DRN-5029435

Complaint

Mr N has complained that Lloyds Bank PLC ("Lloyds") continued to allow him to use his overdraft over an extended period and even when he was in financial difficulty.

Background

Lloyds increased Mr N's overdraft limit to £4,000.00 in March 2017. In May 2024, Mr N complained that Lloyds continued allowing him to use his overdraft in the same way and charged him for doing so, despite it being clear that the overdraft had become unsustainable for him.

One of our investigators looked at Mr N's complaint and thought that Lloyds should have realised that Mr N's overdraft had become demonstrably unsustainable for him by April 2021. So she upheld Mr N's complaint and that Lloyds needed to refund all the interest, fees and charges it added to his account from April 2021 onwards.

Lloyds disagreed with the investigator's view and so the complaint was passed to an ombudsman for review.

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 Mr N's complaint. I'll explain why this is the case in a little more detail.

Lloyds will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out here.

Having carefully considered everything provided, I think Lloyds acted unfairly when it continued charging overdraft interest, fees and any associated charges on Mr N's facility from April 2021. Our investigator used the term 'overdraft prisoner' to describe the that she believed Mr N was in. This is not terminology that I would use. Nonetheless, I do consider that by this point, Mr N's account had barely seen a credit balance for an extended period of time and his statements show that he was what is known as hardcore borrowing.

In response to our investigator's assessment, Lloyds has calculated a retrospective income and expenditure assessment which it says shows that Mr N was consciously choosing to remain in his overdraft. However, it's worth noting that in the period concerned the number of Mr N's creditors was increasing. And a significant amount of the payments from Mr N's accounts were going towards paying creditors.

I can see payments to at least six different creditors each month in the months leading up to the renewal. In my view, Mr N's account statements themselves show that he was becoming increasingly indebted and that's not even considering what Mr N may have been paying through other facilities or what his actual credit report would show his debt position was.

Furthermore, I'm mindful that Mr N's account balance was made to look better than it actually was by a number of credits which Mr N was unlikely to able to count upon continuing to receive going forward. For example, I can see that Mr N received two Self-Employment Income Support Scheme payments. These were grants which Mr N was provided with by the government because of the pandemic. Mr N also made at least one money transfer from a credit card as well.

I don't see how these were a sustainable source of payments such that they could be considered to constituted funds that would reasonably repay an overdraft within a reasonable period of time. Indeed it's fair to say that Mr N's actual monthly income was substantially lower than his overdraft limit and it's fair to say that Mr N may well have been overdrawn to a greater degree had it not been for the payments highlighted. Furthermore, it's to see how Mr N would have cleared the overdraft over a reasonable period of time on the basis of salary alone.

I can also see that Lloyds has referred to individual transactions and commented over what these may or may not have been for. However, Lloyds ought to have taken steps to question what was going on at the time of the April 2021 review and not wait for a number of years to pass before speculating over this.

In these circumstances, I think that by April 2021, at the absolute latest, Lloyds should have stopped providing the overdraft on the same terms and treated Mr N with forbearance rather than adding even more interest, fees and charges on the overdraft.

In reaching my conclusions, I've thought about the fact that Lloyds sent Mr N letters about his overdraft usage. Indeed, if I take Lloyds' argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Mr N because it had sent Mr N a number of letters as it had identified that his overdraft usage had become a problem. And because Mr N didn't respond to the letters it was reasonable to continue allowing Mr N to use his overdraft in the same way.

This is despite the fact that Mr N hadn't provided any indication that he'd be able to clear the persistent debt he was in and so Lloyds' actions (and Mr N's continued usage of overdraft in the same way) were never likely to remedy the situation.

In my view, this ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not responding to letters or not wanting to discuss the situation. I have to query just how many unanswered letters it would have needed to send in order to conclude that there may have been a problem. Furthermore, this fails to take into account that a lender should be taking steps to prevent a facility becoming unsustainable for a customer, not waiting until the problem is completely irretrievable before doing so.

I also think that this fails to take any account of the fact that there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't. While Mr N didn't contact Lloyds, most likely because he didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for Lloyds to conclude that he would be able to clear the persistent debt he was in, or that the lack of a response to its letters meant that there wasn't a problem.

In my view, all Lloyds' actions here were likely to result in (in sending Mr N letters and hoping he'd eventually respond irrespective of everything else that was unfolding in front of it), was Mr N paying high amounts of interest and charges (relative to the amount he owed) for the privilege of being allowed to continue holding, what Mr N's actions suggested, was a debt that had become unsustainable.

So as far as I'm concerned Lloyds' actions in allowing Mr N to continue using his overdraft and incurring further charges, when everything it had was suggesting he would struggle to be able to repay what he owed, worsened Mr N's problem rather than helped him.

Overall and having considered Lloyds' arguments, I'm satisfied that it failed to act fairly and reasonably towards Mr N by not taking corrective action in relation to his overdraft when it ought reasonably to have realised he was struggling to repay what had become a problem debt by April 2021 at the latest. It follows that I'm upholding Mr N's complaint.

In reaching my conclusions, I've also considered whether the lending relationship between Lloyds and Mr N might have been unfair to Mr N under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Lloyds to do results in fair compensation for Mr N given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Lloyds needs to do to put things right for Mr N

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

- Reworking Mr N's current overdraft balance so that all interest, fees and charges added from April 2021 onwards are removed. This is to reflect the fact that Lloyds ought to have realised that the overdraft had become demonstrably unsustainable for Mr N by this stage at the latest and he should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once adjustments a and b (set out above) have been made Lloyds should contact Mr N to arrange a suitable repayment plan Mr N 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 Mr N's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in April 2021. Lloyds can also reduce Mr N's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of carrying out the above adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr N 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 remains after all adjustments have been made, then Lloyds should remove any adverse information from Mr N's credit file. Lloyds can also reduce

Mr N’s overdraft limit by the amount of refund if it considers it appropriate to do so.

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

My final decision

For the reasons I’ve explained, I’m upholding Mr N’s complaint. Lloyds Bank PLC should put things right in the way I’ve directed it to do so above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 23 December 2024.

Jeshen Narayanan
Ombudsman