

## **The complaint**

Mr O complains about the alteration of his Basic bank account to a Classic account which he says happened without his consent.

Mr O also complains that the initial overdraft he got he never applied for and the subsequent limit increases ought not to have been approved for him due to his past financial history.

## **What happened**

Mr O commenced his complaint with Lloyds Bank in January 2022 but received no response and so sent a second complaint letter in February 2022.

The heart of Mr O's complaint has several elements to it. The first part is that he says the account was upgraded without his consent.

The second part is that the new account gave him an overdraft which was not good news for him.

The third part is that with his bad credit history, having access to the new account which allowed him to apply for credit in the form of an overdraft, meant that he was allowed to get to a £2,500 credit limit which he used and now he can't pay it back. He says this was irresponsible lending by Lloyds.

Mr O says that he has been treated unfairly. He was given 30 days where the account was 'frozen' to pay off the overdraft but that was not enough. The account has closed now.

The bank has explained that it responded with its formal final response letter (FRL) to Mr O's complaint in May 2022.

In its submission to us Lloyds has summarised the background to the account history.

The Basic account Mr O had was due to be upgraded. Lloyds told us that it monitors basic account holders' usage and will upgrade accounts when it considers a customer merits one.

Lloyds wrote to Mr O in May 2021 to explain that his account was going to be upgraded on 26 July 2021 giving Mr O time and the opportunity to contact Lloyds if he did not want that upgrade. The account was upgraded to a Classic account on 26 July 2021.

Mr O received a £500 overdraft. Mr O says he did not apply for this. This overdraft was in place in August 2021.

After that Mr O applied for some credit limit increases. In the final response letter Lloyds said:

- Lloyds originally gave Mr O a Basic bank account due to his credit history at the time
- When reviewing Mr O's credit file, as the historic adverse information had been removed by 2021 (after six years had passed) and the fact Mr O had been managing

the Basic account well, then it considered that a Classic account would suit him.

- The £500 overdraft facility was not automatically applied to the new Classic account. Mr O applied for it on 24 August 2021
- Mr O applied for the credit limits to be increased and Lloyds considered these were approved and done responsibly
- Mr O had the option to remove the arranged overdraft either with the consolidation loan he obtained from Lloyds in September 2021 or through the other funds he obtained from another lender. But Mr O chose not to do that.
- The account had been closed and a default had been applied to the account in the correct way. The account was sold to a third party.

Mr O's overdraft was increased to £2,500 and from December 2021 he was sent letters from Lloyds to say that he was over his limit and later he was informed that its collections team were handling his account.

Mr O referred his complaint to the Financial Ombudsman Service in May 2022. That was soon after Lloyds had informed Mr O that his bank account had been assigned with a debt balance of £2,580.46 to a third party.

The account is closed with Lloyds.

After Mr O had referred his complaint to the Financial Ombudsman Service in May 2022, one of our adjudicators looked at the complaint in August 2022. He did not think that Lloyds had acted irresponsibly in approving the overdraft and limit increase application. He came to the view that the checks they carried out before giving Mr O the overdraft and limit increases were reasonable and proportionate in the circumstances.

Mr O disagreed. He has written to us with many submissions. These listed below relate to what he said after our adjudicator's view.

Mr O was concerned that we had not looked at the complaint properly as he did not think that the Financial Ombudsman Service had gathered all the information he felt we needed to be able to look at it.

Mr O sent to us a copy of the Final Response Letter which we already had but maybe Mr O did not know that. Mr O pointed out that he had had the Basic account for many years and those sorts of accounts were given to people with poor credit and at the time he had poor credit. He has said that he had County Court Judgments (CCJs) in the past and other unpaid debts.

Mr O has said that the bank account statements would have shown thousands of pounds being spent on transactions relating to betting and gaming. He said he used all his wages some months on these transactions.

Mr O said that he has lots of current CCJs. And he had mortgage arrears, council tax arrears and poor payment with gas and electric bills.

Mr O said that these gambling payments over twenty years using his Basic account would have been seen by Lloyds. And his bad credit with CCJs and Court Orders against his name leads him to pose the question whether Lloyds' approval of the overdraft limits was responsible lending – which is the heart of Mr O's complaint.

Mr O had assumed that our adjudicator had not seen the bank statements for the Basic account, but in fact he had received them from Lloyds going back to March 2018.

Mr O has pointed out that the overdraft facility went from £0 to £2,500 in 28 days. Mr O says that his request for a loan to pay off his overdraft was refused.

Mr O disagrees strongly with the idea that Lloyds have lent to him responsibly. He thinks Lloyds had a duty of care to extend to him.

The complaint was passed to me to decide. I make it clear that this decision deals with the overdraft issues only and not any complaint Mr O may have about his credit card or any loans.

After I had reviewed Mr O's complaint in August 2022, I asked Lloyds to send me details of all of the issues Mr O had raised, including what it knew of his credit history, information on the declined loan Mr O says was refused by Lloyds, and information surrounding the procedure it went through before approving an overdraft. We had received most of the information that was needed already but additional details were requested by me and I received them.

On 19 August 2022, through our adjudicator, I asked Mr O to send us details of the items he has said were relevant to the complaint, such as details of his arrears, his CCJs and his other bad debts. Mr O had given us the impression he may have current bad credit history.

Mr O asked for additional time to send these details. Our adjudicator suggested he send us a copy of his credit file. Mr O has been given several extensions of time but nothing has been received from him. It seems that this may well be historic debt records that Mr O is trying to find and send to us. So that may be the reason we have not got it.

I referred to the evidence in the provisional decision I issued on 11 October 2022 and gave both parties one month to respond.

Lloyds has not responded to my provisional decision as the outcome was a non-uphold I would not necessarily expect it to. It submitted all it wished to submit before I issued my provisional decision.

Mr O has replied to say that he accepts all I have said except for that part relating to the assignment of the overdraft debt to a third party which has resulted in a default being added to his credit file. He says this needs to be addressed by me and he wants the default removed. He confirms that he is receiving advice from a volunteer organisation which I am glad to hear.

For ease of reading I set out in the next section the provisional decision in full (in smaller type to differentiate it), followed by my final 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.

### ***My provisional decision findings dated 11 October 2022.***

Lloyds will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So, I don't consider it necessary to set all of this out in this decision.

An arranged overdraft is a fixed borrowing limit, agreed in advance, which allows the consumer to spend up to that limit, through all the usual payment methods. This will usually be at a cost, either through a fixed monthly or daily fee whilst the account is overdrawn, and/or interest charged on the overdrawn balance.

The questions I ask myself when considering a complaint of this nature are: Did the lender carry out reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way? If so, was a fair lending decision made? If not, what would such checks more likely than not have shown?

Having carefully considered everything provided, I have provisionally decided that Lloyds acted fairly when it approved Mr O's overdraft facility in August and September 2021. And that it acted correctly when refusing further credit limit increases in September 2021, and November 2021 and January 2022. I give my explanations and reasoning here.

To make my provisional decision easier to read I have sub-divided it into sections. There is inevitably an overlap between sections.

### **Change of account**

Lloyds' notes tell me that Mr O's chosen, preferred method of communication was email through his on-line banking. So, I do not consider it unusual or unreasonable for Lloyds to have communicated with him in that way for the account information and news. It appears that Mr O opened the emails – not all of them. But before and after May 2021 he had opened those emails and so I think it's reasonable of me to conclude that Mr O was aware of that inbox and the letters from the bank.

I've seen the correspondence to Mr O from Lloyds in May 2021 informing him of the change from a Basic account to a Classic account. It gave him additional features which were the option to apply for an overdraft and the option to request a cheque book. And it informed him he'd be able to manage the account using internet, mobile and telephone banking.

The letter also said:

*'If you're happy the account is still right for you, you can carry on using it as you do today, and if we don't hear from you before 26 July 2021, we'll take it to mean you accept the change. Whenever we make a change we also let you know that you can choose to close your account.'*

I don't consider that the change of account was done without Mr O's consent. The language of the letter in May 2021 was to inform him that unless he objected to the change of account then it would go ahead on 26 July 2021.

I have been given information by Lloyds that Mr O had received that letter but it had remained in his on-line 'in-box' as an unread email. So, that may be why Mr O thinks that the change happened without him knowing about it. But I don't think that was the case. And as I have explained earlier, as this was his preferred method of communication then Lloyds did the right thing by sending it to him through that route.

The reason given in the terms and conditions relating to the ownership of a Basic account clearly indicate that Lloyds can alter that.

The terms say (page 8 of the document sent to us):

*'From time to time we will review your financial circumstances and the way you are using your account. We may decide to move you to a more suitable account if you become eligible for it. We will write to you about this at least two months before moving your account, giving our reasons.'*

The reasons given in the Lloyds' letter in May 2021 were:

*'You've had your Basic Account for a while and because of the way you've managed your money, you are eligible for an account with more features and services. So, on 26 July 2021 we'll change your account from a Basic to a Classic Account.'*

This is a commercial decision for Lloyds and seems reasonable to me. I have reviewed the bank statements for Mr O's account, which Lloyds has sent to us, and cover the period from March 2018 to April/May 2021. Lloyds' assessment of a well-managed account seems fair and reasonable.

I do not consider it fair or reasonable to attribute to Lloyds any suggestion that giving Mr O this upgraded account with the option to apply for an overdraft led to Mr O's gambling addiction resurrecting itself, or led to Mr O further getting into debt to fund that gambling addiction.

I think that would be too far removed from the reality which was that Lloyds offered him that new account which Mr O did not have to accept. And even if he had not realised he had the new style account until it was created in July 2021, still Mr O had the option to ask for it to be closed or to discuss with Lloyds other options.

And the overdraft of £500 was not an automatic feature – and I deal with this in the next part of my decision. I plan not to uphold this part of Mr O's complaint.

### **Overdraft applications.**

Lloyds has provided for me the copy bank statements for the relevant account leading up to May 2021 and for the periods leading up to each of the credit limit increase applications. And having reviewed them there's nothing in the transactions recorded there which likely would have alerted Lloyds to Mr O having any financial difficulties. Overall, my view is that Lloyds' decision was appropriate and its checks were proportionate.

Lloyds has explained to us that Mr O applied on-line for each of the overdraft limit increases after he had applied for the initial overdraft request. Lloyds told us:

*'In order to qualify for lending, customers must pass credit assessments (using scores), indebtedness assessments (debt/income and industry standard indebtedness scores), policy rules (e.g. employed, good credit history) and an affordability assessment (the full details of which are below). We used a combination of credit reference agency data, models and customer stated data to assess the application from both a creditworthiness and affordability perspective, which is industry standard.'*

Lloyds has explained that it used external Credit Reference Agencies (CRAs) and its own Credit Decisioning System (CDS) to come to opinions on the applications.

Twice Mr O's applications (on-line) were 'referred'. I asked Lloyds to explain that to me and reading all it has said it seems I have two explanations for why Mr O's applications may have been marked 'refer'.

One explanation from Lloyds was that due to the velocity with which Mr O was applying and reapplying for additional credit limit increases, the applications were halted. Lloyds has explained that these are refreshed each 30 days and so a later on-line application proceeded to be checked for affordability. And they were approved.

A second explanation Lloyds has given us is that it uses the CRA and CDS systems which allocates *'...points for each piece of relevant information. These add up to produce an internal score. When a score reaches a certain level then the application is approved. If the score does not reach this level the application is either declined, or referred for a manual review.'*

Lloyds has sent me details of the dates and the outcome of the overdraft applications. It has explained that these were made on-line and it has explained the reasons an application may be marked 'refer'. I've summarised those earlier in this decision.

Lloyds has explained what it does when considering an overdraft application and it follows the usual

requirements according to the Financial Conduct Authority (FCA) Specialist sourcebook – CONC.

And I have created here a summary of the information Lloyds has given me in respect of each application.

<b>Date of application</b>	<b>Existing overdraft limit</b>	<b>Amount applied for</b>	<b>Information given as part of the application</b>	<b>Approved. Rejected or referred?</b>
24 August 2021	£0	£500	Income £2,400 pcm Mortgage/rent £995	approved
24 August 2021	£500	£1,000	As above	approved
24 August 2021	£1,000	£1,500	As above	approved
27 August 2021	£1,500	£2,000	Income £2,730 Mortgage/rent £995	Marked 'refer'
6 September 2021	£1,500	£2,000	Income £2,700 mortgage/rent £995	approved
15 September 2021	£2,000	£2,500	Income £2,600 mortgage/rent £995	approved
15 September 2021	£2,500	£3,000	Income £2,600 mortgage/rent £995	Marked 'refer'
10 November 2021	£2,500	£2,920	Income £2,740 mortgage/rent £1,570	declined
4 January 2022	£2,500	£3,050	Income £2,680 mortgage/rent £1,100	declined

Lloyds has said that where it was marked 'refer' then Mr O would have been invited to speak to a lending officer for the application to be reviewed manually. The fact that the record remained 'refer' then Lloyds has said that suggests Mr O did not pursue the application.

Other notes sent to me by Lloyds tells me that both reasons for 'refer' were due to the velocity rules which I have explained earlier in this decision.

A loan was approved for Mr O between on a date around 23 September 2021 and the Lloyds notes I have relating to the complaint investigation Lloyds carried out show that it was for £4,000. He had told the bank his income was £2,592 and his expenditure was £995. The reason for the loan was to consolidate the lending Mr O had with Lloyds – so I think that means Mr O was going to use it to pay off the overdraft. That loan was paid off on 29 September 2021 using funds from another loan from a different bank lender.

Mr O had reached his credit limit of £2,500 by 16 September 2021. The account was last in credit 1 November 2021.

The listed gambling transactions were few and far between – two in May 2021 and several in October 2021. No overdraft credit limit was increased after 15 September 2021. The declined overdraft credit limit increase application in November 2021 prevented Mr O from having any further money to spend which is at the heart of his complaint. I think it was a reasonable outcome.

The first time Mr O went over his overdraft limit was 1 December 2021. By December 2021 Lloyds was writing to him about him being over his credit limit and so any application for an increase in the overdraft limit at that stage would not likely be a successful one. So those that marked 'declined' seemed a reasonable outcome.

The bank had concluded that the evidence of any financial difficulties earlier in his life (around 2012) would have been removed as credit records usually are kept for six years only. And Lloyds has made a good point which is that obtaining the other loan from another bank lender together with the Lloyds loan showed that there was no further adverse information on his credit files such that these applications likely would have been turned down.

And I have seen a summary of the credit searches it carried out around August 2021 and September 2021 and these do not show anything to cause Lloyds to be on alert to any financial problems.

Lloyds has said to us that it had no record of Mr O telling it about his gambling addiction and the transactions it reviewed on his Basic account, before it was upgraded, did not show that. The transactions show a lot of transfers in and out from other accounts and payments to other individuals. And as I have been sent all of Mr O's bank statements since March 2018, I have looked at them all and in my view there were no records likely to have prompted Lloyds to think that Mr O had a gambling issue.

Mr O seems to be suggesting that records Lloyds may have had from 18 or 20 years before ought to be records that it utilised in 2021. I do not agree. I would not consider that fair or reasonable to expect a bank to keep information about all its customers for that length of time. And it may be in breach of data regulations to keep it for so long - but I have not reviewed that legislation as I do not think it's necessary to do that.

Mr O has told us that he had other adverse information on his credit file and Lloyds ought to have known of it. But despite giving Mr O plenty of time to send to us, for example, a copy of his credit file or any copy documents or correspondence he has about those details, none has been sent to us.

It is in the interests of both parties that the complaint is resolved. This matter has been ongoing since January 2022 and so it seems fair and reasonable that I come to my decision now. And I plan not to uphold this part of Mr O's complaint.

### ***Treated fairly***

Mr O says that he was not given enough help to assist him with the debt. But I disagree. Lloyds actions have been that it stopped overdraft credit increase applications when right to do so, it gave Mr O time in March 2022 for 30 days when the account was frozen to repay it, and earlier in the relationship – in September 2021 – it seems it approved a loan for him to clear the overdraft debt.

The 14 March 2022 letter said this

***'We've put a 30 day hold on your account(s)***

*Thank you for writing to us recently. We know how tough it can be to get in touch about money, so we're grateful for your letter.*

*We've read your letter, and we'd like to let you know that we've put a 30 day hold on the account(s) noted at the top of this letter. We hope this will give you the time to take a breath and have a good think about what you'd like to do.'*

Mr O had mentioned that he was already taking advice from debt assistance charities and so the bank knew this. I have seen reference to the fact that Mr O wanted the final response letter in writing so that he could take it to the charities offering him debt advice (note of 6 May 2022).

After the 30 day 'freeze' period ended, the account was closed and assigned to a third party. This would have been in line with the account terms and conditions.

I do not agree that Mr O was not told about this.

Correspondence has been sent to me by the bank to show that Mr O was sent letters about these procedures and what would happen next.

So, I plan not to uphold this part of Mr O's complaint.

### ***Other matters not already covered in the decision***

#### ***The declined loan***

Mr O said that he was declined a loan. As I have said earlier, the September 2021 loan was approved and paid back early.

Mr O was asked by us about a declined loan and he has told us it was on the telephone in February or March 2022. We have received no details from him. Mr O has said that we should get that recorded call about the declined loan. But it was after the account was in arrears and after he was over his overdraft limit.

The overdraft approval dates pre-dated this refused application then largely it's irrelevant. So, I do not consider I need to obtain information about that declined loan.

If Mr O considers that unfair then as I have said earlier, I am not dealing with complaints about any loans, only about the overdraft approvals in August 2021 and September 2021. I've included it here to show Mr O that I have thought about it.

#### ***Additional evidence from Mr O***

Mr O did send us a list of his CCJs but they were lists of references and details but no dates. He must have obtained those details from a record and we asked to see that record and nothing has been sent to us. So, I do not know when these occurred. They may have been recent or they may have been from two decades before as Mr O has told us this has been an unfortunate part of his life for 20 years.

But I have noticed when I accumulate all his submissions together that these CCJs and charging orders and other bad debts to which he refers may well have been in place when he first applied to Lloyds for a bank account. As Mr O has explained that he was only given a Basic account because of his CCJs and bad debts at the time, and he had that account for 18 to 20 years until it was changed in July 2021.

And in another email Mr O has said: 'yes I have CCJs 15 years ago and still have them in place today 01.09.2022'. and 'These CCJs are 15 years old I don't have orinal [sic] court paperwork'.

Mr O has not sent us any records of any recent entries.

If that is the case, then any checks done in 2021 would not have shown these as credit file entries 'fall off' records after six years. This is a point which Lloyds has said to me. And so, without that detail I have not been able to apply the details to my decision making. But these points are to show Mr O I had thought about them.

#### ***Gambling transactions on the bank statements***



Mr O has said many times in his submission to us that all of his gambling transactions would have been seen as he used the Lloyds Basic account to do them, but I have reviewed the statements and they do not show these transactions. And any they do show are limited and low in number.

#### *Account closure*

Mr O has explained that he is paying the third party £50 a month and is upset his bank account was closed. But the bank did that and was within the terms and conditions of having the bank account to do that.

This marks the end of the provisional decision findings duplicated here for ease of reading for the final decision.

#### ***My final decision findings***

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

Having reviewed that part of the provisional decision about which Mr O said he did not agree - which was that part relating to the assignment of the debt and the imposition of a default – then I am not persuaded to alter my views.

I repeat that part under the sub-heading in my provisional decision 'Treated fairly'. After the 30 day 'freeze' period ended, the account was closed and assigned to a third party. This would have been in line with the account terms and conditions.

I do not agree that Mr O was not told about this. Correspondence has been sent to me by Lloyds to show that Mr O was sent letters about these procedures and what would happen next.

And dealing with the account closure, Mr O has explained that he was paying the third party £50 a month and was upset his bank account was closed. But Lloyds did what it was entitled to do within the terms and conditions of the bank account ownership.

So – for the same reasons set out in my provisional decision which are repeated here and form part of this final decision, I do not uphold Mr O's complaint.

#### **My final decision**

My final decision is that I do not uphold Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 December 2022.

Rachael Williams  
**Ombudsman**