

The complaint

Miss D complains that Lloyds Bank PLC (“Lloyds”) acted irresponsibly by increasing her overdraft limit and acted unfairly by continuing to apply charges to her account when she was in financial difficulty.

What happened

Miss D had an overdraft with Lloyds from 2006. Miss D arranged a repayment loan with Lloyds regarding this in November 2017. Miss D complained to Lloyds in February 2022 that her overdraft and charges applied to it were unaffordable. Lloyds said we couldn’t investigate the overdraft prior to six years of Miss D making her complaint or within three years of becoming aware that she had cause to complain. So it would only look at her overdraft from February 2016.

Lloyds says all overdraft increase applications from this point were made online by Miss D and were properly assessed against its lending criteria. And as Miss D didn’t make it aware of any financial difficulties when applying for overdraft increases it didn’t uphold her complaint.

Miss D was dis-satisfied with this and brought her complaint to this service. Our adjudicator looked at all of this and thought we could only look at Miss D’s overdraft from February 2016. They thought that Lloyds ought to have known Miss D was in financial difficulty by August 2016 as she hadn’t seen or maintained a credit balance for a significant period of time and that it should refund all interest and charges from this point onwards.

Lloyds accepted our adjudicators findings and agreed to:

- 1) Rework Miss D’s current account overdraft balance so all interest fees and charges applied to it from August 2016 onwards are removed. This means after taking into consideration previous refunds a sum of £1,009.62.
- 2) This refund will be treated as overpayments and returned to Miss D along with 8% simple interest, minus tax, from the date they were made until the date of settlement.
- 3) As Lloyds isn’t aware of any adverse information on Miss D’s credit file in respect of this account it will take no action.

Miss D didn’t wish to accept this offer – she says she wasn’t aware she could make a complaint regarding the affordability of her overdraft until recently and wants her overdraft looked at from 2009 and has asked for an ombudsman’s decision.

What I’ve decided – and why

Why I can only look at Miss D’s overdraft from February 2016

I can’t look at all the complaints referred to me. The rules applying to this service say that, where a business doesn’t agree, I can’t look at a complaint made more than six years after

the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook.

And in this case Lloyds hasn't agreed. Miss D's complaint was made in February 2022 in relation to her overdraft dating back to 2009. Six years before she raised her complaint is February 2016. So under the six year rule we can only look at increases in her overdraft limit and the charges applied – the events complained about – from February 2016. So I need to think about whether the complaint was made within three years of when Miss D should reasonably have been aware she had cause to complain.

I can see that Miss D contacted Lloyds in November 2017 about suffering financial difficulties. Following this contact, Miss D arranged a loan to repay her overdraft. So I think Miss D ought to have known enough when she made contact with Lloyds whether her overdraft was affordable for her and that Lloyds did something wrong by increasing her limit over the years. I think Miss D should reasonably have been aware she had reason to complain about the affordability of her overdraft at this time.

Three years from this is November 2020. As this doesn't provide with Miss D with a longer period of time to complain about the affordability of her overdraft and the charges applied it means we can only look at the affordability of Miss D's overdraft from February 2016 (6 years prior to Miss D raising her complaint).

I can still look into complaints made outside the time limits if I'm satisfied the failure to comply with them was due to exceptional circumstances. Miss D has said that she didn't know she could complain until recently but I'm afraid not knowing you could complain isn't considered an exceptional circumstance. So because Miss D didn't refer her complaint earlier my decision is that I'm unable to look into Miss D's complaint about her overdraft being unaffordable and the charges applied to it before February 2016.

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 D is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

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 charged the fees and given the credit they shouldn't have. And we may award modest compensation that we think is fair and reasonable.

So where a business continues 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.

I'm in agreement with our adjudicator here that although Miss D arranged to pay back her overdraft with a loan in 2017 when Miss D got in touch with it about her financial difficulties I don't think this was soon enough. I say this because even having a cursory look at Miss D's

bank statements I can see she hadn't been able to maintain or see a credit balance for an extended period of time and think that Lloyds should've stepped in by August 2016.

Lloyds has agreed to this – and Miss D will be 'refunded' all of the interest, fees and charges caused by her overdraft from August 2016. So I'm satisfied that what Lloyds has already agreed to do to put things right for Miss D is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Miss D to decide whether she wishes to accept Lloyds's offer.

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 D is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 8 August 2022.

Caroline Davies
Ombudsman