Financial Ombudsman Service

complaint

Miss E complains that Lloyds Bank Plc lent her money that she couldn't afford to pay back.

background

Miss E complained that Lloyds Bank Plc repeatedly raised her overdraft limit when she wasn't earning enough to pay back the debt.

Lloyds said that Miss E had applied online to raise her overdraft limit. It assumed when she did that, she had considered how much she wanted to borrow and how much she could afford to repay. It said it wasn't obliged to verify her income and expenditure, and it didn't micromanage accounts. When she increased her overdraft limit in October 2013, she was spending a lot of money on non-essential items. Lloyds didn't think that it had done anything wrong. But it offered to pay off her overdraft of £100 and close down her account.

Our investigator didn't uphold this complaint. He said that he couldn't see evidence on Miss E's statements that the bank should've been aware that she was in financial difficulties, or that the lending was unsuitable for her. He said that she did go over her overdraft limit on a few occasions, but she quickly brought the account back within the limit. And he also said that there was no evidence of multiple borrowing applications within a short period of time and reduced or no credits being made to the account.

Miss E strongly disagreed with our investigator. She said her income was only £800 to £1,000 per month. So an overdraft of £3,000 wasn't affordable for her. Miss E wanted an ombudsman to consider her complaint, so the case was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it. This is what I said then:

- Miss E said that if Lloyds had looked properly at her account, and her credit history, it would've seen that the increases to her overdraft weren't affordable for her. She thought that it had lent her money irresponsibly. She sent us her credit record, and she also sent us details of a payday lender that she said she'd taken a number of loans from, at around the same time as she was asking for an increased overdraft. She said that details of these loans had been removed from her credit history, after a complaint to this service was upheld. But Lloyds would've been able to see those loans on her credit record at the time when she was asking it to raise her overdraft limit. Miss E also said that she'd fallen behind on her mobile phone payments too, although her credit history seems to show that this debt actually defaulted some time after her overdraft limit was raised.

- Lloyds said that when it considered whether it should raise Miss E's overdraft limit, it relied on credit scoring. It thought that was reasonable. Lloyds also said it doesn't have any record of the enquiries it made then. It can only see now that she passed those checks. It sent us most of Miss E's statements from the time. Lloyds didn't appear to have considered the transactions on Miss E's account when it assessed her lending.

- I considered Miss E's statements and credit history, and tried to work out when her overdraft limit had been raised. It seemed as if there was an overdraft with a limit of £500 before November 2011, when an increase to £1,500 was agreed. Then the credit record said the limit was raised to £1,800 in September 2013. Her statements showed a raise to £2,500 in September, then up to £3,000 in October 2013.

- Miss E said that at the time when Lloyds lent her this money, she was earning between £800 and £1,000 per month. Earnings of around £1,000 seemed to be consistent with what I could see on her account. I could also see that Miss E went over her overdraft limits on a number of occasions, but this was usually only for a very short period.

- I also needed to bear in mind that Miss E had a history of taking out payday loans. One was taken on 13 October 2011, just before the first increase in her overdraft amount. Further loans were then taken out in quick succession in January, April, May and June 2012. The June loan was deferred, and not paid back until around September 2012. Miss E took further payday loans in July and September 2013. It seemed most likely that at least the second raise to her overdraft in 2013 was done after this loan was taken. I thought that at that time, Miss E's history of reliance on payday loans, and a recent reoccurrence of repeated loans, would've tended to suggest that Miss E wasn't in control of her finances. And I thought that it was reasonably clear from the transactions on Miss E's account that there was cause for concern. I thought that Lloyds should've considered those transactions, as well as Miss E's credit score, when it extended her overdraft at that time. So it didn't seem to have been responsible to raise her limit to £3,000 at that time, at least not without making more detailed enquiries than Lloyds did.

- Because I thought that it wasn't responsible to lend Miss E £3,000 through an overdraft facility in October 2013 without at least making further checks, I thought that Lloyds should refund the interest and charges that Miss E has paid since then. I had considered whether I should ask Lloyds only to refund interest charged for the amounts that it lent Miss E over her previous overdraft limit. But I thought that there must be some doubt whether the two previous raises I had also considered were affordable. They were also made against a background of payday loans. So I didn't think it would be reasonable to reinstate an earlier, lower overdraft limit. I thought it was reasonable to ask Lloyds to refund all the overdraft interest and overdraft charges on this account from 1 October 2013, to date.

- Lloyds could apply that refund to pay off any remaining debt on this account, then pay any money left over to Miss E.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Miss E replied to accept the decision. Lloyds replied to object to my findings, and to supply a considerable amount of further information.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Lloyds started by saying that it might help to set out the exact dates when Miss E's overdraft limit was raised. It said that the raises were as follows –

2011		2013	
18 July	£500	28 September	£1,800
7 November	£700	2 October	£2,200
21 November	£1,000	6 October	£2,500
25 November	£1,500	18 October	£3,000

That fits with what I can see on her credit record and statements, so I think that these are the changes that were made to Miss E's overdraft limit.

Lloyds has made a number of detailed representations on this case. I don't think it would be helpful to set those representations out in detail here, especially as some of these didn't seem to me to be supported by the bank statements I have seen, and when challenged, weren't pursued by Lloyds. I've considered all the points Lloyds made, but I'll summarise here the points that I do think are relevant to my considerations.

Lloyds argued that it was being asked to reconsider the lending it had made to Miss E, as if it was made on a different basis. Lloyds said that its procedures mean that even if someone applies in a branch, its staff won't check the transactions on a customer's account. Lloyds seemed to imply that it couldn't be judged for lending if it turned out that Miss E couldn't afford it, as she had met Lloyds' own lending criteria. But banks set their own lending criteria and decide what risk they do or don't accept. By deciding not to check Miss E's income, pattern of account use and affordability at the time that she took out the loan, I think it could be argued that Lloyds was accepting that there might be problems there which would only be discovered at a later date.

I discussed Lloyds' points with the bank, and offered to check with Miss E whether we could share with Lloyds the credit record that Miss E has sent us. That shows the credit history as it would've appeared when the loans were made.

Lloyds shared with us the decision information that it generated when Miss E applied for her last two overdraft limit increases. That shows a pass/fail for the applications, and indicated that the applications Miss E made were a pass on Lloyds' automated system. It seems that all the successful applications Miss E made were passed on the automated system. Lloyds said that it didn't take Miss E's income into consideration in these checks. It could loan customers up to £50,000 through unsecured borrowing, so it thought that £3,000 was a modest amount of borrowing.

Lloyds then looked again at the lending it made to Miss E in 2013. It said that it was confident that this lending was affordable for her. It said that it hadn't done a worked affordability assessment at the time, looking at all the details on her account, but it could do one now. So it provided a worked affordability assessment, looking at the money lent as if it was a 12 month loan rather than an overdraft.

Lloyds said that Miss E had a net monthly income of around £1,220 when the 2013 overdraft increases were made. It based this on wages and benefits in the previous three months. I think that is about right. Lloyds said that her payments to loans totalled an average of just under £300 per month. I think that too is a reasonable amount to use. And Lloyds said that Miss E had declared that she was cohabiting. It could see money being paid into her account, which looked like it was supposed to cover bill payments, so it took this income into account as well. I expressed some doubts about this, as at the relevant time there seemed to be at least one large amount of money transferred back to the person who was paying these smaller amounts for bills to Miss E. But it does seem reasonable to assume that she was getting some help with household costs. Lloyds showed her rent as a little over £290, which I think is reasonable. It may be a few pounds more than she actually paid. And Lloyds offered an alternative approach to calculating her outgoings, which was to include half of the rent amount she was paying in her expenditure. That also seems reasonable to me.

Lloyds worked out the cost of lending that Miss E would pay (interest and charges) as no more than £53 per month. It uses a standard formula for necessary living expenses. It thought that after her necessary living expenses, it would have easily been possible for Miss E to pay back the capital in this overdraft of £3,000 over twelve months at £250 per month.

I think there are some mistakes in this calculation. It doesn't allow for an average of £102 in payments on a credit agreement with a mobile phone provider which shows on Miss E's credit record from the time. And the calculation doesn't seem to show the right amount for Miss E's share of a couple's living expenses. So it seems to me the surplus is rather less than Lloyds suggested, and Miss E would've found it very difficult to repay a £3,000 overdraft within twelve months.

I also think I have to bear in mind that overdrafts aren't a structured form of lending, with standard repayments over a pre-set period. They are repayable on demand. So I don't think it was reasonable for Lloyds to lend this customer an amount of money through an overdraft facility, repayable on demand, which it seems to me that she would have struggled to repay over a twelve month period. I don't think that the calculation Lloyds has provided us with demonstrated that its lending to Miss E in October 2013 was responsible.

Lloyds said that even if the lending in 2013 had been mis-sold (which it didn't accept) it didn't think that would mean that it should refund all the interest and charges since then. It thought that it should only refund interest and charges on the amount of the overdraft which had been mis-sold. So if I thought that the 2013 lending was mis-sold, Lloyds thought it should only refund any interest or charges on an amount over the limit that Miss E had in 2011. But I said that I was also concerned about the lending in 2011. I thought there were doubts about whether that was affordable. I've looked more closely at that now, and also applied Lloyds' suggested test to Miss E's income and expenditure in 2011. Her income was rather less then, averaging just over £800 per month in the preceding three months. Her rent was £250 per month. She had just taken out a payday loan, and still had a sizeable monthly commitment on a credit agreement with a mobile phone provider.

I don't have clear evidence that Miss E was cohabiting in November 2011. But even if we assume she was sharing living expenses, it still doesn't look, applying Lloyds' suggested test, as if she could've comfortably repaid the amounts she borrowed then over a twelve month period.

So I still think that it wasn't responsible to lend Miss E £3,000 through an overdraft facility in October 2013 without at least making further checks. And I still think there must be some doubt whether the previous raises in 2011 were affordable. I still think the right solution to this case is to ask Lloyds to refund all the overdraft interest and overdraft charges on this account from 1 October 2013, to the date of this decision.

my final decision

My final decision is that Lloyds Bank Plc should refund all the overdraft interest and overdraft charges on Miss E's account from 1 October 2013, to the date of this decision.
Lloyds Bank Plc can apply that refund to pay off any remaining debt on this account, then pay any money left over to Miss E.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 13 March 2018.

Esther Absalom-Gough
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