

Complaint

Mr C is unhappy with what Lloyds Bank PLC ("Lloyds") has done to put things right in relation to his complaint about his overdraft.

Background

When the complaint was referred to us Lloyds agreed to refund all the interest, fees and charges it added to Mr C's account from February 2019 onwards. One of our adjudicators looked into Mr C's concerns and thought that what Lloyds had agreed to do to put things right was fair and reasonable in the circumstances of the case. Mr C disagreed and so the complaint was passed to an ombudsman for a final 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.

Having carefully considered everything, I think that what Lloyds has already agreed to do to put things right for Mr C is fair and reasonable in all the circumstances of his complaint. I'll explain why I think this is the case.

Lloyds has agreed that it ought to have realised that Mr C's account was in difficulty and it shouldn't have added any interest, fees and charges to Mr C's account from February 2019 onwards. And it has agreed to refund all the interest, fees and charges added to Mr C's account from then in order to put things right.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, or continued to allow a consumer to use, a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year. That's what Lloyds has agreed to do here, so it has agreed to do what I'd normally expect a firm to do in these circumstances.

In this case, Mr C has been left with an outstanding balance even though he's been 'refunded' all of the interest, fees and charges applied from February 2019. So while Mr C

has been left with an outstanding balance to repay and he might be unhappy with this, Lloyds has done what I'd normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr C believes that Lloyds should do more. As I understand it, he thinks that Lloyds shouldn't have provided him with an overdraft in the first place so he should have all his interest, fees and charges back – not just some of them. And he's also unhappy that Lloyds now plans to reduce his overdraft limit.

I've carefully thought about what Mr C has said. And in light of this, I've thought about whether it was fair and reasonable to provide Mr C with an overdraft in the first place.

Lloyds needed to make sure it didn't lend irresponsibly. In practice, what this means is Lloyds needed to carry out proportionate checks to be able to understand whether Mr C could afford to repay any credit it provided. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Lloyds says it agreed to Mr C's initial overdraft application and his limit increases after it obtained information on his income and expenditure and carried out a credit search. On the other hand, Mr C says no checks were done at all. I've carefully thought about what Mr C and Lloyds have said.

I have to start by saying that Lloyds did ask Mr C about his income and expenditure before providing the overdraft and subsequent limit increases. And the information provided did suggest that what was being advanced was affordable. However, I'm mindful that Mr C made a number of applications within a short period of time. And in these circumstances, I think that Lloyds should have taken a closer look at his circumstances before agreeing to the increases.

That said, having looked through Mr C's statements, in the lead up to the overdraft being provided and the increases, I don't think that there was anything concerning in this period of time. In particular, Mr C had operated his account with a reasonable surplus for an extended period. And there wasn't anything in Mr C's account transactions prior to the increases which contradicted what Mr C had declared during his applications either. As this is the case, I'm satisfied the information available suggested Lloyds was reasonably entitled to conclude Mr C could repay what he was being lent within a reasonable period of time.

I know that Mr C's position did worsen after the increase to £3,100.00 was agreed. But this was after the decision to lend had already been taken. And it wouldn't be fair and reasonable for me to use hindsight here, or say that Lloyds should have known this would happen. Equally, Lloyds has accepted that it ought to have stepped in by the time Mr C's account was due to be reviewed in February 2019. And it's refunded the charges it added from then.

I know Mr C says the interest fees and charges led to direct debits being missed. But these payments were refused because he had insufficient funds in his account. So I can't see how not having the overdraft in the first place would have changed this, especially as Mr C will still have a balance after all adjustments have been made and I'm satisfied that these payments would have been missed even if Mr C had been refused an overdraft in the first place. As this is the case, I'm satisfied that Lloyds' offer does adequately compensate Mr C for his losses.

Finally, I've thought about what Mr C has said about Lloyds wanting to reduce his overdraft limit to £850. I know Mr C is unhappy with this. But as Mr C complained that his overdraft was unaffordable for him, I don't think it is unfair for Lloyds to have taken this into account or put measures in place to ensure Mr C doesn't accrue further charges he can't afford to pay.

So I don't think it would be fair and reasonable for me to say that Lloyds should continue to provide an increased overdraft limit to Mr C in circumstances where, bearing in mind what Mr C has said, it has concluded he can't afford it.

Overall and having considered everything, while I do appreciate Mr C's strength of feeling on this matter, I think that what Lloyds has already done to put things right for him is fair and reasonable and it hasn't treated him unfairly. And I leave it up to him to decide whether he wants to accept Lloyds' offer. I realise that this will be very disappointing for Mr C. But I hope that he'll understand the reasons for my decision and he'll at least feel that his concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what Lloyds Bank PLC has already agreed to do to put things right for Mr C is fair and reasonable in the circumstances of his complaint. So I'm not requiring it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 March 2022.

Jeshen Narayanan
Ombudsman