

The complaint

A company, which I'll refer to as R, complains that Lloyds Bank PLC treated it unfairly in relation to the granting of an overdraft facility and its associated terms.

R is in liquidation. This complaint has been referred to us by Mr R, a former director of R, acting on behalf of the liquidators.

What happened

In October 2021, R contacted Lloyds requesting a temporary overdraft facility while it awaited an R&D tax claim from HMRC and an anticipated investment from an investor. R's request stated it was happy for the overdraft facility to be removed once it received the R&D tax claim.

Lloyds agreed and the relevant paperwork was completed by both parties, confirming that the term was for a three-month period. The facility was extended for a further three-month period in January 2022 and again in April 2022.

In mid-2022, a new relationship manager (RM) was assigned to R. He introduced himself to Mr R and informed him that the overdraft facility was due to expire in July 2022. He explained that for a new overdraft facility to be put in place, Lloyds would require information including financial reports, alongside additional security, to be provided by R. Alternatively, the debt would need to be repaid in full.

Mr R wasn't in a position to provide additional security for R at that time, so Lloyds agreed to put a new one-year facility in place which would reduce by £1,000 on a monthly basis. In addition, Lloyds removed R's charge card and replaced it with a new credit card with a much lower limit.

In March 2023, Lloyds were informed that R had entered voluntary liquidation, so they withdrew the overdraft facility.

Mr R complained to Lloyds about what he described as their unfair treatment of R concerning the granting of the overdraft facility and its terms.

In addition, Mr R complained that Lloyds didn't provide enough personal support for him and the other director of R, who I'll refer to as Mrs R.

Lloyds upheld some of the complaint. They agreed that they hadn't considered the legal implications of any repayments due to liquidation before they put their repayment proposal to R, and they said that their request for repayment of the full overdraft facility was inappropriate.

However, they didn't believe there had been any detriment to R, other than the inconvenience of the additional time it took for Lloyds to reevaluate their position. Lloyds also said that despite this inconvenience, their communication around the amount they would be

willing to accept from R in repayment was clear from the outset. And they were willing to release the personal guarantee if R's overdraft facility was repaid in full.

They didn't uphold the complaint points about the personal support they provided to the directors as the issues raised related to the limited company and not the directors personally, and they referred the matter to their appropriate internal team based on that relationship.

Mr R remained unhappy with Lloyds' findings and Lloyds issued further final responses along the same lines. Ultimately a resolution couldn't be reached between the parties, so Mr R brought R's complaint to our service.

One of our investigators looked into R's concerns but he didn't uphold the complaint. He detailed Mr R's concerns as follows:

- Unfair treatment by Lloyds concerning the granting of the facility and its terms.
- Discrimination by Lloyds against Mrs R contrary to the Financial Conduct Authority (FCA) guidelines and the Equality Act.
- Discrimination by Lloyds against Mr R contrary to the FCA guidelines and the Equality Act.
- Negligent misrepresentation by Lloyds regarding the facilities covered by the personal guarantee.
- Repudiation of the personal guarantee by Lloyds as it refused to take settlement of the guarantee on any terms.
- Unfair treatment of Mr R by Lloyds giving him advice that was contrary to the Insolvency Act which could have led to severe financial consequences and criminal prosecution.
- Clauses in the personal guarantee from Lloyds which breach regulations.
- Refusal by Lloyds to implement a proposed resolution which would settle RBA's outstanding debt that Mr R was being chased for under the personal guarantee.
- Lloyds' failure to follow its own complaint procedures.

Our investigator separated the complaint into the parts we could consider and those that fell outside of our jurisdiction. He issued a separate view on everything related to the personal guarantee as that complaint was from Mr R himself and not the limited company, R. I have issued a separate decision about the personal guarantee, so I won't be addressing the guarantee in this decision other than to consider what security Lloyds required when agreeing to sanction a new overdraft facility.

Our investigator considered R's complaint about unfair treatment by Lloyds concerning the granting of the facility and its terms. He didn't uphold the complaint as he said Lloyds were entitled to be selective about who they offer credit to, including how much credit they offer and how long this credit is available for. As Lloyds had concerns about R's level of debt payments relative to its profits, our investigator thought they were within their rights to reduce the credit available to R and to request that Mr R provide additional security. He didn't think Lloyds acted unfairly or unreasonably or made any errors in this respect. In addition, there were elements of the complaint which related to discrimination against the directors in their personal capacity. Some of these points have been addressed by the courts, so we have no power to consider them.

Mr R didn't agree and asked for R's complaint to be reviewed by an ombudsman. So, the case was passed to me to decide.

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 reviewed all of the information available to me by both parties, I agree with our investigator that this complaint shouldn't be upheld. I've detailed my reasons below.

In October 2021, when R requested a temporary overdraft facility from Lloyds, R explained that it was expecting to receive funds into the account so this would be a temporary arrangement and the overdraft could be removed once those funds were received. As such, Lloyds agreed to a three-month facility, and I've seen the paperwork to confirm this.

The facility was extended for a further three-month period in January 2022 and again in April 2022. Whilst I've seen internal notes around this extension, I've not seen any evidence of any documents issued to R in relation to this period. As such, I've considered if Lloyds treated R unfairly here and if there was any detriment to R as a result of the overdraft being renewed.

Having the overdraft in place allowed R to continue with its work while it awaited anticipated funds into its account. So, I think R benefitted from having the overdraft in place during this period. However, I understand that the rolling over of the overdraft caused some confusion as Mr R said R took on a body of work in June 2022 on the basis that it had this overdraft facility available to it until the R&D tax claim was received.

Having reviewed the documentation relating to the overdraft, Lloyds' internal notes relating to the overdraft facility and the available correspondence between R and Lloyds, I have seen no evidence that Lloyds ever agreed that the overdraft facility would remain in place until the R&D tax claim was received by R. So, I don't think it would be fair for me to blame Lloyds for R taking on this work - particularly without clarifying the current position of its borrowing with Lloyds before doing so.

The issue of the overdraft facility not being for an indefinite period became apparent to Mr R when a new RM conducted a review of R's finances and looked at the overdraft facility in mid-2022. All financial institutions are expected to carry out regular reviews of their customer's accounts, so I've not seen any evidence that it wasn't reasonable for the new RM to review R's account, especially as the overdraft facility was due to expire.

Following the RM's review of R's finances and considering Mr R wasn't in a position to provide additional security to Lloyds, the RM agreed to put a new one-year facility in place which would reduce by £1,000 on a monthly basis. In addition, Lloyds removed R's charge card and replaced it with a new credit card with a much lower limit.

Lloyds are entitled to make a commercial decision about who they lend to and the terms of that lending. Mr R wasn't willing to provide any additional security to Lloyds and the anticipated R&D tax claim still hadn't been received into the account. So, I can't fairly say that Lloyds were unreasonable with this offer.

In respect of the security requested by the new RM, Mr R has argued that it was unreasonable for Lloyds not to ask for a new guarantee. However, Mr R wasn't willing to provide additional security at that time and the guarantee already in place covered all monies and liabilities, present or future, that R owed to the bank. So, I don't think there was any requirement for Lloyds to replace the existing personal guarantee and I can't say they treated R unfairly by not requesting a new personal guarantee from the directors, especially when Mr R had said he couldn't provide additional security at that time.

Lloyds were concerned about the level of debt payments R had taken on in comparison to its profit over recent years so I can't say that Lloyds acted unfairly in asking R to increase the security provided before deciding what lending would be made available to R. When no additional security was provided, Lloyds put a reducing facility in place rather than demanding immediate repayment of the facility in full. So, I think it's fair to say they supportive of R's financial circumstances at that time.

In addition, R had only requested a temporary facility initially, yet Lloyds agreed to provide the facility from October 2021 to July 2023 to support R. The facility was only withdrawn once Lloyds received notification that R was in liquidation.

So, I've seen no evidence to suggest Lloyds were unfair in the decisions they made in relation to the facility, and I can see that R benefitted from having this facility available during the time it was in place. I therefore don't uphold this complaint and I won't be asking Lloyds to take any action in respect of this complaint.

Lloyds' treatment of the directors of R

In respect of the other points raised about the treatment of the directors, and in line with the explanation given to Mr R by our investigator, R is a limited company, it is a legally distinct entity to the directors personally. As such I can only consider the impact of Lloyds' actions on the company itself, rather than any frustration or inconvenience the directors have personally suffered. As such, I won't be commenting any further on those aspects of the complaint.

Complaint Handling

As our investigator explained, we're unable to consider complaints about complaint handling as it isn't a regulated activity or an ancillary banking service according to the rules under which we operate.

I understand that Mr R will find my decision disappointing and that this has been a very challenging time for himself and Mrs R. However, based on the evidence I have seen, it would be unfair for me to say the Lloyds treated R unfairly in relation to this overdraft facility and its renewal.

My final decision

I don't uphold this complaint for the reasons set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 21 February 2025.

Tara Richardson
Ombudsman