DRN-1835400

Complaint

Mr D has complained about the overdraft on his Lloyds Bank PLC ("Lloyds") bank account. He's said that he had a gambling problem, between 2013 and 2018, which ought to have been apparent from his statements. And in these circumstances, it was unfair to lend to him, let alone increase the limit on his overdraft to £5,000.

Background

Mr D's complaint was initially reviewed by one of our investigators. He didn't think that Lloyds had done anything wrong or had treated Mr D unfairly. Mr D disagreed with the investigator and also said that Lloyds failed to take his deteriorating credit file into account either.

Mr D asked for an ombudsman to consider his case. So the complaint was passed to me for review.

My provisional decision of 25 March 2020

On 25 March 2020, I issued a provisional decision setting out my initial findings on Mr D's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started out by setting out the regulatory framework and other relevant publications that I thought were important to my determination of Mr D's complaint.

The regulatory framework

Regulation by the Office of Fair Trading (up to 31 March 2014)

In 2013, which is the start of the period of time Mr D asked us to look at, Lloyds held a standard licence from the Office of Fair Trading ("OFT"), which permitted it to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—

a. *the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*

b. *such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*

c. *practices and procedures that the applicant proposes to implement in connection with any such business;*

d. *evidence of the kind mentioned in subsection (2A)*

(2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*

a. *committed any offence involving fraud or other dishonesty or violence;*

b. *contravened any provision made by or under—*

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

c. *contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*

d. *practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*

e. ***engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)*** *[my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the ***OFT to involve irresponsible lending*** *[my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome on Mr D's complaint.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice.

Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section 4 of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. I mention this for reference because as I’m not looking at Lloyds’ decisions to provide an overdraft in the first place or increase Mr D’s overdraft limit, I’m not considering any lending decisions in this case.

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once credit has been provided. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower’s repayment record

Section 6.2 goes on to say:

“The OFT considers that creditors should take appropriate action, including notifying the borrower of the potential risk of an escalating debt, and signposting the borrower to not-for-profit providers of free independent debt advice, when/if there are signs of apparent/possible repayment difficulties – for example, a borrower failing to make minimum required payments or making a number of consecutive small/minimum repayments or a borrower seeking to

make repayments on a credit card account using another credit card. This is particularly important in the case of borrowers who it is known - or it is reasonably believed - may lack the mental capacity to make financial decisions about repayments at the time the repayments are due, especially under circumstances in which the borrower or his representatives have specifically requested that this should be done.

A symptom of some conditions such as bipolar disorder is that the borrower may engage in unusual spending patterns.”

<u>Regulation by the Financial Conduct Authority (from 1 April 2014)</u>

Lloyds continued to provide Mr D with his overdraft after regulation of consumer credit activities had transferred from the OFT to the Financial Conduct Authority (“FCA”) on 1 April 2014. Lloyds was authorised by the FCA at this time so it was subject to the FCA’s rules in respect of consumer credit activities from 1 April 2014.

- *the FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook (“CONC”)*

This sets out the rules which apply to firms specifically when carrying out credit related regulated activities. CONC also replaced the requirements set out in Section 55B. Bearing in mind the complaint before me, I think the most relevant sections of CONC here are CONC 1 which sets out guidance in relation to financial difficulties; CONC 5 which sets out a firm’s obligations in relation to responsible lending; and CONC 6 which sets out a firm’s obligations after a consumer has entered into a regulated agreement.

CONC 1.3G provides guidance on financial difficulty. It says:

"In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:

1. *consecutively failing to meet minimum repayments in relation to a credit card or store card;*

2. *adverse accurate entries on a credit file, which are not in dispute;*

3. *outstanding county court judgments for non-payment of debt;*

4. *inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*

5. *consecutively failing to meet repayments when due;*

6. *agreement to a debt management plan or other debt solution;*

7. *evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling"*

CONC 5 sets out the rules and guidance in relation to 'responsible lending', CONC 6 sets out the rules and guidance in relation to Post contractual requirements; and finally CONC 7 sets out the rules and guidance in relation to Arrears, default and recovery (including repossessions).

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5, CONC 6 and CONC 7. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions. For the same reasons that I didn't set out the relevant passages of section 4 of the ILG, I don't propose to set out the sections in CONC 5 which relate to responsible lending. Instead I'll focus on what I consider to be the relevant sections of CONC 6 and CONC 7.

CONC 6.7.2 R states:

"A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties."

*[**Note**: paragraph 6.2 of ILG]*

CONC 6.7.3 G states:

The action referred to in *CONC 6.7.2 R* should generally include:

(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and

*[**Note**: paragraph 6.16 of ILG]*

(2) providing contact details for not-for-profit debt advice bodies.

*[**Note**: paragraph 6.2 (box) of ILG]*

CONC also provides guidance to lenders about how to deal with consumers in arrears, this time making reference to the Office of Fair Trading's Debt Collection Guidance (DCG).

CONC 7.3.2G states:

When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.

*[**Note**: paragraphs 7.12 of ILG and 2.2 of DCG]*

CONC 7.3.4R states that:

A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

*[**Note**: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]*

CONC 7.3.5G lists some examples of forbearance and due consideration and states:

Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

1. *considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a* customer *provides evidence of financial difficulties and is unable to meet* repayments *as they fall due or is only able to make token* repayments*, where in either case the level of debt would continue to rise if interest and charges continue to be applied);*

*[**Note**: paragraph 7.4 (box) of ILG]*

2. *allowing deferment of payment of arrears:*

    a. *where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or*

    b. *provided that doing so does not make the term for the repayments unreasonably excessive;*

3. *accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).*

Other relevant publications

The ILG and CONC set out the regulatory framework that firms carrying out consumer credit activities have to adhere to. But they represent a minimum standard for firms. I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Lloyds was a subscriber to the Lending Standard Board's Lending Code and currently subscribes to the Standards of Lending Practice which replaced it in July 2016.

<u>The Lending Code</u>

Section 4 of the Lending Code is concerned with Credit Assessments. It says:

Personal customers

50. Before lending any money, granting or increasing an overdraft or other borrowing, subscribers should assess whether the customer will be able to repay it in a sustainable manner. They should do this by considering the potential for the borrowing to adversely impact the customer's financial situation, information from CRAs, including existing financial commitments where provided, as well as the following, as appropriate:

- *The type and amount of credit being sought;*
- *How the customer has handled their finances in the past;*
- *Any known future financial commitments of the customer;*
- *Any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- *Internal credit scoring techniques (if used by the subscriber);*
- *The customer's declared income;*
- *Why the customer wants to borrow the money and for how long; and*
- *Any security provided.*

51. Subscribers should take a view on which of the above factors it is appropriate to consider in any particular circumstance dependent on, for example, the type and amount of credit being sought and the potential risks to the borrower.

52. Assessment may also include other checks that have not been listed above.

53. The requirement to consider information from CRAs does not apply in specialist customer segments such as private banking where use of CRA data may not be appropriate.

54. Where income is one of the factors considered when assessing ability to repay a personal loan and the loan is agreed only if the income of another person is taken into account, normally the loan should be provided on a joint and several basis. However there may be circumstances when it is appropriate to provide a loan on a sole basis.

55. Subscribers should ensure they are familiar with the requirements of the Code Sponsors' Guide to Credit Scoring and the explanations that need to be given to customers if credit scoring is used.

56. If a lending application is declined following credit assessment, the subscriber should explain the main reason why if asked by the customer. If the decline is as a result of information obtained from a CRA search, the subscriber should provide the customer with contact details for the CRA.

The Standards of Lending Practice

The standards relating to assessing the affordability of credit are set out in the *'Product Sale'* section of the Standards of Lending Practice. The relevant section says:

"5. Before providing any form of credit, granting or increasing an overdraft or other borrowing, Firms should assess, from the information available to the Firm at the time, whether the customer will be able to repay it in a sustainable manner without the customer incurring financial difficulty or experiencing significant adverse consequences. [CONC 5]"

There is also a section on *'Money Management'* and paragraph 3 of this section says:

"3. Firms should monitor customers' credit card and overdraft limits to ensure that the customer is not exhibiting signs of financial stress and where relevant, offer appropriate support."

Information Lloyds itself provided

Lloyds' Personal Banking Terms and Conditions, in September 2013, also had the following information. Section 10.3 said:

"Overdrafts are always repayable on demand. This means that we can ask you to repay all or part of your overdraft (and any interest or charges) at any time, even if we have agreed a period for the overdraft with you. We can also reduce your overdraft limit at any time. If we demand repayment or reduce your limit, this will usually be due to a change or anticipated change in your personal circumstances. If we can reasonably do so without prejudicing our interests, including our regulatory position, we will give you at least 30 days' notice before making the change".

And section 10.5 said:

"A 'Planned Overdraft' is an overdraft up to a limit that we agree, taking into account your personal circumstances, and which you arrange with us in advance so as to increase the available funds in your account. We will provide you with the terms of any Planned Overdraft, including how long the Planned Overdraft will apply. If we do not specify a period, then your Planned Overdraft will continue indefinitely until ended by either of us. We will carry out a review of your Planned Overdraft at least once every 12 months."

I than confirmed that having reviewed matters, I thought that the crux of Mr D's complaint was that Lloyds should have stopped lending to him in 2013 because it ought to have realised that he was unlikely to be able to sustainably repay what he owed.

I set out that ordinarily the first question I would consider in an irresponsible lending complaint was:

- Did Lloyds complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his overdraft in a sustainable way?
    - If so, did it make a fair lending decision?

- If not, would those checks have shown that Mr D would've been able to do so?

But in this case, Mr D hadn't said that Lloyds shouldn't have given him the overdraft in the first place. And as far as I could see a limit increase (in the period I've been asked to look at) didn't take place until 2015. But even though Lloyds might not have increased Mr D's limit until 2015, Mr D had, in any event, said that Lloyds should have stopped lending to him sooner than this as a result of how his overdraft was being used.

As this was the case, I think that there was one main question that I needed to consider in order to fairly and reasonably determine Mr D's complaint. And depending on the answer to that question, there may have been a series of sub-questions for me to consider too.

This main question was:

1. Did Lloyds have an obligation to review Mr D's use of his overdraft facility?

I then set out that should the answer to this question be yes, I'd then need to consider a series of potential sub-questions. These would be:

- When should any review or reviews have taken place?
- What should have formed part of any reviews?
- Was Mr D experiencing financial difficulty?
- Does any and/or all of this mean that Lloyds ought fairly and reasonably to have realised that Mr D was more likely than not unable to sustainably repay what he owed and so should have stopped lending to him?

I started by considering the main question.

<u>Did Lloyds have an obligation to review Mr D's use of his overdraft facility?</u>

I started by saying that Lloyds would have been aware that the provisions of the ILG and CONC imposed an obligation to monitor Mr D's repayment record and offer assistance where it may have been apparent that he may have been experiencing financial difficulty.

But leaving aside Lloyds' regulatory obligations, I was also satisfied that Lloyds additionally committed to reviewing to reviewing the overdraft on Mr D's current account on an ongoing basis. I said this because as I set out in the other key publications section of my provisional decision as a subscriber to the Standards of Lending Practice, Lloyds committed to ensuring that Mr D's overdraft usage wasn't suggesting that his finances were under strain.

Equally Lloyds' own correspondence to Mr D said that Mr D's usage of his overdraft facility would be reviewed on an ongoing basis. So it seemed to me that – irrespective of the regulator's rules - the Standards of Lending Practice and Lloyds' own terms and conditions confirmed Mr D's use of his overdraft would be monitored.

Bearing all of this in mind, I was satisfied that Lloyds ought reasonably to have been monitoring and reviewing Mr D's use of his overdraft facility. And I didn't think that the fact that Mr D may not have notified Lloyds about any change in circumstances or financial difficulty he may have been experiencing changed this. As I concluded that this was the case, I then went out to consider the series of sub-questions that I'd set out.

<u>When should Lloyds' reviews have taken place?</u>

I once again started by reiterating that the rules and regulations in place throughout the period Mr D had his overdraft required a lender to monitor a customer's repayment record. So I thought that it was perfectly fair and reasonable to have expected Lloyds to have monitored Mr D's repayment of his overdraft on an ongoing basis. And also offer assistance where it may have been apparent Mr D may have been experiencing difficulty.

I also pointed out that paragraph 10.5 of the terms and conditions of Mr D's account, in any event, said that his overdraft would be reviewed at least once a year. I also noticed Mr D's statements had overdraft renewal dates on them. And this suggested to me that his overdraft was, or at the very least ought to have been, reviewed and/or renewed on an annual basis.

And this led me to point out that even if I agreed that CONC didn't prescribe precise periods for any reviews, I was satisfied that Lloyds itself committed to reviewing and, depending on the circumstances, potentially renewing Mr D's overdraft each year.

Given the circumstances of this case, I was particularly mindful of the renewal that took place in July 2014 as this was the first one to take place after the period of time Mr D said that he was experiencing financial difficulty. As such I then went on to consider whether it was fair and reasonable for Lloyds to have renewed Mr D's overdraft in July 2014.

<u>Bearing in mind all the circumstances, was it fair and reasonable to renew Mr D's overdraft in July 2014?</u>

I started my consideration of this question by saying that Lloyds hadn't provided any details about what its review process in general would have involved or what it specifically did in relation to Mr D's account in July 2014. I welcomed any comments or information Lloyds could provide in relation to this in its response to my provisional decision.

I then went on to consider what I thought any review and renewals should fairly and reasonably have taken into account bearing in mind Lloyds' regulatory obligations and the terms and conditions of Mr D's account.

As a starting point, I thought that any review or renewal of Mr D's overdraft had to include a review of Mr D's repayment record – in other words it needed to look at how Mr D's account was funded, how often it was in credit etc.

I thought it also important to note that section 10.3 of Mr D's account terms and conditions stated that his overdraft was repayable on demand. I was also mindful that while Lloyds' own literature was silent on this matter, it was generally accepted, in the industry, that overdraft facilities were only really suitable for (and so only supposed to be used for) occasional or emergency borrowing. This message was reinforced in Lloyds' notifications of the 2017 changes to its overdraft pricing structure, which stated that overdrafts are intended to help out with short-term borrowing needs.

And I also thought it was a view shared by the FCA in Consultation Paper 18/42 *High-Cost Credit Review: Overdrafts consultation paper and policy statement* ("CP18/42"). I did acknowledge that this was published sometime after the period I was looking at. But I did think that it offered some insight on the FCA's perspective on the use of overdrafts. And so I did consider it to be of some relevance in this case.

Paragraph 3.35 of CP 18/42 stated:

"Overdrafts are intended for short-term or emergency borrowing, but some consumers use them repeatedly over a long period of time. This repeat overdraft use can harm consumers because it can be an expensive way to borrow, and they can build up problem debt over time."

Bearing in mind off all of this, I thought that any review or renewal of Mr D's overdraft also ought fairly and reasonably to have had in mind that the facility was repayable on demand – in other words, had to be repaid in full should Lloyds request this -, that it was only really intended to help out with short-term borrowing needs and the good practice set out in the Lending Code.

I kept all of this in mind when thinking about Mr D's financial position in July 2014. As Lloyds had access to them, I considered it perfectly fair and reasonable to use Mr D's bank statements to form my view on what a fair and reasonable review of whether Mr D's overdraft should have been renewed is more likely than not to have shown. I therefore went on do so and also set out what I thought any such review ought fairly and reasonably to have uncovered.

Mr D's financial position in the period leading up to July 2014 renewal

I started by saying by the time of this review, the FCA had provided clear guidance on financial difficulty, which it set out in CONC 1.3.1 G. I'd already set this guidance out in full and in essence, CONC 1.3.1 G lists a number of factors, which if a firm is aware of, or it ought reasonably be aware of, may signify that a borrower is experiencing financial difficulties.

I thought that having carefully looked at the period post the July 2013 review, it was clear that a number of the factors set out in CONC 1.3.1 G were present in Mr D's circumstances.

For starters, I could see that there were a number of returned direct debits on Mr D's statements. Mr D also statements showed that he was taking payday loans from at least three different providers, every month for an extended period of time in an attempt to keep within his overdraft limit. So while Lloyds may have argued that Mr D wasn't considered to be in difficulty because he kept within his limit, it was clear that he was only able to do so because he was borrowing from unsustainable sources.

But what was most concerning of all on Mr D's statements was the sheer amount of gambling transactions that were taking place. On most days there were between ten and twenty gambling transactions. And when these were added up, it was clear that Mr D was gambling far in excess of his monthly income each month.

I went on to clarify that I wasn't saying that it was for Lloyds – or any other bank for that matter - to tell a consumer how they could and couldn't spend their money. But as Mr D was constantly using his overdraft he wasn't spending his own money. He was gambling funds that Lloyds was lending to him. And his ability to repay was wholly dependent on his success as a gambler. I made this point while especially mindful of the fact that Mr D's statements, in the period between July 2013 and July 2014, didn't ever show him having a credit balance on his account either.

In my view, all of this meant that, in July 2014, Lloyds ought reasonably to have realised that there was a change in Mr D's circumstances. And this in turn meant that no reasonable decision maker, on these facts, could reasonably conclude that he'd be able to repay what he owed on demand, or within any sort of reasonable period of time. And on top of this, I thought that the sheer number of gambling transactions meant coupled with the increasing number of payday loans meant that any further lending was simply unsustainable.

I also thought that instead of realising this and taking steps to help Mr D, as per its regulatory obligation to provide a customer in financial difficulty with assistance (and what its own terms and conditions said an adverse change in his financial circumstances would lead to), Lloyds unfairly and unreasonably added a significant amount of overdraft interest, fees and charges to his balance.

This meant that Mr D paid Lloyds high amounts of interest for the privilege of allowing him to continue to hold what, in my view, had clearly become an unsustainable debt. And on top of this Lloyds even decided to increase Mr D's overdraft limit to £5,000 despite all of this and its responsibility to assess whether any increase in the funds lent could be repaid sustainably.

Taking all of this into account, I reached a finding that Lloyds didn't act fairly and reasonably towards Mr D when it renewed his overdraft in July 2014.

So I explained that I was intending to find that Lloyds didn't act fairly and reasonably towards Mr D in relation to his overdraft. I then went on to consider whether Mr D lost out because Lloyds hadn't acted fairly and reasonably towards him.

<u>Did Mr D lose out because Lloyds didn't act fairly and reasonably towards him?</u>

I thought that Lloyds ought reasonably to have realised that Mr D was in financial difficulty by July 2014 at the latest and at this point Lloyds ought reasonably to have exercised forbearance and helped Mr D managed his debt. But instead of doing this Lloyds added further overdraft interest, fees and charges to his overdrawn balance.

So I thought that Mr D lost out because he had to pay, and he was still being expected to pay interest and charges that shouldn't have been added to his balance in the first place. And so it was my intention to find that Mr D lost out because Lloyds didn't treat him fairly and reasonably.

I finally set out a method of putting things right for Mr D, which I found addressed Lloyds' failings and Mr D's resulting loss.

Responses to my provisional decision

Mr D responded to my provisional decision confirming that he accepted it and that he currently had nothing further to add. He said that he reserved hiss right to provide further submissions in the event that Lloyds provided further arguments in its response to my provisional decision.

Despite being a significant amount of additional time to do so. Lloyds didn't provide anything further for me to consider.

My findings

I've considered all the available evidence and arguments provided from the outset, including Mr D's response to my provisional decision, in order to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I remain of the view that the main question and related sub-questions that I set out in my provisional decision are what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint. These are:

1. Did Lloyds have an obligation to review Mr D's use of his overdraft facility? If so,

- When should any review or reviews have taken place?
- What should have formed part of any reviews?
- Was Mr D experiencing financial difficulty?
- Does any and/or all of this mean that Lloyds ought fairly and reasonably to have realised that Mr D was more likely than not unable to sustainably repay what he owed and so should have stopped lending to him?

I carefully considered these questions and set out, in some detail, my findings in relation to them in my provisional decision of 25 March 2020. Given this is the case, and I've not been provided with anything further at all to consider, I've not been persuaded to depart from the provisional findings I reached on 25 March 2020.

As this is the case, I find that:

- Lloyds *did* have an obligation to monitor Mr D's use of his overdraft facility;

- A Review of Mr D's overdraft facility *should* have taken place in July 2014;

- Any fair and reasonable review of Mr D's overdraft in July 2014 would more likely than not have shown that Mr D was in financial difficulty and so the overdraft facility *shouldn't* have been renewed in July 2014.

This means that I find that Lloyds didn't act fairly and reasonably towards Mr D in relation to his overdraft. As I've already explained why Mr D lost out because Lloyds didn't act fairly and reasonably towards him, I'll now set out what Lloyds needs to do to put things right.

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

Having carefully considered everything, I find that it would be fair and reasonable in all the circumstances of Mr D's complaint for Lloyds to put things right in the following way:

- rework Mr D's current overdraft balance so that all the interest, fees and charges applied to it from July 2014 onwards are removed;

AND

- if an outstanding balance remains on the overdraft once these adjustments have been made Lloyds should contact Mr D to arrange a suitable repayment plan for this. It can also backdate a default on Mr D's credit file to July 2014 should it consider it necessary to do so;

OR (if the effect of removing all interest fees and charges results in there no longer being an outstanding balance)

- any extra should be treated as overpayments and returned to Mr D. If no outstanding balance remains after all adjustments have been made then Lloyds should remove all adverse information from Mr D's credit file.

- pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†;

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 12 June 2020.

Jeshen Narayanan
Ombudsman