

## complaint

Mr and Mrs F complain about two loans sold to them by Lloyds Bank Plc in 2009 and how Lloyds handled their credit cards at that time.

## background

I issued my provisional decision in July 2015, a copy of which is attached and forms part of this final decision. In my provisional decision, I explained why I was going to uphold Mr and Mrs F's complaint and what I thought the bank needed to do to put things right. And I asked all parties to let me have any further points before I reached a final decision.

Both Lloyds and Mr and Mrs F have responded to me.

In summary, Mr and Mrs F say:

- As the loans weren't affordable, Lloyds shouldn't have lent them any money at all. Instead, the bank should've sent them to a not for profit organisation in February 2009. So now they want the defaults to be backdated to February 2009.
- They don't agree with the figures in the affordability assessments produced by Lloyds during this complaint which showed that the loans were between 18-20% unaffordable. They say that the loans were actually more unaffordable than this.
- They didn't benefit from the money lent to them in 2009 or when the credit cards were paid off but weren't closed.
- The bank has '*wrecked our life, our children's all through poor advice against office of fair trading guidance*'. And they don't feel that this service has fully appreciated the gravity of the effect of this on them.
- The only fair outcome is for Lloyds to write off £32,000 '*in recognition of the advice the bank provided as a result of us seeking advice for our growing debt*'.

Lloyds says it's willing to accept the provisional decision to bring this matter to a close. But it'd like me to give a breakdown of the amounts Lloyds is expected to return to Mr and Mrs F. It also says that some of the wording in the provisional decision is unclear. For example, at point 1 of what the bank needs to do to put things right, the bank says the wording used makes it sound as though there *are* further refunds of interest and fees to be made. But it says it's already refunded them all to Mr and Mrs F.

Finally, the bank says that if it's required to buy back any debt that it's sold before, this won't allow Mr and Mrs F the best deals which are often given by third party debt agencies.

## my findings

I thank both Mr and Mrs F and the bank for their submissions. I've considered them alongside all the evidence and arguments already submitted in order to decide what's fair and reasonable in the circumstances.

It may be helpful at this stage for me to explain that, although Mr and Mrs F have raised a number of concerns in response to my provisional decision, I will only be addressing those

issues I consider to be materially relevant to the complaint in hand. Even so, Mr and Mrs F should note that I've given careful consideration to all of their points before arriving at my final decision.

Having considered all of the evidence, I've reached the same conclusions as set out in my provisional decision and for the same reasons. However, I'd like to make the following observations in response to Mr and Mrs F:

- As explained in my provisional decision, on an affordability basis, the loans offered should've been between 18-20% lower than they were. But it wouldn't be fair or reasonable for me to now say that Lloyds should rework the account as though it'd given Mr and Mrs F a loan which was 18-20% lower. Nor do I think it'd be fair to say that Lloyds should write off all the money lent to Mr and Mrs F.

I say this because it would mean that Mr and Mrs F would've had less debt when they left Lloyds in 2009 than when they walked in. And that just cannot be fair. Because of this, my view would still be the same even if the loans were less affordable than 18-20%, as suggested by Mr and Mrs F.

However, I don't think that Lloyds should've lent Mr and Mrs F the extra £1,300.

- One of the main benefits Mr and Mrs F had from the loans given to them by Lloyds was that they consolidated their credit card and overdraft debts. This means they had an end date to repay those debts which they didn't have when they were only making the minimum payments.

And Mr and Mrs F continued spending on their credit cards and their current accounts. I accept what they say - some of this was to make their loan repayments and pay living costs such as food. But I can also see that some of what they spent was on things like eating out, hotels and a holiday. This spending was on both their credit cards and current account after the loans had been taken out in February 2009. So I think that this also shows that Mr and Mrs F did have a benefit from the loans given to them by Lloyds.

In relation to what the bank needs to do to put things right, I think that the provisional decision is clear. However, responding to some of the specific issues raised by Lloyds:

- (point 1 of what the bank needs to do to put things right) If the bank has already refunded interest and fees incurred as a result of late payments on the credit cards, then it doesn't need to do anything more under that heading.
- (point 2 and 6 of what the bank needs to do to put things right) It's not for this service to rework the loans for Lloyds. The bank will need to do this. And, once it's done this, it will know what amount it should record when it backdates the defaults to 1 June 2011. This means reducing the original loan amounts by 2.8% each and recalculating the outstanding balance as though Mr and Mrs F had always borrowed the lower amount. By my calculations, the bank lent Mr and Mrs F a total of £1,304.16 too much when the loans were set up in 2009.
- (point 3 of what the bank needs to do to put things right) If no fees and charges have been applied to the loan accounts, then no refund is required.

- The provisional decision doesn't specifically require Lloyds to take back the debts in house. But it should consider doing so – at no disadvantage to Mr and Mrs F – especially as the amount owed by Mr and Mrs F will now be lower.
- If Mr and Mrs F accept this decision, Lloyds needs to demonstrate, to the reasonable satisfaction of Mr and Mrs F, that it's done all of the things set out in this decision. This includes setting out clearly the revised balances of the loans and how all interest and payments have been applied.

*distress and inconvenience*

As mentioned in my provisional decision, I think that Mr and Mrs F should be paid £1,250 by Lloyds to recognise the substantial distress and inconvenience caused to them. And I'd like to repeat my earlier comment that I think it would show willingness on the part of Mr and Mrs F if at least part of it was used to further reduce the amount owed to the bank.

**my final decision**

My final decision is that, to put things right, Lloyds Bank Plc should:

- 1) refund any interest and fees incurred as a result of late payments charged on Mr and Mrs F credit cards (less any amounts which the bank's already refunded to Mr and Mrs F).
- 2) re-work the original loans so that it's as though Mr and Mrs F borrowed only the amount they needed at the time. This means reducing the original loan amounts by 2.8% and recalculating the outstanding balance as though they'd always borrowed the lower amount.
- 3) refund any interest and fees incurred as a result of late payments charged on Mr and Mrs F's loans.
- 4) ensure that no further interest or charges are applied to the outstanding balances.
- 5) engage with Mr and Mrs F (and their DMC) positively and sympathetically with a view to agreeing a manageable repayment plan for the outstanding debts.
- 6) on the four accounts referred to in its letter of 2 June 2011, backdate the defaults to 1 June 2011.
- 7) pay £1,250 to Mr and Mrs F for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 14 September 2015.

Rebecca Ellis  
**ombudsman**

## **extract provisional decision dated 9 July 2015**

### **background**

Mr and Mrs F say that, by February 2009, they realised they were struggling financially. And although they'd not missed any payments, they made appointments with Lloyds to discuss this and get help. Mr and Mrs F say that they told the advisor that:

- Mrs F was unwell;
- their finances were in a mess;
- Mrs F's business account was being supported by personal finance; and
- they'd given Lloyds a joint personal guarantee of £25,000 for a business loan taken out for Mrs F's business.

Mr and Mrs F say that at no point during their meetings was an income and expenditure assessment done by the advisor. They also say that they weren't told to go to a not for profit organisation to get help. Instead, Mr and Mrs F say the advisor looked at their good credit score alone and sold them 'consolidation' loans of around £25,000 to Mr F and £21,500 to Mrs F to refinance their existing unsecured borrowing. This was along with payment protection insurance (PPI) which would've added around £7,500 to Mr F's loan and nearly £7,000 to Mrs F's loan. The PPI policies were cancelled during the cooling off period as Mr and Mrs F say they knew they couldn't afford the additional debt. I can also see that, at the same time, Lloyds upgraded Mr and Mrs F's current account to a premium account. There was a cost for this of £25 a month.

Lloyds says that an affordability assessment form (AAF) was completed at the time which shows that they both earned some £2,500 pm. However, Mr and Mrs F say this wasn't correct. And the notes show that Mrs F's AAF doesn't include her share of the mortgage, some benefits were counted twice and it didn't take into account Mr F's new loan repayment. There were also a number of other things that weren't right on the AAF.

The consolidation loans were used to pay off existing debts with Lloyds and other providers. They were also used to pay off their overdraft with Lloyds. But Mr and Mrs F say that their credit card wasn't cancelled and, soon after the consolidation loans were taken out, Lloyds sold Mrs F another credit card. Lloyds says it may not have cancelled the credit cards but it didn't say that it would and it says it did reduce Mr and Mrs F's overdraft facility from £6,900 to £600.

Mr and Mrs F say that the loan repayments weren't affordable for them and so they used the Lloyds credit cards for their monthly spending to allow them to meet their repayments. Sometimes they drew out cash using their credit cards to pay into the current account from where the loan repayments were taken. And Mr and Mrs F say that Lloyds knew that Mrs F's business was struggling as the business accounts were with the bank.

Mr and Mrs F found a debt management company (DMC) to help them with a debt management plan (DMP). And they say that through the DMP they've taken greater control of their debt.

Mr and Mrs F say that the bank advisor in February 2009 should've completed a full income and expenditure assessment and consulted with the business banking manager. Mr F says that he feels the bank should've turned them away. And they say that, had the advisor fulfilled his duty in February 2009 to turn them away and recommend a not for profit debt advisor, they might've been advised to enter a DMP, Individual Voluntary Arrangement (IVA) or bankruptcy. If they had, they say they'd be in a far better position now – either the IVA would've passed or they'd owe a lot less under a DMP started in 2009.

Lloyds say that the advisor's actions in February 2009 didn't disadvantage Mr and Mrs F's financial position at that time. Instead, the bank feels that it gave Mr and Mrs F a structured repayment plan for their unsecured borrowing and reduced their monthly outgoings by around £170. However, it's recognised that it didn't do things as it should have. So it's made an offer to Mr and Mrs F to refund

the interest charged on both loans and both credit cards since February 2009. But Lloyds says that Mr and Mrs F had raised these concerns in 2011, and accepted an offer of around £6,500 in settlement at that time. This amount represented the interest charged on their credit cards since the loan had been agreed in February 2009 along with some money for distress and inconvenience. So Lloyds has deducted this amount from the offer it's already made.

In response, Mr and Mrs F have said that Lloyds should be writing off all the credit card debt as well as refunding the interest to them. Mr and Mrs F also want money for their time spent dealing with this complaint. They're upset that defaults have been applied to their credit files. And, as this wasn't done at the correct time, the default on Mr F's credit card should be backdated. Lloyds has agreed to back date the entry on Mr F's credit file but not to when Mr F has requested.

Our adjudicator looked at this complaint. He took into account what the bank had said about the information in the AAF and that it might've been given by Mr and Mrs F and that the forms were signed by them. However, he also noted that the AAFs were computer generated, the page with the actual income on hadn't been signed and the information in them simply wasn't supported by what Lloyds would've known from other dealings with Mr and Mrs F. Overall, he felt that the loans simply weren't affordable for Mr and Mrs F. He felt that this was supported by Lloyds' own affordability assessment produced during this complaint which showed that the loans were between 18-20% unaffordable.

The offer from Lloyds wasn't accepted by Mr and Mrs F and so the complaint's been passed to me for a decision.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened, I've based my decision on what I think's most likely to have happened in light of the evidence.

Having done so, I'm satisfied that Lloyds didn't do what they should've done when Mr and Mrs F approached the bank in 2009.

#### *loans from February 2009*

I don't think that Lloyds can show that it made a realistic assessment of Mr and Mrs F's finances. And I don't think it gave proper consideration to the information held by it before agreeing to lend to Mr and Mrs F. Had it done so, I don't think it would've reached the conclusion that Mr and Mrs F would be able to repay the loans without undue difficulty, out of their income or savings. This was the relevant test at the time, as set out in guidance issued by the Office of Fair Trading.

That said, I cannot ignore the benefit that Mr and Mrs F gained from consolidating their debts. And I agree that Mr and Mrs F had the benefit of the extra funds that were made available to them on the credit cards. And, even though I consider they could ill afford to have done so, they chose to spend on their credit cards.

When Mr and Mrs F approached Lloyds, they consolidated debts of around £45,230. When they left the bank, ignoring PPI as this was later cancelled, they had a debt of £46,530. So there was extra borrowing of £1,300. This is 2.8% of what Mr and Mrs F borrowed overall.

Whilst, on an affordability basis, the loans offered should've been between 18-20% lower, this would mean that Mr and Mrs F would've had less debt than when they went in. And I don't think that would be fair because Mr and Mrs F did benefit from the money and they did have lower repayments than before they took out the Lloyds loans. Importantly, they also had end dates for the repayment of the credit card and overdraft debt which they didn't have when they were only making the minimum payments. However, I don't think that Lloyds should've leant them the extra £1,300.

### *Mr and Mrs F's credit files*

In a letter from Mr and Mrs F to Lloyds in May 2011, they asked a number of questions. One was,

*'Can you confirm the position for each of the Lloyds TSB debts, what will happen, will we have defaults on our credit file, will you send them to a Debt Recovery Agency?'*

In June 2011, Lloyds answered this question by saying,

*'Your four accounts with CDR will already have been registered at the Credit Reference Agencies we use'.*

So Mr and Mrs F say that the credit file defaults should be backdated to be registered on or before 1 June 2011. Lloyds say that they haven't done anything wrong by deciding to backdate the credit file defaults for Mr F to December 2011. This is the same date as the bank has used for Mrs F.

I think that the response from Lloyds in June 2011 gave the impression that Lloyds had already registered defaults on all four of Mr and Mrs F's accounts. In fact, the bank had still not registered all the accounts with defaults until recently.

### *distress and inconvenience*

For the reasons set out above, I think that the service given by Lloyds to Mr and Mrs F in 2009 fell far below what it should have. So I think that Mr and Mrs F should be paid £1,250 by Lloyds to recognise the substantial distress and inconvenience caused to them.

It would be a matter for Mr and Mrs F to decide what to do with this part of the award. But I think it would show willingness on their part if at least part of it was used to further reduce the amount owed to the bank.

### **my provisional decision**

My provisional decision is that Lloyds should:

- 8) refund the interest and fees incurred as a result of late payments charged on Mr and Mrs F credit cards (less anything the bank's already refunded under the 2011 payment).
- 9) re-work the original loans so that it's as though Mr and Mrs F borrowed only the amount they needed at the time. This means reducing the original loan amounts by 2.8% and recalculating the outstanding balance as though they'd always borrowed the lower amount.
- 10) refund the interest and fees incurred as a result of late payments charged on Mr and Mrs F's loans.
- 11) ensure that no further interest or charges are applied to the outstanding balances.
- 12) engage with Mr and Mrs F (and their DMC) positively and sympathetically with a view to agreeing a manageable repayment plan for the outstanding debts.
- 13) on the four accounts referred to in its letter of 2 June 2011, backdate the defaults to 1 June 2011.
- 14) pay £1,250 to Mr and Mrs F for the distress and inconvenience caused.

Rebecca Ellis  
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