

The complaint

Mr M is complaining that Monzo Bank Ltd discriminated against him when they declined his overdraft application.

What happened

Mr M has a current account with Monzo. He lives with particular medical conditions and has been receiving disability benefits since around January 2018. He currently receives Employment and Support Allowance (ESA) and Personal Independence Payment (PIP.) He tells us his PIP will be reassessed in 2024, and his ESA currently has no planned review date.

In January 2022 Mr M applied for an overdraft with Monzo. On his application he selected that he was unemployed. Monzo declined his application. Mr M received an automated response to say this was because he didn't have a permanent source of income.

Mr M complained to Monzo. He said, in summary, that it was unfair for Monzo to treat him differently due to his disabilities. He said his income was guaranteed until at least 2024 and people who are in full or part-time work do not have a guaranteed, permanent income. He said that a lot of disabled people are unemployed and it wasn't fair for Monzo to automatically refuse credit on this basis; he thought his application should have been considered. He thought there should be a separate category in the application process for people who were not working due to a disability.

Monzo replied to Mr M with their final response letter. They explained that they were only able to offer an overdraft facility to those employed in a full or part-time position. They said they weren't able to accept benefit payments as a form of income because they are specifically designed to cover cost of living essentials.

Mr M was dissatisfied with Monzo's response, and he brought his complaint to us. In addition to his complaint points outlined above, he said that shortly after his complaint Monzo asked their app customers to confirm their employment status, and one of the options was "not working due to illness or disability." He felt this was added due to his suggestion and Monzo should acknowledge that.

Monzo told us, in summary, that their decision not to lend to Mr M was based on their internal lending policy. Because Mr M is unemployed and in receipt of welfare support which is meant to be to meet the cost of day to day living essentials, his income shouldn't be classed as permanent. On this basis, they felt that it would have been irresponsible for them to lend to Mr M.

Our investigator upheld Mr M's complaint. He said that although it was for Monzo to decide their own lending criteria, he didn't think it was fair that Monzo hadn't considered Mr M's application at all in the circumstances of this particular case, and he thought they should have carried out an affordability assessment. He explained that it wasn't our role to decide if Monzo had breached the Equality Act 2010, as that would be for a court to decide. But he

didn't think Monzo had been fair and reasonable in how they treated Mr M. He recommended Monzo should pay Mr M £150 in compensation.

Monzo disagreed with the investigator's view. They said, in summary, that they don't believe they breached any legislation, they acted in line with their own policies and it's fair and reasonable for them not to lend to Mr M.

Mr M raised a number of points in response to the view. I've summarised the main points of his responses below:

- he wanted Monzo to apologise and accept that his income is permanent;
- he wanted Monzo to recognise that they changed their system to include the option of 'not working as a result of illness or disability' as a result of his suggestion;
- he says Monzo's discrimination has affected his health as it's caused him to need additional appointments and medication for his medical conditions - and £150 isn't enough to compensate him for this;
- he doesn't want Monzo to change their policy but he does want them to offer him reasonable adjustments; and
- he also felt Monzo shouldn't have sent their final response letter on his birthday.

Neither party agreed with the investigator's view. So Mr M's complaint was passed to me for review and a decision.

Monzo told us they thought we should put Mr M's complaint on hold due to ongoing legal action. Mr M has filed a protective claim with the County Court, but has also sent us some evidence that the claim has been stayed until 1 June 2023.

I issued my provisional decision on 10 March 2023. This is what I said.

I've already explained to Monzo that as the claim's been stayed I can't see a reason, from the information I have so far, for me not to proceed with considering this complaint at this time. I've not seen anything yet to show the stay's been lifted, but I'll consider anything else Monzo wish to supply on this point.

I'm provisionally upholding Mr M's complaint, in part.

Our role is to look at the individual circumstances of a complaint, taking into account relevant law, regulations and industry guidance, to make findings about what is fair and reasonable in all the circumstances of a complaint.

As the investigator's explained, only a court can make a legal finding about whether Monzo have breached the Equality Act 2010. But if it's relevant law, I'm required to take it into account in deciding if Monzo have treated Mr M fairly and reasonably. And I do think it's relevant law in Mr M's case, because from what I've seen, I think it's likely that a court would find that Mr M has a disability as defined by the Act, and therefore a protected characteristic.

As a person with a protected characteristic, the Act protects Mr M from treatment which might be unfair. This includes direct and indirect discrimination and discrimination arising from his disability, and it imposes a positive obligation to make reasonable adjustments. This is all relevant law which I've taken into account.

I agree with Monzo that it's for them to decide their own lending criteria based on their own commercial appetite. But I've considered whether Monzo have acted fairly and reasonably in the way they've applied their lending criteria when not considering Mr M's application.

Monzo have said they don't take accept overdraft applications from those who are unemployed and don't take into account benefit income - because this type of support is designed to meet day to day living expenses, and so can't be classed as permanent. So I've considered this point in relation to Mr M's position - also bearing in mind that a business providing credit or lending is also under regulatory obligations to ensure that lending is affordable, and a consumer doesn't end up in a cycle of continuing debt.

Mr M's income is from PIP, and ESA with the severe disability premium. Mr M says he's been in receipt of these since around January 2018. From the information Mr M's given us about the duration of his disability, I don't think there's a high risk of his benefits being reduced or withdrawn in the near future. So, I haven't seen anything to make me think that his income is less permanent than it would be if he was in full or part-time employment.

I also note that Monzo don't class Mr M's income as permanent, because they say it's designed to meet his living expenses. But permanent refers to the time he might be receiving the benefits, not their purpose. And of course, it's also the case that employment income has to meet the recipient's living expenses too.

It's also relevant to note that Mr M's benefits income, paid as a result of his disability, is higher than benefits income paid to recipients of other forms of benefits. So Mr M's income meets Monzo's minimum income threshold. Whether his income only meets his basic expenses, or whether it leaves him with a surplus that could be put to overdraft repayments, can only be known if his individual circumstances are assessed. And if Mr M's income was from employment, I think Monzo would have carried out an affordability assessment before deciding whether or not to lend to him. Looking at the income he receives each month, he meets the minimum income threshold of £10,000 to apply for an overdraft.

Monzo didn't initially carry out an affordability assessment for Mr M - they disregarded his application without thinking about whether the lending was affordable and didn't take into account the income derived from the benefits arising from Mr M's disability in deciding whether to lend to him. And by doing so, I don't think they treated him fairly in the circumstances of this particular case.

I appreciate Mr M feels very strongly about his complaint. And I want to be clear that we can't instruct Monzo to change their lending policy, or to lend to Mr M - as this is a matter for their own commercial judgement. We can, however, ask Monzo to put things right for Mr M in the individual circumstances of his complaint by fairly considering his income in making their lending decision. And I think they should do that by carrying out an affordability assessment for Mr M's application in line with how they'd do so if Mr M's income was from employment, and also by paying him compensation for the distress and inconvenience he's been caused.

I note that Monzo's more recent correspondence with Mr M explains that since the investigator issued his view Mr M has made some more overdraft applications - and they've told Mr M that the applications were considered and declined due to Mr M's credit score. So it may be that Monzo have already done what I'm asking them to do to put this right. But I'd invite comments from both parties on this point before making my final decision.

Turning to Mr M's other points, I don't think it's necessary for Monzo to explain why they've decided to make changes to their policy or procedures around the options they have for

recording their customers' employment status - this is a matter for them to decide internally. But Monzo have told us that the questions they asked their customers of the app about their employment status was related to separate regulatory requirements and wasn't related to Mr M's complaint or suggestions about the overdraft facility application process. And having seen Monzo's explanation I don't think it's likely this was prompted by Mr M's complaint.

It's unfortunate that Mr M received Monzo's final response letter on his birthday and I'm sorry to learn that distressed him, but I don't think this was intentional, and I wouldn't ordinarily expect a business to check a customer's birthday before sending them correspondence. So I don't think they've done anything wrong here.

I'm also sorry to learn that Mr M's health has been affected by this complaint. I can see that he's had some appointments about his health while his complaint's been going on, but I've not seen anything to show that these appointments were directly related to his complaint with Monzo - although I do understand why he would have found this process stressful. I've taken this into account in deciding fair compensation here.

I have carefully considered the impact on Mr M, and I do think the £150 compensation recommended by the investigator is fair and reasonable in the circumstances.

My provisional decision was that I upheld the complaint, in part. To put things right, I said Monzo Bank Ltd should:

- Reassess Mr M's overdraft application by carrying out an affordability assessment in line with their usual process for employed customers with an annual income of more than £10,000 (if they have not already done so); and
- Pay Mr M £150 in compensation.

I asked Monzo Bank Ltd and Mr M to reply with anything they wished to add by 24 March 2023.

Monzo replied to say they had no additional comment to make following my provisional decision.

Mr M replied with around 50 emails and documents. I've summarised the main points of his response below:

- His ESA isn't going to be reassessed in 2024, just his PIP;
- To answer my question about whether Monzo have already assessed an overdraft application in line with my provisional decision, in December 2022 he made an overdraft application and selected 'employed' but he was then told his application had been declined due to credit score;
- If he hadn't needed to make a complaint in the first place his birthday wouldn't have been affected;
- In the last few weeks Monzo have added an option specifically to their overdraft application process of "not employed due to disability." Mr M says this contradicts what they said in response to his complaint about them doing what they needed to do. He thinks this is added at his suggestion and he should claim intellectual property rights;
- He found some of the language used in a recent online chat with Monzo to be offensive;

- He's made around 65 applications for an overdraft that have been declined so he feels he should receive £150 in compensation for each of these applications; and
- His credit score declined around June 2022 but he thinks he would have been accepted for an overdraft at the time he applied.

Overall, he disagrees with my provisional decision and thinks he should receive substantially more compensation.

Mr M's also told us that the legal action that was previously stayed until 1 June 2023 was set aside on 15 March 2023 as proceedings were issued due to the court's error.

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.

Monzo haven't replied to my summary of my understanding that the legal claim was stayed until 1 June 2023 (at the time I issued my provisional decision) so I couldn't see any reason not to proceed with my decision. Monzo haven't said anything else about this.

Mr M's told us the court order which led to the service of proceedings on Monzo has now been set aside due to the court's error in serving proceedings when Mr M's claim should have only been registered as a protective claim. Taking this into account, I don't think legal action is currently ongoing. So I'm now proceeding with my final decision.

I've summarised Mr M's arguments in less detail than he's given using my own words, to focus on what I think the key issues are. If there's something I've not mentioned, it isn't because I've ignored it. But I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I want to reassure Mr M that I understood his income was guaranteed until 2024 and it was only his PIP and not his ESA that may be reviewed then.

Monzo haven't responded on the point I've made in my provisional decision about Mr M's more recent applications and whether they've already assessed his application as if he was an employed person with a minimum income of £10,000. But looking at Mr M's response about this, it seems this may have come about because Mr M made another application and selected that he was employed – and this application was declined due to Mr M's credit score.

Given what Mr M has told us about the outcome of his further applications, I'm not going to direct Monzo to re-assess this one in the way it ought to have been, as it seems likely it won't succeed. But, in the absence of any clarity from Monzo on whether this has happened already, I still think Mr M should have the *option* of his application being assessed in the way I set out in my provisional decision if he wishes.

I do appreciate what Mr M's said about his credit score having changed since he made the original application, which makes him think it's less likely his application would be approved now. When we decide that something has gone wrong we ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred. But sometimes it's not possible to put a consumer in exactly the same position, because circumstances have changed. And I think this is the case here.

As I've explained in my provisional decision, Monzo are under regulatory obligations to make sure lending is affordable. And one of the things they can take into account when deciding this is a consumer's current credit score. So, I don't think it would be a fair resolution, or indeed in Mr M's best interests, to require Monzo to base any lending decision they make now on Mr M's credit score as it was when he made the original application.

Mr M chose to make a further 65 overdraft applications when he'd already had an application declined (and so was already aware of the likely outcome). I don't doubt that receiving further declines would have been distressing, but in order for me to make an award for that impact I'd need to be satisfied it flowed directly from Monzo's mistakes. I don't think that's the case here – as I consider it resulted from Mr M's choice to submit more applications, when the outcome of those ought to have been apparent. So, I don't agree Mr M should be compensated £150 for each overdraft application that was declined as I don't think Monzo are responsible for the distress caused by them.

Although it's unfortunate Mr M says his birthday was ruined by receiving Monzo's final response, I've already explained that I wouldn't have expected them to time their response accordingly. Mr M's pointed out that his birthday wouldn't have been affected if he hadn't needed to complain in the first place. I've taken this into account in considering the overall impact on him of what went wrong here. I'm sorry to disappoint Mr M, as I know how strongly he feels about his complaint. But after taking into account everything he's said and provided in response, I still think £150 is fair and reasonable in all the circumstances.

A number of the recent points Mr M has raised – specifically, what he's said about the addition of the option of "not employed due to disability" to the overdraft application options in February 2023, and the language used in the recent online chat with the complaints team, are new issues that don't form part of his original complaint to us. Monzo haven't had an opportunity to investigate or comment on those, so it's not appropriate for me to address them as part of this complaint. I can see Mr M's now raised a separate complaint with Monzo about the language used.

My final decision

My final decision is that I uphold this complaint, in part. To put things right, Monzo Bank Ltd should:

- Give Mr M the option of having his overdraft application reassessed by carrying out an affordability assessment in line with their usual process for employed customers with an annual income of more than £10,000; and
- Pay Mr M £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 April 2023.

Helen Sutcliffe
Ombudsman