

Complaint

Miss H is unhappy with what Lloyds Bank PLC (“Lloyds”) has done to put things right in relation to her complaint about her overdraft.

Miss H is being assisted in her complaint by her partner. So where I’ve referred to Miss H, insofar as any arguments made, I’m referring to the points that have been made by her partner.

Background

One of our adjudicators initially looked at Miss H’s complaint. And she thought that Lloyds ought to have realised that Ms H’s overdraft had become unsustainable for her by August 2019 and it needed to refund the interest, fees and charges it added from this point onwards. Lloyds agreed with our adjudicator but Miss H didn’t 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 Miss H 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 Miss H’s account was in difficulty and it shouldn’t have added any interest, fees and charges to Miss H’s account from August 2019 onwards. And it has agreed to refund all the interest, fees and charges added to Miss H’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, Miss H has been left with an outstanding balance even though the credits she's made to her account have been factored in and she's been 'refunded' all of the interest, fees and charges applied from August 2019. So while Miss H 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.

Miss H believes that Lloyds should do more. As I understand it, she thinks that Lloyds shouldn't have provided her with an overdraft in the first place, or at least increased her limit by as much and as it did. I've carefully thought about what Miss H has said. And I've started by looking at whether it was fair and reasonable to provide Miss H with an overdraft and limit increases 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 Miss H 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 Miss H's initial overdraft application and her limit increases after it obtained information on her income and expenditure and carried out a credit search. On the other hand, Miss H says she was already struggling. I've carefully thought about what Miss H and Lloyds have said.

I have to start by saying that Lloyds did ask Miss H about her income and expenditure before providing the overdraft and subsequent limit increases. And the information provided did suggest that what was being advanced was affordable – when Miss H's declared expenditure was deducted from her income she did appear to have enough to repay the funds she was applying for. However, I'm mindful that Miss H 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 her ability to repay rather than simply rely on what had been declared before agreeing to the increases.

That said, having looked through Miss H's statements, in the lead up to the overdraft being provided and the increases, it's noticeable that Miss H received a significant influx of funds in January 2018. So while Miss H may have had a low credit score (I note that there was some payday lending) and this may have played some part in the assessment, I would have expected Miss H's account conduct and account balances would have played an even larger part in any decision to lend as it was a rich source of data. I'd also point out that there isn't an outright prohibition to lending to a customer who'd taken payday loans.

In particular, Miss H had operated her account with a surplus for periods. And when the discretionary transactions taking place from the account are stripped out, it seems to me that Miss H did have sufficient disposable income to be able to repay the overdraft within a reasonable period of time, at least when the limit increases were initially provided.

I've also seen the point made about Lloyds' refusal to provide a loan. But this was a different product with a different repayment schedule and therefore subject to different parameters. And as Miss H already owed Lloyds a further £5,000.00 on her overdraft by the time she applied for the loan, I don't think that Miss H being refused the loan means that she shouldn't have been provided in the overdraft in the first place.

I know that Miss H's position did worsen after the increase to £5,000.00 was agreed. Although, it's not immediately apparent to me what caused this as there appears to be a lot of discretionary spending and account transfers. 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.

I do think that Lloyds was required to monitor Miss H's use of her overdraft after the limit was increased and it has accepted that it ought to have stepped in by the time Miss H's account was due to be reviewed in August 2019. And in the absence of Miss H getting in touch before this to ask for help, I'm satisfied that it would have been entitled to wait until the next review date to carry out its review.

Finally, I've thought about Miss H's points regarding a distress and inconvenience award from Lloyds. I know Miss H says that Lloyds adding charges exacerbated her difficulty and left her in fear of further charges. I'm sorry to hear about what Miss H has told us and sympathise with the difficult position she found herself in. But I do think it's fair to say that Miss H's also bears some responsibility for her position because she did apply for the overdraft and subsequent limit increases in circumstances where she was best placed to decide whether they were affordable for her. That is not to say that Lloyds didn't have any obligations or responsibilities here.

Clearly Lloyds did have some obligations and responsibilities and I've already found that it ought to have realised that the overdraft had become unsustainable for Miss H in August 2019 and that is why it needs to refund the interest and charges added from then. Miss H also had the use of funds which given what she's told us it seems as though she needed at the time. Miss H has repeatedly said Lloyds' decision to provide her with an overdraft and subsequent limit increases was unfair because she was already in difficulty. And her account conduct suggests she may have ended up taking out even more payday lending, but for being provided with the overdraft and limit increases. So I'm not persuaded that Lloyds' actions, in this case, caused Miss H additional distress and inconvenience at a level which would warrant an award here.

Overall and having considered everything, while I do appreciate Miss H's strength of feeling on this matter, I think that what Lloyds has already done to put things right for her is fair and reasonable in the circumstances of her case and it hasn't treated her unfairly. I therefore leave it up to her to decide whether she wants to accept Lloyds' offer. I realise that this will be very disappointing for Miss H. But I hope that she'll understand the reasons for my decision and she'll at least feel that her 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 Miss H 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 Miss H to accept or reject my decision before 13 April 2022.

Jeshen Narayanan
Ombudsman