DRN-3516340

The complaint

Miss P has complained about the lack of support Lloyds Bank PLC ("Lloyds") gave her when she was in financial difficulty. She says the fees it applied to her account were disproportionate and caused hardship.

What happened

Miss P complained to Lloyds about the charges applied to her account. Lloyds agreed it should've stepped in earlier and identified she was in need of long-term support and refunded all charges applied to her account after November 2019.

Miss P was dis-satisfied with this and brought her complaint to this service. Our adjudicator looked at all of this and initially thought that Lloyds should've stepped in from October 2016 because her statements showed large amounts of borrowing on payday loans. But on review he thought that due to high amounts of non-essential spending that Lloyds had done enough to put things right.

Miss P disagreed and has asked for an ombudsman's decision. I issued my provisional decision on 6 May 2022 and explained why I was proposing to uphold Miss P's complaint.

I invited both parties to let me have any further submissions before I reached a final decision. Both Lloyds and Miss P have come back with further information – but none of it new information.

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.

Miss P has asked in her response to my provisional decision whether a separate complaint about her credit card should be included in this decision. To confirm my decision only deals with Miss P's overdraft and any complaint about a credit card will be dealt with separately. Miss P has also asked whether there is grounds for the cut off to be earlier. But after examining at all the evidence I'm satisfied that the point Lloyds should've stepped in should remain at the date stated in my provisional decision.

In my provisional decision I said that:

"*I've seen that Miss P has in some of his correspondence referred to the proportionality of the charges applied to her account. But before I go any further, I want to be clear in saying that I haven't considered whether the various amounts Lloyds charged over the years were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately, how much a bank charges for services, what services it provides and to who is a commercial decision. And it isn't something for me to get involved with.*

That said, while I'm not looking at Lloyds's various charging structures or processes per se, it won't have acted fairly and reasonably towards Miss P if it applied any interest, fees and *charges to Miss P's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Miss P was experiencing financial difficulty. And where this is the case, I'd expect Lloyds to put Miss P in the position she'd be in now if she hadn't paid any further interest and charges on that credit.*

This means I'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.

Initially our adjudicator thought Lloyds should refund all interest and charges from October 2016 as Miss P's statements showed she was in a cycle of repeated payday loans. Following Lloyds' response and further review our adjudicator changed his view on this and felt that despite the high amount of payday loans there were also regular transactions relating to non-essential spending such as holidays and hotels.

I'm in agreement with our adjudicator here. Although I accept Miss P's statements show payday lending and use of credit cards, there was a regular healthy salary coming into the account which brought her overdraft down and sometimes paid it off. And while I'm not seeking to make retrospective value judgements over her expenditure, nonetheless there are significant and at times large amounts of non-committed, non-contractual and discretionary transactions including holidays and hotels.

I accept what Miss P has told us that she had to travel for work and that these were work related costs. But there is no evidence to suggest Lloyds knew this and therefore that these transactions weren't discretionary spending. So I don't think that Lloyds ought to have realised Miss P was in financial difficulty when it reviewed Miss P's account in October 2016.

But I do think Lloyds should've stepped in before it did because I can see by September 2017 her statements show more transactions around paying back credit rather than discretionary spending. And although a healthy salary was still coming into the account which brought the overdraft down – almost immediately it went back up again - and this cycle continues.

By this point, Lloyds ought to have realised that Miss P's use of her overdraft was unsustainable. As she was in a cycle of repeated payday borrowing. In these circumstances, Lloyds ought to have realised that Miss P was at a significant risk of being unable to repay what she already owed. So Lloyds should have stopped providing the overdraft on the same terms and treated Miss P with forbearance rather than charge even more interest, fees and charges on the overdraft.

Miss P ended up paying additional interest, fees and charges on her overdraft and this ended up exacerbating difficulties she already had in trying to clear it. So I currently think that Lloyds didn't treat Miss P fairly and she lost out because of what it did wrong. And this means that it should put things right."

I've considered both parties submissions but ultimately they don't give me any reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss P's complaint for Lloyds to put things right by:

- Reworking Miss P's current overdraft balance so that all interest, fees and charges applied to it from 7 October 2017 are removed.

AND

- If Lloyds considers it appropriate to record negative information on Miss P's credit file, Lloyds should reflect what would have been recorded had it started the process of taking corrective action on the overdraft from 7 October 2017.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss P along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Lloyds should remove any adverse information from Miss P's credit file. Lloyds can also reduce Miss P's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Miss P a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I uphold Miss P's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 4 July 2022.

Caroline Davies
Ombudsman