

## **The complaint**

Mr H has complained that Lloyds Bank PLC (“Lloyds”) failed to remove his overdraft following a complaint of irresponsible lending being upheld. He says this led to him once again using his overdraft and getting into further debt when he was vulnerable.

## **What happened**

Mr H held a £4,700 overdraft facility with Lloyds. Mr H made a complaint against Lloyds about irresponsible overdraft lending in July 2022. Lloyds upheld Mr H’s complaint and refunded all overdraft interest, fees and charges applied to it from March 2017 which paid off Mr H’s overdraft. As part of the settlement of this complaint Lloyds told Mr H that his overdraft would be removed and it would add a marker to his account so no lending could be provided for at least 12 months.

Lloyds failed to remove Mr H’s overdraft and Mr H once again became overdrawn in August 2022 and continued to use his overdraft until he reached his limit and raised a complaint with Lloyds about failing to remove it in February 2023.

Lloyds agreed it had made an error in not removing the overdraft and:

- Refunded all overdraft fees and charges applied since July 2022 amounting to £86.54.
- Put a 30 day hold on the account to stop further charges and agreed a three month balance reduction plan interest and fee free.
- Following this Lloyds will work with Mr H to come to a suitable arrangement to pay back the overdraft.
- Lloyds paid £200 compensation for the distress and inconvenience caused.

Mr H was unhappy with this and brought his complaint to this service. Mr H wants Lloyds to wipe the balance of his overdraft.

One of our adjudicators looked into Mr H’s complaint and thought that it wouldn’t be fair to ask Lloyds to write-off the overdraft as Mr H used the funds and didn’t think it was unreasonable for Lloyds to request that Mr H pay back the overdraft.

Mr H disagreed and has now asked that his complaint be progressed 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 Mr H 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 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.

In this case, Lloyds has agreed it made an error by failing to remove Mr H's overdraft which was found to be unaffordable and allowed him once again to use the overdraft funds. And Lloyds has already done what I'd expect it to do to put things right – as outlined above. Mr H was 'refunded' all of the interest, fees and charges caused by the overdraft facility.

Furthermore, Lloyds has already introduced an interest and fee free three month' overdraft reduction plan and wishes to work with Mr H to set up an affordable repayment plan for the remainder of the overdraft following this. And Lloyds has compensated Mr H £200 for its mistake. All of this is in-line with what I'd recommend.

Mr H is unhappy with this, he wants his overdraft written off. He says having access to the overdraft enabled him to continue gambling. I thought about what Mr H has said and what he's said is a reason for upholding his complaint rather than a reason for departing from our normal approach to putting things right in cases such as his. I also note that despite knowing that Lloyds had made a mistake in not removing the overdraft in August 2022, Mr H waited until Lloyds started charging him again for the overdraft (around December 2022) rather than informing Lloyds about it in the first instance.

Instead, Mr H chose to make use of the funds. And although I accept some of the overdraft was used for gambling there were also other transactions on the account that weren't gambling related such as payments for hotel bookings, pension and other leisure activities. And I can also see evidence on his account of lending with other providers. So I don't think Lloyds mistake has left Mr H with a debt that he wouldn't otherwise have been left with.

What Mr H is left with to repay are the funds which he used, so I think it's perfectly fair and reasonable to expect Mr H to repay these funds. And I don't think that Mr H's unhappiness at having a balance to repay on his overdraft, even after his complaint has been upheld, is in itself a compelling reason for me to depart from our usual approach here.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 August 2023.

Caroline Davies  
**Ombudsman**