

Complaint

Mrs M and Mr M have complained that Lloyds Bank PLC (“Lloyds”) continued to allow them to use their overdraft over an extended period, even when they were in financial difficulty.

Background

Lloyds increased Mrs M and Mr M’s overdraft limit to £2,500.00 in September 2019. In September 2023, Mrs M and Mr M complained that Lloyds continued allowing them to use their overdraft in the same way and charged them for doing so, despite it being clear that the overdraft had become unsustainable for them.

One of our investigators looked at Mrs M and Mr M’s complaint and thought that Lloyds ought reasonably to have realised that Mrs M and Mr M’s overdraft had become demonstrably unsustainable for them by June 2020. So she upheld Mrs M and Mr M’s complaint and said that Lloyds needed to refund all the interest, fees and charges it added to their account from June 2020 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 Mrs M and Mr M’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 Mrs M and Mr M’s facility from June 2020. By this point, Mrs M and Mr M’s account hadn’t really seen a credit balance for an extended period of time and their account statements show that they had been, what is known as, hardcore borrowing.

In response to our investigator’s assessment, Lloyds has calculated a retrospective income and expenditure assessment. It says that this shows Mrs M and Mr M not experiencing difficulty and instead were consciously choosing to use their overdraft for extended periods.

I’ve thought about what Lloyds has said. It has said that Mrs M and Mr M exceeding their overdraft limit wasn’t of concern because these were subsequently paid. However, while these payments may have been paid a few days afterwards, Mrs and Mrs M’s account did have missed direct debit payments. Some of these were for essential expenditure such as utility bills.

I can also see payments to a debt purchaser in the months leading up to the renewal, which although Lloyds has included in its income and expenditure, it doesn't appear to have commented on. In my view, these payments would only have been made if Mrs M or Mr M had defaulted on a credit commitment. So it's fair to say the statements do not necessarily show that Mrs M and Mr M were in a healthy financial position and that's not even taking into account what Mrs M and Mr M may have been paying as a result of other credit facilities or what their respective credit files would show their debt position was.

Furthermore, I'm mindful that Mrs M and Mr M's account balance was made to look better than it actually was by a credit which Mrs M and Mr M were unlikely to be able to count upon continuing to receive going forward. For example, I can see that Mrs M and Mr M's account received Self-Employment Income Support Scheme ("SEISS") payment. This was a grant which Mrs M or Mr M would have been provided with by the government because of the pandemic. The account statements also show that a portion of this was used to repay a tax bill, which was a committed expense, almost immediately after this too.

I don't see how the SEISS payment could be considered to be a sustainable source of payments such that it could be considered to constitute funds that would reasonably repay an overdraft within a reasonable period of time. Indeed it's fair to say that the actual income credits Mrs M and Mr M received were lower than their overdraft limit and it's fair to say that Mrs M and Mr M may well have been overdrawn to a greater degree had it not been for the payment highlighted. Furthermore, given everything I've highlighted it's difficult to see how Mrs M and Mr M would have cleared the overdraft over a reasonable period of time.

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 June 2020 review and not wait for a number of years to pass before retrospectively speculating on what funds Mrs M and Mr M may or may not have had elsewhere. I also think that the default Mrs M or Mr M had and the makeup of their creditors do not leave me persuaded that Mrs M and Mr M were sitting on a large sum of funds elsewhere in the way that Lloyds is suggesting they might have been.

In these circumstances, I think that by June 2020, at the absolute latest, Lloyds should have stopped providing the overdraft on the same terms and instead treated Mrs M and Mr M 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 Mrs M and Mr M letters about their 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 Mrs M and Mr M because it had sent them a number of letters as it had identified that their overdraft usage had become a problem. And because Mrs M and Mr M didn't respond to the letters it was reasonable to continue allowing Mrs M and Mr M to use their overdraft in the same way.

This is despite the fact that Mrs M and Mr M hadn't provided any indication that they'd be able to clear the persistent debt they were in and so Lloyds' actions (and Mrs M and Mr M's continued usage of overdraft in the same way) was 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 and 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 Mrs M and Mr M didn't contact Lloyds, most likely because they 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 they would be able to clear the persistent debt they were 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 Mrs M and Mr M letters and hoping they'd eventually respond irrespective of everything else that was unfolding in front of it), was Mrs M and Mr M paying high amounts of interest and charges (relative to the amount they owed) for the privilege of being allowed to continue holding, what the actions of Mrs M and Mr M was suggesting, was a debt that had become unsustainable.

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

Overall and having considered Lloyds' arguments, I'm satisfied that it failed to act fairly and reasonably towards Mrs M and Mr M by not taking corrective action in relation to their overdraft when it ought reasonably to have realised they were struggling to repay what had become a problem debt by June 2020 at the latest. It follows that I'm upholding Mrs M and Mr M's complaint.

In reaching my conclusions, I've also considered whether the lending relationship between Lloyds and Mrs M and Mr M might have been unfair to Mrs M and Mr M 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 Mrs M and Mr M given the overall circumstances of their 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 Mrs M and Mr M

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

- Reworking Mrs M and Mr M's current overdraft balance so that all interest, fees and charges added from June 2020 onwards are removed. This is to reflect the fact that Lloyds ought to have realised that the overdraft had become demonstrably unsustainable for Mrs M and Mr M by this stage at the latest and they should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once the adjustments set out above have been made Lloyds should contact Mrs M and Mr M to arrange a suitable repayment plan. Mrs M and Mr M are 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 Mrs M and Mr M's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in June 2020. Lloyds can also reduce the

overdraft limit on Mrs M and Mr M's account by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave them over their 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 Mrs M and Mr M 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 Mrs M and Mr M's credit file. Lloyds can also reduce Mrs M and Mr M'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 Mrs M and Mr M a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm upholding Mrs M and Mr M'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 Mrs M and Mr M to accept or reject my decision before 12 February 2025.

Jeshen Narayanan
Ombudsman