

## **The complaint**

Miss M says Lloyds Bank PLC irresponsibly lent to her.

Her complaint has been brought through a representative but for ease I will refer solely to Miss M in this decision.

## **What happened**

Miss M applied for £3,000 of overdraft facility across two current accounts in August 2023. She says the lending was irresponsible as Lloyds was on notice of her vulnerabilities, and she could not afford to repay it.

Lloyds offered to refund all interest and charges and apply this refund to reduce her outstanding balances. It said it would backdate the default(s) to 22 August 2023. But Miss M needed to agree a repayment plan for the capital outstanding.

Our investigator said this was a fair settlement offer.

Miss M disagreed and asked for an ombudsman's review. She said she cannot repay the debts: she has no regular salary. This should have been very easy for Lloyds to check and therefore decline her overdraft applications. Lloyds failed in its duty of care, she was extremely ill mentally in August 2023 and was eventually sectioned until late March 2024.

And Lloyds was aware of an earlier related incidence in 2020 - at that time her account was flagged with a lending block to protect her. When she made this complaint all the details of her illness and vulnerabilities were provided to Lloyds and it has made no allowance for her circumstances in its settlement offer.

I reached a different conclusion to the investigator with regards to what Lloyds must do to put things right. So I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 2 October 2024.

### *Extract from my provisional decision*

*The parties now agree that the overdrafts should not have been given to Miss M. What remains in dispute, and therefore what I will focus on, is what Lloyds needs to do to put things right. What it has proposed is, in part, in line with our standard approach. But as it knows we review each case on its individual merits, and in the circumstances of this case I don't think this resolution fully reflects either the impact that the lending decisions had on Miss M, or her current situation which seems unlikely to improve in the near-term.*

*I would remind Lloyds that where it knows, or reasonably suspects, that a customer has one of the conditions set out in CONC 2.10.6G its checks ought to be more thorough. CONC 2.10.6G states "Amongst the most common potential causes of mental capacity limitations are the following examples, a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including*

*prescribed drugs) induced intoxication.” Given the 2020 lending block I find it had reason to ensure it checked Miss M’s mental capacity before lending in 2023. I cannot see it did this.*

*In addition, CONC 7.10.1R states that a lender must suspend the pursuit of recovery of a debt from a customer when:*

- 1. the firm has been notified that the customer might not have the mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time; or*
- 2. the firm understands or ought reasonably to be aware that the customer lacks mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time.*

*[Note: paragraphs 3.7r of DCG and 7.13 of ILG]*

*The DCG refers to the OFT’s Debt Collection Guidance and both the DCG and ILG paragraphs reiterate the above extracts from CONC. They also go on to explain that: “... creditors should consider writing off debts where a borrower lacked the mental capacity to make the relevant financial decision at the time that he entered the credit agreement with the creditor. The legal position in England and Wales is that a contract is voidable where the creditor knew of the incapacity or must be taken to have known of it.”*

*Bearing this in mind and taking everything into account, in the context of this case, I currently think the fairest thing to do to put Miss M back into the position she would have been in had she not been granted the overdrafts by Lloyds is for it to write-off the full balances of the outstanding debts.*

*In summary, Lloyds should:*

- a) write-off the outstanding balances, including the capital, on Miss M’s accounts; and*
- b) remove any adverse information from her credit file in relation to the two accounts.*

*Finally, I’ve also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I’m satisfied the redress I have directed above results in fair compensation for Miss M 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.*

*Both parties responded by the deadline. Miss M accepted the outcome but raised some concerns if Lloyds intended to close her account to facilitate the write-off. She also asked for confirmation that any interest and charges she had paid would be refunded.*

*Lloyds accepted my provisional decision. It agreed that in this instance it could write-off the outstanding overdraft balance without closing the account. It said it would add a lending block to Miss M’s active account. This would be in place for 12 months and Miss M will need to get in touch if she wishes to renew it after that time.*

### **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.*

*As neither party challenged the key findings set out in my provisional decision I have no reason to change them, or the overall conclusion.*

There were queries about the redress that have now been resolved, but for clarity I will summarise the points before setting out the redress instructions in full.

Miss M asked if Lloyds would be refunding all interest and charges applied to her overdrafts, as well as writing off the existing balance. It had already agreed to do this and my decision that the debt should also be written off did not and does not change this requirement.

Miss M does not want to be left without a Lloyds account and Lloyds initially said it would need to close the active account to facilitate the write-off, and it could not guarantee Miss M would be able to open a new account. However, following our intervention it has agreed that given the circumstances of this case it can write-off the balance without closing the account.

### **Putting things right**

Lloyds should – looking across both accounts in combination:

- Rework Miss M's current accounts so that all interest, fees and charges applied to the overdraft balances are removed.
- If any outstanding balance remains once these adjustments have been made Lloyds must write-off that debt. Lloyds must then remove Miss M's overdraft facility and place a 12-month lending block on the active account.
- 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 M along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement.
- Lloyds should remove any adverse information related to either account from Miss M's credit file.

†HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Miss M a certificate showing how much tax it has taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance it must do so after deducting the tax.

### **My final decision**

I am upholding Miss M's complaint. Lloyds Bank PLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 13 December 2024.

Rebecca Connelley  
**Ombudsman**