

The complaint

Mr D complains that Lloyds Bank PLC (“Lloyds”) didn’t support him regarding the management of his current account and his overdraft facility. He believes they should have seen the potentially damaging transactions taking place and should have intervened.

What happened

Mr D holds a current account with Lloyds. He initially held an overdraft facility of £1,800 on the account. He says during some of the years he held the account, he was under a lot of pressure from work and family and was also in financial difficulties. Mr D also says he formed a gambling addiction during the time and relied on his account with Lloyds to deposit money into various gambling accounts. He says, at times he was gambling more than he could afford and began to chase his losses.

Mr D’s overdraft facility has increased and decreased over the years he has held the account. Most notably, at around January 2017, Mr D’s overdraft facility was increased to £2,000. It increased further at around July 2017 to £2,250. It was increased again to £2,500 at around September 2017.

Mr D says he has now received professional help for his gambling addiction. He believes Lloyds should have seen the potential damaging transactions that were taking place and should have put in place safeguarding measures. So, he complained to Lloyds.

Lloyds responded and explained to Mr D that although there is a duty of care they must provide as a responsible lender, there is also a requirement for their customers to be able to conduct their finances in a feasible manner.

Mr D, unhappy with Lloyds response, brought his complaint to our service. Our adjudicator found that Lloyds should have done more to put things right and that from July 2015 onwards, it ought to have been apparent to them that Mr D was unlikely to have been able to repay what he owed. The adjudicator explained that Mr D was using his overdraft to fund the gambling for a large amount of transactions. In settlement, our adjudicator said that Lloyds should rework Mr D’s account to remove all the interest and charges added to his account from July 2015.

Lloyds disagreed with the adjudicator’s findings. They believe, among other things, that Mr D’s spending and use of his overdraft facility on his account was sustainable as he had a regular monthly salary that brought his account into credit each month. They say there was no extended period when the account was not in credit balance during the years reviewed.

As Lloyds disagreed, the complaint was passed to an ombudsman.

I issued a provisional decision on 29 April 2022 where I explained why I intended to not uphold Mr D’s complaint. In that decision I said:

“Based on what I’ve seen so far, I don’t intend to uphold this complaint and I won’t be asking Lloyds to do anything further.

We've set out our approach to unaffordable/irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach while deciding Mr D's complaint.

Mr D has said that he suffered from a gambling addiction during some of the years he held an account with Lloyds. I'm sorry to hear that was the case but pleased to hear that he sought help and has now been able to bring his addiction under control. I've considered what he's said about his gambling addiction, but it doesn't automatically mean that Lloyds should refund any historic interest, fees and charges it has added to his account over the years.

Furthermore, I haven't considered whether the amount of fees Lloyds decided to charge Mr D, were fair and reasonable. This is because this is a commercial decision and it's down to Lloyds to decide how much to charge for its services. This isn't something I can get involved with.

That said, I've looked at whether Lloyds was aware or ought to reasonably have been aware, that Mr D could be in financial difficulty through the use of his account. And if so, whether it was appropriate for Lloyds to apply any interest, fees and charges. So, I've considered whether there were any instances where Lloyds didn't treat Mr D fairly and reasonably because it failed to act when told Mr D was in financial difficulty, or it failed to recognise this in circumstances where it ought to have done.

Our adjudicator has said that Lloyds should have done more to put things right and that from July 2015 onwards, it ought to have been apparent to them that Mr D was unlikely to have been able to repay what he owed.

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. But I can't see that Mr D made Lloyds aware of his gambling addiction or that he was in financial difficulty.

So, I've also considered whether Lloyds carried out reasonable and proportionate checks to satisfy itself that Mr D would be able to repay any credit and whether a fair lending decision was made.

Before approving these overdraft applications, Lloyds needed to make sure it didn't lend irresponsibly. This means it needed to carry out proportionate checks to satisfy itself that Mr D could afford to repay the amount it was lending. A proportionate check is dependent on a number of factors including – but not limited to – Mr D's particular circumstances (e.g. his financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit he was looking to obtain.

I've looked at the application data Lloyds has provided me at the time Mr D's overdraft limits increased. Each application had a unique credit score ID, suggesting a credit check was completed. While it doesn't show what specific data the credit checks shown, I'm satisfied it is likely a credit check was completed on each occasion.

Having looked at Mr D's spending and account habits around the time his overdraft limit increased, I can see he had a regular salary coming into his account. His monthly salary was around £2,000, and in some months, it was supplemented by additional credit into his account of around £540 for rent payments. I also can't see his account or overdraft facility being used for regular or persistent gambling transactions around the times Mr D's overdraft limits increased.

Mr D, also on occasions credited his account with large sums of money, ranging from £15,000 to £40,000.

Lloyds must monitor their customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties. But I can't see that Lloyds ought to have been aware that Mr D might have been struggling during these periods. It's fair to say that Mr D did incur overdraft and associated fees and he may well argue that this in itself ought to have led Lloyds to realise that it was unfair for it to apply these charges. But it's also fair to say that these charges were incurred sporadically.

Mr D often had a credit balance on the account, which further supported that any difficulties were temporary.

I accept that neither credit checks, or Mr D's account activity meant that Mr D wasn't experiencing financial difficulty. But I don't think there was anything in Mr D's account statements or in the transactions themselves which ought to have alerted Lloyds to further financial difficulty – at the times Mr D's overdraft limits increased.

So, in these circumstances, I don't think it was unreasonable for Lloyds to proceed with the interest, fees and charges it did add to Mr D's account. And I don't think, at the time of each limit increase, that there was a point where Lloyds ought to have realised it was increasing Mr D's indebtedness in a way that was unsustainable or otherwise harmful.

I appreciate this is likely to be very disappointing for Mr D – especially as our adjudicator concluded his complaint should be upheld. But I hope he'll understand the reasons for my intended decision and that he'll at least feel his concerns have been listened to."

I set out that I didn't intend to uphold this complaint. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses to the provisional decision

Lloyds responded and said they had no further comments to make.

Mr D responded and said that Lloyds were made aware of his gambling problem back in 2015 when he went over his credit limit on a credit card he had with them. He says he used his current account to gamble, then turned to his credit card when his funds had depleted.

Mr D says that due to his gambling, it was agreed that his credit card be deactivated, and a regular repayment amount made to pay off the outstanding amount.

Mr D also says the large deposits into his current account came from redundancy and family inheritance – the majority of which he has now lost through his current account with Lloyds due to gambling.

As both parties responded before the deadline I set out in my provisional decision, I'm now in a position to reach my decision.

What I've decided – and why

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

Mr D says that Lloyds were made aware of his gambling problem in 2015. However, I can't see that Lloyds were made aware. I have implied by what Mr D has said that he believes Lloyds *ought* to have been aware of his gambling in 2015, due to the use of his credit card. While that may be so, it doesn't necessarily follow that Lloyds ought to have done anything differently with his current account.

Mr D has explained the source of the large sums of money he received. It is an unfortunate set of circumstances that most of that money has now left his account. But I can't say Lloyds were to blame in this instance. Mr D was mainly spending his own funds in his current account. And when he did use his overdraft credit facility during the months his limit was increased, he had regular income coming into his account, bringing him out of debt on each occasion, and I can't see any irregular spending habits. So, I can't fairly say Lloyds ought to have realised it was increasing Mr D's indebtedness in a way that was unsustainable or otherwise harmful.

So, in this instance, I won't be asking Lloyds to do anything further.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 June 2022.

Ronesh Amin
Ombudsman