what happened in April 2001 too. But there did come a time when I think it should've been clear to Lloyds that Mr P was having difficulty meeting his priority expenses. And from the evidence I've seen, I think this is likely to have been from some time in 2002.

Because of this, I think Lloyds should've tried to assist Mr P at around this stage by freezing the interest on his accounts, discussing a more realistic repayment plan and speaking to Mr P about cancelling his non priority direct debits so that he wouldn't continue to incur further charges on his account. Instead Lloyds continued to consolidate Mr P's debt whilst also allowing his account to go overdrawn despite it being clear that Mr P was in financial difficulties. Lloyds say that they weren't increasing Mr P's lending, and that they just consolidated Mr P's existing borrowing. But I think the point is that the lending did continue to increase because as well as consolidating, Lloyds still allowed Mr P to go into overdraft (authorised or otherwise). And I understand that the interest rate on the loans was higher as he consolidated further and further.

And so I don't think that continuing to consolidate Mr P's existing debt in December 2002 and again in 2004 was the responsible thing to do in Mr P's circumstances. I take the view that Lloyds should've instead assisted Mr P as above. And this is what my proposed compensation reflects.

In my previous provisional decision, I said Lloyds should refund the charges and interest on Mr P's account from the second loan onwards (April 2001). But I appreciate that at this stage, though not ideal given they allowed Mr P's overdraft to continue, Lloyds may still have considered that this was the best way forward. But as mentioned above, I think it would've been, or at least should've been clear to Lloyds that Mr P was in financial difficulties and shouldn't have consolidated Mr P's loans again in December 2002 and 2004.

#### *evidence*

I appreciate that due to the amount of time that has passed, Lloyds are no longer in a position to submit a full file of evidence. This is of course understandable. So they don't have information about what was discussed when Mr P was provided with the loans – for example, income and expenditure. But I've seen enough evidence for me to be able to reach a fair outcome in this case.

I understand that Lloyds are concerned about a precedent being set around the compensation. But I would like to reassure Lloyds that this isn't the case as this complaint has been decided purely on its own merits and it isn't intended, nor can it, set a precedent.

So having considered all the points raised, by both parties, I still intend to uphold Mr P's complaint about financial difficulties and irresponsible lending. But for the reasons mentioned, my provisional decision has changed to the extent that instead of asking Lloyds to compensate Mr P from April 2001, they should instead do so from 17 December 2002.

**proposed fair compensation**

Lloyds should:

- refund Mr P any overdraft fees, charges and interest he incurred on his business accounts from 17 December 2002 to when his loan account was sent to recoveries in 2009.
- recalculate the outstanding amount Mr P has left to pay by restructuring the December 2002 and 2004 loans as if no interest was payable on them (reconstructed debt).
- Lloyds should take back the debt from the third party and amend the outstanding amount to what it should be as calculated in the point above.
- If Lloyds can't take back the debt, then they should pay the third party the difference in the amount requested by the third party and the reconstructed debt.

Lloyds should set out clearly for Mr P how it has arrived at its calculations.

**my provisional decision**

I intend to uphold Mr P's complaint against Lloyds Bank PLC for the reasons already set out.

I now ask both Mr P and Lloyds Bank Plc to provide me with any further comments and evidence they would like me to consider by 8 May 2017 after which I will issue my final decision.

Navneet Sher  
**ombudsman**