

Complaint

Miss P has complained that Lloyds Bank PLC (“Lloyds”) unfairly allowed her to continue using a credit card.

She says that she was allowed to continue using her credit card despite being in a cycle of persistent debt and there being clear evidence of her poorly managing her account.

Background

Miss P also made a complaint about Lloyds’ actions when providing her with an overdraft. But we’ve already considered and issued a separate answer to that complaint and I won’t be offering any further comment in relation to that matter.

While Miss P initially complained that Lloyds failed to act fairly and reasonably towards her when it increased the credit limit on her credit card in 2013, we’ve already explained why we’re unable to look at Miss P’s complaint about matters prior to March 2015. So this decision is solely looking at whether it was fair and reasonable to continue allowing Miss P to use her credit card from this point onwards.

When it initially considered Miss P’s complaint, Lloyds agreed to refund £540.10 in interest that it added to her account while no repayment plans were in place. Although this wasn’t made clear in its final response, subsequent correspondence indicates that this was a refund of the interest added to Miss P’s account from March 2019 onwards.

Miss P remained dissatisfied at Lloyds’ offer and referred her complaint to this service.

One of our investigators then reviewed what Miss P and Lloyds had told us. And she thought Lloyds shouldn’t have allowed Miss P to continue using her credit card by May 2015 at the latest. So she recommended that Miss P’s complaint should be partially upheld and recommended that Lloyds should refund all of the interest it added to Miss P’s account from May 2015.

Lloyds didn’t agree with our investigator and instead offered to refund the interest it added from October 2017 to March 2019 (as it had already refunded the interest from March 2019 onwards).

As Miss P didn’t accept Lloyds’ alternative offer and Lloyds did not agree to settle the complaint in line with the investigator’s assessment, the case was passed to an ombudsman for review as per the next stage of our dispute resolution process.

My findings

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’m upholding Miss P’s complaint. I’d like to explain why in a little more detail.

Lloyds will be familiar with all the rules, regulations and industry codes of practice we consider when looking at whether a bank treated a customer fairly and reasonably in relation to credit card (or revolving credit) lending.

Of relevance here are the rules in relation to the Post contract: business practices, which the industry regulator the Financial Conduct Authority (“FCA”) has set out.

The most relevant of these rules is CONC 6.7.2R which, in May 2015, stated:

“A *firm* must monitor a *customer’s* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

[Note: paragraph 6.2 of ILG”

The FCA has also set out what it considers to be a list of indicators which could indicate that a customer is in financial difficulty in Section 1.3 of Consumer Credit Sourcebook (“CONC”). This section of CONC is entitled ‘*Guidance on financial difficulties*’.

Amongst this list of indicators – which is set out in CONC 1.3.1G - are where a customer has adverse accurate entries on a credit file which are not in dispute; where a customer is proving unable to meet repayments out of disposable income or at all; where there is evidence of non-payment of essential bills, and/or where the customer is consecutively failing to meet repayments when due.

In this instance, by February 2015 Miss P had been over the credit limit that Lloyds had deemed to be affordable, of £5,750.00, for four consecutive billing periods. So, in my view, this ought to have been a warning sign that Miss P might have been struggling and at the very least it was an indication of her having potential repayment difficulties. And while Miss P had managed to just about keep below her credit limit in March 2015 and April 2015, Lloyds ought to have been concerned that she had exceeded her limit by over £100 in May 2015.

I’m therefore satisfied that Lloyds ought to have taken appropriate action in accordance with CONC 6.7.2R at this stage. Whilst it disagreed with the investigator’s assessment, Lloyds didn’t argue that it had taken steps to offer assistance, or that it had taken appropriate action, in circumstances where it ought to have been aware that of actual or potential repayment difficulties on the part of Miss P. It has simply said that it wrote to Miss P about making the minimum payments in May 2016 – which was a year later.

I’d also add that Miss P being over her limit for four consecutive billing periods would be a reason for adverse entries to have been recorded on Miss P’s credit file. I don’t know whether Lloyds did record this information on Miss P’s credit file. But it in any event, as this was its debt, it would have been aware that Miss P had repeatedly been over her credit limit.

I appreciate that Lloyds says that Miss P was making payments and therefore there was no need for concern. However, by this stage Miss P had been consistently exceeding her limit and as a result was not operating her account in line with the agreement she had with Lloyds, or only borrowing what Lloyds had agreed to lend to her.

So I’m satisfied that it would have been fair and reasonable for Lloyds to have taken steps to enquire about Miss P’s financial situation in order to check that financial difficulty wasn’t the reason for her repeatedly being over her credit limit, when she went back to exceeding her credit limit in May 2015. Lloyds did not do this. So I’ve considered what it is likely to have learned in the event that this had been done.

In order to consider this matter, I've reviewed the information in Miss P's bank statements. I do accept that Lloyds will not necessarily have checked Miss P's bank statements at this time. But given I'm now required to consider matters some years afterwards, I'm trying to reconstruct what Miss P's circumstances were like and Miss P was a Lloyds bank account customer so Lloyds will have been aware of what was going on in her account, I do think it is fair, reasonable and proportionate for me to rely on this information to now determine what Miss P's financial position is more likely than not to have been like at the time.

Having looked at Miss P's statements during this period leading up to May 2015, I can see that Miss P had been hardcore borrowing. She was continually overdrawn and it was clear that she was borrowing from a number different creditors, including at least one payday lender, in order to juggle her funds and try to make ends meet. Even then the number of returned payments suggests that she wasn't doing so particularly successfully.

I think that if Lloyds had taken appropriate action to assess and get an understand why Miss P had continually been exceeding her credit limit, with a view to offering assistance (as I think it was fair and reasonable to have done in the circumstances), it is more likely than not that it would have found out that this was because she was experiencing financial difficulties.

As this is the case, I'm satisfied that Lloyds not only failed to take appropriate action in light of Miss P's potential repayment difficulties, but its failure to do so resulted in it continuing to allow Miss P to use her credit card in a way that was not in her interests (or fair and reasonable to do so) given the difficulty she was experiencing at the time. Lloyds also added further interest and charges for allowing Miss P to use her card in this way. So I'm also satisfied that she lost out because of what Lloyds did wrong.

Overall I'm satisfied that Miss P lost out because Lloyds failed to act fairly and reasonably towards her and Lloyds should therefore put things right.

Fair compensation – what Lloyds needs to do to put things right for Miss P

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Miss P's complaint for Lloyds to put things right by:

- Reworking Miss P's current balance so that all interest, fees and charges applied to it from May 2015 onwards are removed.

AND

- If an outstanding balance remains on Miss P's credit card once these adjustments have been made Lloyds should contact Miss P to arrange a suitable repayment plan. Miss P is encouraged to get in contact with and cooperate with Lloyds to reach a suitable agreement for this. If it considers it appropriate to record negative information on Miss P's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the credit card in May 2015.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss P along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance on Miss P's credit card remains after all adjustments have

been made, then Lloyds should remove any adverse information from Miss P's credit file.

† HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Miss P a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss P's complaint. Lloyds Bank PLC should put things right in the way I've directed it to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 9 April 2024.

Jeshen Narayanan
Ombudsman