

The complaint

Mrs L complains that Lloyds acted irresponsibly in how it handled her overdraft facility on her current account when it applied charges when she was struggling financially.

What happened

Mrs L has held a current account with Lloyds for a number of years and with an overdraft facility. In April 2018 the overdraft limit stood at £250, in January 2019 the limit increased to £350, in February 2019, the limit increased to £700 and then to £850 in March 2019. In October 2019, the limit was reduced to £650 where it remained after further reviews.

In January 2018 Mrs L complained to Lloyds that it had unfairly applied fees that had caused her financial difficulty.

On 5 January 2018 Lloyds issued Mrs L with a final response letter ("FRL"). Within the FRL, Lloyds didn't uphold the complaint and said it was satisfied that it had applied the fees correctly to her account.

In January 2021 and July 2021, Mrs L reached out to Lloyds online due to financial difficulties. Between February 2021 and January 2023, a hold was added to her account which meant no charges or interest were applied. And in July 2023, a repayment plan was set up. In September 2023 the account was switched out and was subsequently closed and the outstanding balance sold to a debt collection agency.

In October 2023, Mrs L entered into an Individual Voluntary Arrangement (IVA). – and the insolvency practitioner has an interest in this complaint and the outcome.

In October 2023, Mrs L complained again to Lloyds about it charging her for her overdraft and also put it on notice that she was struggling financially. Lloyds issued Mrs L with a FRL dated 4 December 2023 in which they said she had brought her complaint too late.

Unhappy with the response from Lloyds, in December 2023 Mrs L brought her complaint to us. As Mrs L didn't refer her complaint to us within six months of Lloyd's FRL from January 2018, we were unable to consider this under our regulations and which both parties accepted. Lloyds agreed to consider the lending increases from that date and issued a further FRL in March 2024.

In this FRL, Lloyds said they allowed the overdraft to continue based on an income and expenditure calculation and it believed Mrs L could have reduced her overdraft within a reasonable timeframe. Lloyds said there was a lot of non-essential spending by Mrs L which led to the overdraft facility being used more than it needed to. Mrs L was unhappy with the response from Lloyds and asked us to investigate.

Mrs L's complaint was considered by one of our investigators who concluded that Lloyds hadn't acted fairly when increasing her limit from February 2019.

As Lloyds didn't accept the investigator's view, the complaint has been passed to me for

review and 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 done so, I can confirm that I've come to the same overall conclusions as the investigator and for broadly the same reasons. I haven't considered the granting of the initial overdraft limit or the increases prior to January 2018 for the reasons outlined above.

I'm aware that I've summarised this complaint above in less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. 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 will, however, refer to those crucial aspects which impact my decision.

Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 5D.2 and 5D.3 set out what a business must do to intervene where a customer is repeatedly using their overdraft.

CONC 5D.2 sets out a business' obligation to identify and monitor repeat use of overdrafts and its obligation to identify customers in actual or potential financial difficulty. Some examples of things that might indicate financial difficulties are given here. For instance, use of other products which may indicate a fall in disposable income, an upward trend in a customer's use of the overdraft over time or where a customer has become or remained overdrawn in every month over a 12-month period.

CONC 5D.3 sets out what interventions the business should take in cases of repeat overdraft users.

Where there are signs that a customer is (or might potentially be) suffering financial difficulties, CONC 5D.3 sets out that the business must:

- Communicate with the customer highlighting the pattern of use and whether this is resulting in high avoidable costs AND encourage the customer to contact them about their situation AND provide contact details of debt advice charities.
- If after a reasonable period of time the pattern continues and the customer hasn't made contact, the business must take reasonable steps to contact the customer to set out suitable options designed to help the customer.
- If the customer still doesn't engage with the business the business must after a reasonable period, consider whether to continue offering the overdraft facility and whether to reduce it, so long as this doesn't cause the customer financial hardship.

Given this, I've considered whether Lloyds has acted fairly and in line with its obligations under CONC.

Lloyds's decision to increase Mrs L's overdraft limit from February 2019

Before increasing the overdraft limit to £700 in February 2019, Lloyds was required to complete proportionate affordability checks to ensure the credit was affordable and sustainable. What is considered proportionate will vary depending on the specific circumstances of each case, as there isn't a set list of checks that had to be completed.

Prior to this increase, the overdraft had, in the main, been used as it was intended for, short term borrowing, with periods in and out of credit. This is despite Mrs L first raising concerns about her financial situation when she first complained to Lloyds in January 2018. However, I've seen evidence that prior to the February 2019 increase, Mrs L was constantly overdrawn and had some direct debits returned. I think this should have caused Lloyds concern and which should have prompted further checks. And had further checks been conducted, it would have shown that Mrs L was over reliant on her overdraft.

Mrs L did reach out to Lloyds online in January 2021 and July 2021 when she said she was struggling financially. And as a result they froze the charges and interest and in 2023 set up a repayment plan. However, in my opinion, this was a case of too little too late, as I'm not satisfied, that Lloyds should have doubled the overdraft limit from £350 to £700 in February 2019, given that in the main, Mrs L was constantly overdrawn leading up to this time and had a further overdraft limit increase the month before.

As highlighted above, the CONC regulations puts the onus on lenders that an overdraft is not generally suitable for long term use. So as well as needing to act responsibly when it took each decision it agreed to increase Mrs L's credit limit – ensuring that the overdraft was sustainably affordable without the need for Mrs L to borrow more – Lloyds also needed to monitor and review her overdraft usage. And where it identified a pattern of repeat usage, as with Mrs L's account, it needed to take steps to try and reduce it. And on balance, I'm not satisfied Lloyds have done this. I say this as prior to the February 2019 increase, Mrs L was in the main constantly overdrawn and had direct debits returned in January 2019.

So I don't think Lloyds acted fairly when it increased Mrs L's overdraft limit from £350 to £700 in February 2019, as I've seen evidence that Mrs L was relying on this for long term use, which is not what it's intended for. Therefore, there was a significant risk that Mrs L wouldn't be able to repay the overdraft and all the interest accrued within a reasonable period of time. Because of this, I uphold this complaint from the overdraft limit increase from February 2019.

Did Lloyds act unfairly in any other way

I've also considered whether Lloyds have acted unfairly or unreasonably in any other way and if an unfair relationship existed between Lloyds and Mrs L, as defined by section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've directed above results in fair compensation for Mrs L in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

Lloyds should:

- Re-work Mrs L's current overdraft balance so that any additional interest, fees and charges applied as a result of the overdraft limit increases from February 2019 onwards are removed. This means that from February 2019 onwards interest can only be charged on the first £350 of any overdrawn balance.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Lloyds should contact Mrs L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mrs L's credit file, it should backdate this to February 2019.

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 Mrs L (taking into consideration the interest of the insolvency practitioner), along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of the settlement. If no outstanding balance remains after all adjustments have been made, then Lloyds should remove any adverse information from Mrs L's credit file.*

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

My final decision

My final decision is that I uphold this complaint. Lloyds Bank PLC should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 31 March 2025.

Paul Hamber
Ombudsman