

Complaint

Mrs A has complained about the overdraft fees and interest Lloyds Bank PLC (“Lloyds”) applied to her current account. She’s said she’s recently been diagnosed with an illness and therefore falls into the category of being able to claim these charges.

Background and my provisional decision of 19 October 2021

One of our adjudicators looked at Mrs A’s complaint and thought Lloyds shouldn’t have provided Mrs A with a temporary overdraft in June 2014 and so it needed to refund all the interest and fees it added charged from this point. Lloyds disagreed and so the complaint was passed to an ombudsman.

On 19 October 2021, I issued a provisional decision setting out my initial findings on Mrs A’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by saying that Mrs A had said she’d recently been diagnosed with an illness. I was sorry to hear that was the case and sincerely sympathised with her current position. But while this was the case, and I considered what she’d said about falling into a category of being able to claim charges, Mrs A’s recent diagnosis didn’t automatically mean that Lloyds should refund any historic interest, fees and charges it had added to her account over the years.

Furthermore, I hadn’t considered whether the various amounts Lloyds charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And this wasn’t something for me to get involved with.

However, while I hadn’t looked at Lloyds’ charging structure per se, I did think that Lloyds won’t have acted fairly and reasonably towards Mrs A if it applied any of the interest, fees and charges to Mrs A’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs A was experiencing financial difficulty. So I went on to consider whether there were any instances where Lloyds didn’t treat Mrs A fairly and reasonably because it failed to act when told Mrs A was in financial difficulty, or it failed to recognise this in circumstances where it ought to have done.

Our adjudicator said that Lloyds shouldn’t have granted Mrs A with a temporary overdraft facility in July 2014 because it ought to have realised that Mrs A was struggling at this point. But it wasn’t in dispute that Mrs A was in difficulty at this point. Lloyds’ notes showed that Mrs A got in contact in July 2014 saying that she was experiencing temporary difficulty as a result of only recently returning to work from maternity leave.

I explained that once a lender is told that a borrower is experiencing financial difficulty we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations. Ultimately, we’d expect a lender to listen to a borrower, get an understanding of their circumstances and then assess the most appropriate way to move forward.

As a result of its conversations with Mrs A, Lloyds agreed to a temporary arranged overdraft limit of £210. This was to protect Mrs A from a potentially prolonged period of incurring far more expensive unarranged overdraft fees and to provide her with some breathing space while more appropriate longer-term options were explored. This temporary facility was due to be repaid within six-months but as it was Mrs A returned to a credit balance much sooner than this.

So it seemed to me that Lloyds did exercise forbearance and due consideration when Mrs A got in contact in July 2014 and it offered her appropriate temporary relief, which did resolve matters. And once this was done the temporary agreed overdraft was removed from Mrs A's account. Therefore, I didn't agree that it was unfair for Lloyds to have provided Mrs A with an overdraft at this stage, or that she lost out because of this.

I then proceeded to look through Mrs A's statements from July 2014 onwards. And I couldn't see that Lloyds ought to have been aware that Mrs A might have been struggling during these periods. It was fair to say that Mrs A did incur unarranged overdraft and associated fees. And I acknowledged that Mrs A might well have argued that this in itself ought to have led Lloyds to have realised that it was unfair to apply these charges. But it was also fair to say that these charges were incurred sporadically.

And while I wasn't seeking to make retrospective value judgements over Mrs A expenditure, nonetheless there were significant amounts of non-committed, non-contractual and discretionary transactions going from the account. And it was these transactions rather than any charges which were causing Mrs A to go into an unarranged overdraft when she did. Equally the amount being credited to Mrs A's account each month didn't indicate that the charges would cause difficulty. Indeed, Mrs A often had a credit balance on the account, which further supported that any difficulties in July 2014 were temporary.

I accepted that neither of these things in themselves (or taken together) meant that Mrs A wasn't experiencing financial difficulty. But I didn't think that there was anything in Mrs A's account statements or in the transactions in themselves which ought to have alerted Lloyds to further financial difficulty – especially as Mrs A having got into contact previously indicated she knew assistance was available if she was experiencing difficulty. And, in these circumstances, Lloyds had more reason to expect Mrs A to get in contact if she was struggling or needed more help.

Bearing all of this in mind, I didn't think that it was unreasonable for Lloyds to proceed with the interest, fees and charges it did add to Mrs A's account. And I didn't think that Lloyds did unfairly charge Mrs A in circumstances where it ought to have realised that she may have been experiencing financial difficulty.

I acknowledged that Mrs A's financial circumstances may have taken a turn for the worse in light of her recent diagnosis and I was sorry to hear about this. However, Mrs A had asked us to consider whether she was entitled to a refund of the historic charges applied to her account. And having carefully considered everything, I was minded to find that she wasn't because I didn't think Lloyds applied any of the interest, fees and charges it did to Mrs A's account unfairly. And as this was the case, I wasn't intending to uphold Mrs A's complaint.

Lloyds' response to my provisional decision

Lloyds didn't provide anything further for me to think about.

Mrs A's response to my provisional decision

Mrs A confirmed receiving my provisional decision and told the adjudicator that she was disappointed that I hadn't agreed with her initial view on the complaint.

My findings

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

My provisional decision set out in some detail why I wasn't intending to uphold Mrs A's complaint. And as neither party has provided anything further or challenged my findings, I've not been persuaded to alter my conclusions on this matter. So having carefully considered everything, I'm not upholding this complaint.

I appreciate this is likely to be very disappointing for Mrs A – especially given recent events and our adjudicator initially, albeit erroneously, concluded her complaint should be upheld. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 2 December 2021.

Jeshen Narayanan
Ombudsman