

The complaint

Miss A has complained that Lloyds Bank PLC (“Lloyds”) acted irresponsibly by providing her with an overdraft and increasing her limit. She says it acted unfairly by continuing to apply charges to her account when she was in financial difficulty.

What happened

Miss A was approved for a £500 overdraft on her graduate account with Lloyds in June 2016. The first £1,000 of the overdraft was interest free. Over the next year Miss A applied online and had her overdraft limit increased a number of times until it reached its highest limit of £2,850 in February 2017. In 2018 as Miss A’s financial situation had changed her account was closed for long term support and Miss A took out an Individual Voluntary Arrangement.

Miss A complained to Lloyds that the lending was irresponsible and unaffordable and that the charges applied to her overdraft were unfair when she was struggling financially.

Lloyds said all applications for the overdraft lending passed its credit checks and that all charges were applied to Miss A’s account correctly in line with the terms and conditions of the account.

Miss A was dis-satisfied with this and brought her complaint to this service.

One of our adjudicators looked at this complaint and thought that by January 2017 a proper review by Lloyds of Miss A’s statements would’ve suggested that she wasn’t managing her overdraft facility in a sustainable way and that she may be in financial difficulty and suggested that Lloyds refund all interest, fees and charges applied to Miss A’s overdraft from January 2017.

Lloyds disagreed with our adjudicators view but in order to settle Miss A’s complaint offered to settle the complaint in-line with the adjudicators recommendations and would:

- Re-work Miss A’s current overdraft balance so that all interest, fees and charges applied to it from January 2017 onwards are removed. This amounted to a refund of £1,627.57.
- As the outstanding balance is greater than this amount Lloyds will use the refund to reduce the debt.
- Lloyds will backdate the negative information, default, as though this action commenced in January 2017 and as the process notifying a customer of an account closure and applying a default is three to six months it would back date the present negative information to 30 April 2017.

Miss A didn’t wish to accept this offer as she didn’t feel it had taken into consideration the emotional and mental stress that the situation had on her and the toll that it took on her mental health and has asked for an ombudsman’s 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.

Having carefully considered everything, I think that what Lloyds has already agreed to do to put things right for Miss A is fair and reasonable in all the circumstances of his 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 given the credit they shouldn't have.

So where a business increases 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.

In this case after reviewing Miss A's statements, I'm in agreement with our adjudicator that by January 2017 it was evident Miss A wasn't managing her overdraft in a sustainable way. While Miss A still had a salary coming in which would initially reduce her overdraft, she was spending more and her overall debt was increasing month by month. If Lloyds had carried out a proper review of her statements I think it ought to have realised it was unlikely Miss A would be able to sustainably repay the extra lent within a reasonable period of time.

Lloyds has agreed to settle Miss A complaint in-line with this finding and Miss A will be left with an outstanding balance, once all adjustments have been made, and she's been 'refunded' all of the interest, fees and charges caused by the overdraft facility. So while Miss A will be left with a balance and she might be unhappy with this, Lloyds has agreed to do 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 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 A says Lloyds should do something different here. She says the irresponsible lending and charges took a toll on her mental health and wishes to be compensated for this.

Miss A has given us a background of her circumstances and the tragic events that happened in her family prior to the overdraft lending. I sympathise with Miss A and I am in no doubt that the events she described have affected her mental wellbeing and continue to do so. But I haven't seen enough to persuade me that the main cause of the emotional and mental stress she has suffered is due to Lloyds overdraft lending – rather than her personal circumstances alone.

And I don't think this is a reason for departing from our normal approach to putting things right in cases such as hers. All the interest, fees and charges Lloyds shouldn't have added

will be removed from what she now needs to pay. So what Miss A will be left with to repay are the funds which she used and benefitted from.

So, in these circumstances, and bearing in mind Miss A spent them, I think it's perfectly fair and reasonable to expect Miss A to repay these funds. And I don't think that Miss A's unhappiness at having a balance to repay on her overdraft, even after her complaint has been upheld, is in itself a compelling reason for me to depart from our usual approach here.

I also understand that Miss A would like Lloyds to remove any adverse information it reported on his credit file. But Lloyds does have a duty to make sure the information it reports on its customers affairs to the credit reference agencies it subscribes to is factually accurate – so providing this is the case I can't ask Lloyds to amend this information. Bearing in mind all of this, I'm satisfied that what Lloyds has already agreed to do to put things right for Miss A is fair and reasonable in all the circumstances of her case and I'm not requiring it to do anything more. As this is the case, it's up to Miss A to decide whether she wishes to accept Lloyds' 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 A is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 9 December 2022.

Caroline Davies
Ombudsman