

The complaint

Mr R has complained that Lloyds Bank PLC ("Lloyds") provided an overdraft to him that was unaffordable.

What happened

Mr R held current accounts with Lloyds. In September 2012, Lloyds approved an application from Mr R for an overdraft of £500 for one of the accounts ("A1"). On the same day, Mr R successfully applied for an overdraft of £820 on another current account ("A2") held with Lloyds.

Mr R made use of the overdraft attached to A1, but didn't make any further payments into the account. So Lloyds wrote to Mr R and explained the account was in arrears. Mr R didn't respond, so the account was closed and a default was applied to it in January 2022. Lloyds sold A1 to a third party I'll refer to as "F".

Mr R complained to Lloyds and said it shouldn't have lent to him.

Lloyds issued its response to Mr R's complaint in March 2024. It said it hadn't lent irresponsibly to Mr R and had carried out appropriate checks. It said it had declined previous applications before agreeing to lend to Mr R. It agreed it shouldn't have renewed Mr R's overdraft for A2 in September 2022, given that A1 was closed in February 2022. So it agreed to refund any interest paid by Mr R since February 2022 and said it would remove the arranged overdraft for A2 in April 2022. It also said it may pass A2 to a debt collection agency and arrange backdate the default to February 2022.

Mr R complained to Lloyds about being unable to contact it during Covid-19 and said two defaults had appeared on his credit file.

Lloyds issued a further response to Mr R as he said he was unhappy the overdraft for A2 was being removed. Lloyds agreed to delay this until June 2024.

Unhappy, Mr R referred a complaint to this service. He said he couldn't collect his post during Covid-19 and there was a serious backlog by the delivery company. He said he couldn't reach anyone at Lloyds and he wasn't working. Mr R also explained the impact to his health.

Mr R's complaint was considered by one of our investigators. She thought that Lloyds ought to have realised that Mr R had made two overdraft applications for two different accounts on the same day. She said the total overdraft amount requested by Mr R was close to his monthly income and so, Lloyds should have carried out further checks. Our investigator said further checks would have likely shown Mr R's income was significantly less than he declared. Our investigator also said that she wasn't persuaded Lloyds closed Mr R's accounts without notice, she was satisfied that Mr R would have been able to contact Lloyds before a default was applied and there wasn't any evidence to suggest that two defaults were reported for Mr R's account. Our investigator upheld Mr R's complaint.

Mr R said he didn't say Lloyds didn't tell him about the account closure. Instead he said it reworded his complaints and he tried to contact Lloyds unsuccessfully during and since Covid-19. Mr R also explained the impact of Lloyds' customer service on his health and said our investigator should uphold his complaint about Lloyds refusing his complaints for three years.

Our investigator asked Mr R to provide a copy of his full credit report and also supporting information to show he tried to contact Lloyds for three years.

Mr R said he didn't have any call records as he only kept records for so long. But he sent a copy of his credit file showing a default reported by Lloyds in January 2022 and a default reported by F from February 2022.

Lloyds also disagreed with our investigator. It said Mr R received payments into his account from an employer which when taken into account, resulted in a disposable income of around £340. It also questioned Mr R's non-essential spending.

Our investigator said she was satisfied that Lloyds acted reasonably when trying to contact Mr R. She also said it was normal for two defaults to show when a debt was sold on. She said it wouldn't impact Mr R as it related to the same account. Our investigator also said she was still satisfied that Lloyds lent irresponsibly as the income from the employer wasn't guaranteed and it should have been clear to Lloyds that Mr R couldn't repay the credit in a sustainable way.

Lloyds agreed to refund the overdraft interest and charges applied to both Mr R's accounts from 11 September 2021, as well as backdate the default to this date and remove any late payment markers from this date.

Mr R said he didn't receive letters due to Covid-19 and when he did finally receive them he complained to Lloyds. He also said he made cash payments, so his disposable income wasn't high.

As Mr R remains in disagreement, the case has been 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.

I've read and considered the whole file and acknowledge that Mr R has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

We've set out our approach to unaffordable/irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach particularly focusing on what we normally tell businesses to do to put things right while deciding Mr R's complaint.

In this case, Lloyds has agreed it shouldn't have approved an overdraft on either of Mr R's accounts. It has agreed to repay Mr R all interest and charges and backdate the default applied to Mr R's account to September 2021, which is when it approved both overdrafts. Having reviewed the case, I think this is fair and reasonable in the circumstances.

What remains for me to decide is whether I think Lloyds has correctly reported the account to the credit reference agencies ("CRAs") and whether Lloyds acted unfairly or unreasonably in any other way.

Mr R has provided a copy of his credit file which shows a default reported by Lloyds in January 2022. I can see that prior to this, Mr R's account was over its overdraft limit and Lloyds wrote to Mr R a number of times and explained that his credit score could be affected and it would be sharing information with the CRAs. It also sent a final demand for payment and said it would close Mr R's account if he didn't contact it. I can see that the letters were correctly addressed to Mr R and that he didn't contact it and so, the account was closed.

Mr R has said he didn't receive post and he was unable to contact Lloyds. However, I can see that Mr R visited a branch in May 2021 and he contacted Lloyds in March 2022 to dispute a payment for goods and services. Mr R hasn't provided any supporting information to demonstrate that he called or attempted to call Lloyds and Lloyds' call records don't show any calls received from Mr R after the overdraft was approved and until the account was closed. So, I don't think Lloyds acted unfairly when it closed Mr R's account and neither have I been provided with any supporting information to suggest that Lloyds made it difficult for Mr R to contact it.

In relation to the default, I've reviewed the screenshot that Mr R has provided which shows a default applied by Lloyds in January 2022 and then a default applied by F in February 2022. It isn't clear whether the entries relate to the same debt as there are no amounts or account details recorded with the entries. If I accept it is the same debt, I can see that Lloyds told Mr R that a default would show as being reported by Lloyds until March 2022 and following this date it will be reported by F and it would be responsible for continuing to report the default for the remainder of the six years. It seems Lloyds reported the debt sooner than it anticipated and F updated the credit file sooner too.

Generally when an account is sold with a default, the new owner, which is F in this case, will also report a default to the CRAs to show that the account is with a new company and that company is now collecting the debt. Whilst Mr R may be able to see two defaults on his own credit file, lenders generally only see one default as it relates to the same debt. So overall, I don't think Lloyds has incorrectly reported the default to CRAs. In addition, because Lloyds has agreed it shouldn't have lent to Mr R, it will need to follow my instructions below in relation to its reporting to the credit file, should Mr R accept this decision. If Mr R remains unhappy about how his account is reported by Lloyds should he accept this decision, he may consider raising a further complaint about this.

In reaching my conclusions, I've also thought about whether considering this complaint more broadly as being about an unfair relationship under Section 140A of the Consumer Credit Act 1974 would lead to a different outcome. But even if it could (and should) reasonably be interpreted in that way I'm satisfied this wouldn't affect the outcome in this particular case.

I'm also sorry to hear about the impact of this complaint to Mr R's health and personal circumstances. I'll take the opportunity to remind Lloyds of its obligation to treat Mr R with forbearance and due consideration if he is experiencing financial difficulties.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr R's complaint for Lloyds Bank PLC, if it hasn't already done so, to put things right by:

- Reworking Mr R's current overdraft balances so that all interest, fees and charges applied to it after the overdraft were approved in September 2021 are removed.

AND

- If an outstanding balance remains on the overdrafts once these adjustments have been made Lloyds should contact Mr R to arrange a suitable repayment plan, Mr R is encouraged to get in contact with and cooperate with Lloyds to reach a suitable agreement. If it considers it appropriate to record negative information on Mr R's credit file, Lloyds should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in September 2021. Lloyds can also reduce overdraft limits by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mr R over his limits.

OR

- If the effect of removing all interest, fees and charges results in there no longer being outstanding balances, then any extra should be treated as overpayments and returned to Mr R 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 balances remain after all adjustments have been made, then Lloyds should remove any adverse information from Mr R's credit file. Lloyds can also reduce Mr R's overdraft limits by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Lloyds Bank PLC to take off tax from this interest. Lloyds must give Mr R 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 R's complaint. Lloyds Bank PLC should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 December 2024.

Sonia Ahmed
Ombudsman