

The complaint

Mr B has complained that Lloyds Bank PLC (“Lloyds”) acted irresponsibly and failed in its duty of care by providing an overdraft facility when it should have identified by the way his account was managed he was a gambling addict and vulnerable.

What happened

Mr B held two accounts with Lloyds. Both accounts had overdraft facilities. Account ending 4260 closed on 9 July 2014 and account ending 2768 closed in July 2019.

Mr B complained to Lloyds that it provided him with overdrafts irresponsibly. Mr B believes that Lloyds failed in a duty of care to prevent high value transactions being authorised.

Lloyds declined to look at the complaint regarding account ending 4260 as it says the complaint was brought out of time.

But Lloyds upheld Mr B’s complaint regarding account ending 2768 accepting based on the account activity it shouldn’t have increased Mr B’s overdraft limit to £400 in January 2017.

To settle Mr B’s complaint it agreed to:

- Pay £100 compensation for distress and inconvenience; and
- Refund all charges associated with the account from 23 January 2017 which totalled £105.68.

But Lloyds didn’t agree that it shouldn’t have authorised the payments Mr B was making to a certain merchant out of his account. It says Mr B had a long history of making payments to this merchant and that the merchant was registered as an investment site so large transactions to this company weren’t unheard of. And this being the case it had no reason to query the larger transactions Mr B made as it wasn’t unusual.

Mr B was dis-satisfied with this and brought his complaint to this service.

One of our adjudicators looked at this complaint and didn’t think there were indicators from Mr B’s bank statements that he had a gambling problem and didn’t think Lloyds failed to flag gambling transactions as the merchant Mr B was transacting with was considered an investment company. Our adjudicator thought that the offer Lloyds made was fair and in line with our guidance.

Mr B disagreed and has asked for an ombudsman’s decision.

Why I can only look at part of this complaint

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 we can look at Mr B's account number ending in 4260. Mr B's complaint was made in 2022. This is more than six years after the last charges were applied to Mr B's account and it was closed on 9 July 2014 - which is the event Mr B is complaining about here. To be within the six year rule Mr B needed to complain at the latest by July 2020. So I need to think about whether the complaint was made within three years of when Mr B should reasonably have been aware he had cause to complain.

When applying this rule Mr B doesn't need to know the specifics of the complaint – just that something may have gone wrong. Mr B's account was closed in 2014. So I think Mr B should reasonably have been aware that the overdraft and charges applied to his account were not affordable for him and that Lloyds did something wrong by allowing him an overdraft when his account was closed in 2014.

Three years from this is 2017. As this is earlier than the six year rule referred to above it means Mr B needed to make his complaint about the lending by 2020 (6 years after the event complained about). As he didn't complain until 2022 his complaint is out of time under the rules I have to apply.

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. Mr B has told us that he believed he complained in time but there is no evidence he complained about this account earlier than 2022. And believing you raised a complaint earlier isn't something I would consider exceptional circumstances.

And as such I don't think that exceptional circumstances apply and because Mr B didn't refer his complaint regarding account number ending 4260 in time my decision is I'm unable to look at this aspect of Mr B's complaint.

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 Mr B 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. But for complaints about funds which shouldn't have been provided this isn't straight forward as the funds were provided and, in most cases – such as here, have long since been spent.

So we look to try and find some other way to put things right. And 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 Mr B's statements, I agree that the increase of in Mr B's overdraft limit to £400 in January 2017 was not appropriate. I say this because had Lloyds conducted a manual review of Mr B's statements it would've seen although he often saw a credit balance there were a number of transactions to and from payday lenders which I think indicates Mr B was financially struggling and managing his debt with further high-cost borrowing.

Lloyds has already upheld the element of Mr B's complaint regarding the overdraft lending and agreed to settle the complaint in-line with this finding as well as compensating Mr B an additional £100.

Mr B believes Lloyds should've done more. He is unhappy that he was allowed to make high-cost transactions to gambling sites. Mr B believed there was enough on his bank statements to indicate he was vulnerable and had a gambling problem. I sympathise with Mr B and his struggle with gambling, but although I agree that his bank statements show borrowing from other high-cost lenders indicating potential financial difficulties, I don't agree that there was enough on the statements alone to say Lloyds ought to have known Mr B had a gambling problem and that it shouldn't have authorised certain payments to a merchant.

The gambling transactions in question were to and from a merchant that was a stock trading website and recognised as an investment company by Lloyds. Given Mr B regularly used this merchant and hadn't ever raised an issue with the transactions Lloyds didn't have a reason to query the transactions. So I don't think Lloyds have made an error here. And even if it was recognised as a gambling website, I can't say this would've made a difference as Mr B's account was regularly in credit, he hadn't informed Lloyds of his gambling problem and Lloyds wouldn't be able to put a block on these transactions unless Mr B had authorised it to do this.

So although I think his statements do show some signs of financial vulnerabilities – I don't think there is enough to say Lloyds ought to have known this was caused by a gambling addiction and that it shouldn't have authorised transactions to certain merchants.

Bearing all this in mind, I'm satisfied that what Lloyds has already agreed to do to put things right for Mr B is fair and reasonable in all the circumstances of his case and I'm not requiring it to do anything more.

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 Mr B is fair and reasonable in the circumstances of this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 April 2023.

Caroline Davies
Ombudsman