

## **The complaint**

This complaint is brought on behalf of the estate of Mrs P by her son and representative, Mr W. Mr W says Lloyds Bank PLC (“Lloyds”) ought not to have provided his mother with an overdraft facility when she was already in financial difficulties.

## **What happened**

Mrs P opened an account with Lloyds in April 1991. There is limited information about the start of the overdraft given the amount of time that has passed since then. However, Lloyds confirmed that in September 2002 the overdraft was £1,000 and by October 2003 it had been increased to £2,000. The account was closed in March 2014.

Mr W has said that his mother was vulnerable and struggling financially from around August 2010. Mrs P also took out a loan with Lloyds at around this time which has been investigated separately by this service.

Mr W also complains that Mrs P’s overdraft increased due to a change in the charging structure for overdrafts.

One of our investigators reviewed what Mr W and Lloyds had told us. And she thought Lloyds acted unfairly in charging overdraft fees between December 2010 and March 2014. By way of response, Mr W raised questions about the way the overdraft had been operated as well as a separate savings. Our investigator has since looked into these issues.

Lloyds has agreed with our investigator’s findings and has made an offer to settle the complaint.

Mr W hasn’t accepted the offer and so has asked that the complaint be passed to an ombudsman to review.

## **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.

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide this complaint.

Lloyds needed to make sure it didn’t lend irresponsibly. In practice, what this means is Lloyds needed to carry out checks that were reasonable and appropriate in order to understand whether Mrs P could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender’s checks were appropriate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the

lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Before I look into the merits of the complaint, I'd like to say that it's not my role as an ombudsman to make comment or findings about the general lending policies that Lloyds had in place at the time it lent to Mrs P. So I won't be questioning the pricing structure that was in place at the time it lent to her given that it's something that was the result of a commercial decision made by Lloyds. But what I *can* do is review and consider whether the application of the price structure, being the charges that were added to Mrs P's overdraft, was fair given what we know about Mrs P's financial circumstances at the time.

I've looked at the available evidence and information for the period in question that has been raised by Mrs P's representative, from August 2010. But I've also looked at wider period that the overdraft facility was available to Mrs P, both before and after that date.

As I've already mentioned, there is an unfortunate absence of information from when the overdraft was first granted. That means I won't be able to comment on the lending decision made at that time as I don't have evidence to suggest that the limit may have been agreed irresponsibly.

I've taken the opportunity to look through Mrs P's Lloyds bank statements, covering the period from October 2002 to March 2014. I've seen that between January and August 2010 Mrs P was receiving payments into her account from a separate savings account. I've also noted that Mrs P was making constant use of her overdraft from around June 2010. In August 2010 I can see funds being paid in from the loan she'd taken out with Lloyds, putting the account back into credit and so clearing her overdraft. But by mid-October 2010 the account was again going into the overdraft. Going forwards it was once again being used consistently after that. In early December 2010 the overdraft had reached its £2,000 limit and continued to be heavily utilised up to its full limit. This was briefly subject to some income that was paid in in December 2010 and January 2011.

By February 2011 the overdraft limit had been exceeded with unpaid debits being returned as a result. Credits made to the account were enough only to be able to return the overdraft below its limit for a period of a week or two. After that the overdraft continued to be heavily relied on until a benefit payment took it into credit in July 2011. By mid-September 2011 the account was again up to the overdraft limit. Further benefit payments weren't enough to bring it back to the overdraft limit or make any meaningful reduction in the overdraft balance. By November 2011 the overdraft use had reached £3,000.

All of this leads me to conclude that Mrs P was obviously experiencing financial difficulty and that her financial position was worsening to the point that there wasn't a realistic prospect that she would be able to pay off the overdraft.

It follows that I think by 22 October 2010, when it carried out its review of the overdraft facility, Lloyds ought to have realised that the overdraft was not being used on a short-term, limited basis. I say this given that Mrs P had been making constant use of her overdraft since June 2010. Also, despite funds from a loan being paid into the account in August 2010, these had not been sufficient to prevent Mrs P from starting to resume use of her overdraft again by mid-October.

I therefore don't consider that Lloyds acted fairly in allowing Mrs P to continue to operate her overdraft in this way from 22 October 2010. It needed to take steps to intervene and provide forbearance options to help Mrs P with her situation.

For broadly the same reasons, I'm therefore in agreement with our investigator that Lloyds didn't treat Mrs P fairly.

### **Putting things right – what Lloyds needs to do**

Lloyds has accepted our investigator's uphold finding. It provided a breakdown of how it has calculated the compensation offer of £2,385.95. However, the sum appears to have been calculated based on interest charged from December 2010. The correct date from which the compensation should be calculated is 22 October 2010.

Lloyds therefore needs to do the following:

Re-work the overdraft balance so that all interest, fees and charges applied to it from 22 October 2010 onwards are removed.

AND

If an outstanding balance remains on the overdraft once these adjustments have been made Lloyds should contact Mr W, the estate representative, to arrange a suitable repayment plan for this.

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 the estate, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. †

† HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Mr W a certificate showing how much tax it's taken off if he asks for one.

I've also considered whether the relationship between Mrs P and Lloyds might have been unfair under s.140A of the Consumer Credit Act 1974. I'm satisfied the redress I have directed above results in fair compensation for the estate in the circumstances of this complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **My final decision**

For the reasons I've given, I am upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs P to accept or reject my decision before 18 July 2024.

Michael Goldberg  
**Ombudsman**