

Complaint

Mr O has complained about the overdraft charges Lloyds Bank PLC ("Lloyds") applied to his current account. He's said the charges were applied unfairly as he was allowed to use his overdraft for a prolonged period.

Mr O is being represented in his complaint.

Background

Lloyds provided Mr O with an overdraft in October 2018. He was given an overdraft limit of £200. This limit was steadily increased over the course of the following four months until it reached £2,000.00 in December 2018.

Mr O's complaint was looked at by one of our investigators. He thought that Lloyds ought to have realised that it shouldn't have continued allowing Mr O to use his overdraft by October 2019. Therefore it needed to refund all of the interest, fees and charges added to Mr O's overdraft from this point onwards.

Lloyds disagreed with the investigator and asked for an ombudsman's decision.

My provisional decision of 15 January 2025

I issued a provisional decision – on 15 January 2025 - setting out why I was not intending to uphold Mr O's complaint.

In summary, I wasn't intending to uphold Mr O's complaint because I was satisfied that Lloyds didn't unfairly allow Mr O to continue using his overdraft in a way that was unsustainable or otherwise harmful for him.

Mr O's response to my provisional decision

Mr O didn't respond to my provisional decision or ask for any additional time to do so.

Lloyds' response to my provisional decision

Lloyds responded to my provisional decision confirming its acceptance of it and that it had nothing further for me to consider ahead of my final decision.

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 provided, including the events since my provisional decision, I'm upholding Mr O's complaint. I'll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mr O was unfairly charged by being allowed to continue using his overdraft, I want to be clear in saying that I haven't considered whether the various amounts Lloyds charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at Lloyds' charging structure per se, it won't have acted fairly and reasonably towards Mr O if it applied this interest, fees and charges to Mr O's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr O was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Lloyds didn't treat Mr O fairly and reasonably.

In other words, I've considered whether there were periods where Lloyds continued charging Mr O even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

I've looked through Mr O's account statements throughout the period concerned. And I can't see that Lloyds ought to have unilaterally taken corrective measures in relation to Mr O's overdraft.

It's fair to say that Mr O used his overdraft and the representative appears to be suggesting that this in itself was an indication that Lloyds ought to have taken action. But it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use.

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. Therefore, in this case, I've considered Mr O's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for him to have stopped using his overdraft, based on this.

After all if Mr O was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

The first thing for me to say is that this isn't a case a customer was advanced an overdraft facility which had a limit that was well in excess of their monthly salary. Indeed, I'm mindful that Mr O was not only in receipt of a monthly salary that had the potential to clear what he could owe within a reasonable period of time, he also received a significant amount of other credits into his account too.

So this isn't a case where the borrower was permanently in their overdraft. There were periods where Mr O was in credit – although I do accept that there were times where Mr O would have met the criteria of someone who displayed a pattern of repeat use of their overdraft.

That said, even though this is the case, the question here is whether Mr O's use of his overdraft was causing him to incur high cumulative charges that were harmful to him. And having considered matters, I don't think that this is the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr O expenditure, nonetheless I can't see much, at all, in the way of living expenses going out of his account, which suggests that he didn't have much in the way of this. Furthermore, there

are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mr O's account.

Indeed, it's fair to say that pretty much all of Mr O's expenditure at the time that the investigator believes that the complaint should be upheld was discretionary. It's also fair to say that the main reason Mr O was overdrawn in 2019 was because he made a transfer of £2,600.00 from his account.

Equally, I can't see anything to indicate that the charges he was incurring for what was on the whole discretionary spending were causing him harm. For example, I can't see that he was borrowing from unsustainable sources in order to meet these charges or that his borrowing was increasing exponentially. Although I do note that Mr O's position appears to have worsened during the course of 2024 and I would expect Lloyds to have taken note of this in the review that was due to take place at the end of 2024.

I accept neither of these things in themselves (or when taken together) mean that Mr O wasn't experiencing difficulty. But I don't agree that Mr O was reliant on credit in the way that the representative is suggesting. He was quite comfortably able to make his commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions.

Given the repeat usage letters Mr O is likely to have been sent by Lloyds, I think that he ought to have realised that how much he was paying for this. So I simply don't agree that Mr O was using his overdraft purely for essential spending, or because he had a reliance on credit to get by, as the representative says. It's also worth saying that given the significant and regular payments Mr O was receiving from a cryptocurrency platform, it's possible that he had assets of this type too.

I think it's also worth me saying that if I take the representative's argument to its logical conclusion, this would mean that any customer who uses any form of credit would be reliant on it. And they should not be allowed to use an overdraft, or any other credit, in such circumstances. There isn't anything in any of the regulator's rules, guidance or good industry practice which indicates that it would be a matter of fact that a customer is struggling financially should they be using credit in the way that Mr O was.

I say all of this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Mr O failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Mr O failing to meet his commitments out of his disposable income – were present in Mr O's circumstances in December 2019 or at any time prior to 2024.

Given the representative's reference to decisions from our database and its reference to CONC 5D, I also wish to make it clear that it isn't simply the case that a customer should never be allowed to make discretionary payments from an overdraft. Indeed, its argument appears to be suggesting that a corrective action should be taken against a customer every time they meet the criteria for being sent a letter, irrespective of the circumstances. However, the rules and guidance aren't as blunt a tool as this. The position is far more nuanced.

The representative's interpretation runs contrary to the purpose of the rules and guidance which is to ensure that customers are protected from high cumulative charges where they are likely to cause harm. The rules and guidance aren't to prevent the use of overdraft in all circumstances where a repeat use letter has been sent in the way that the representative's argument suggests.

Even more importantly the representative's argument is at odds with the concept of proportionality – a firm should take action proportionate to the circumstances – which runs right through CONC 5 as a whole. Therefore, while I've noted the conclusions in the decisions which the representative has referred to, as I'm not persuaded that Lloyds ought reasonably to have realised that Mr O's overdraft usage was causing him harm, the decisions referred to do not persuade me to reach the same outcome here.

Overall and having considered everything, I don't think that it was unreasonable for Lloyds to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of Lloyds taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Lloyds to demand that Mr O immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr O clearing what he owed in a reasonable period of time.

So I'm satisfied that Lloyds did not charge Mr O in circumstances where it ought to have realised that it was unfair to do so.

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

However, for the reasons I've already explained, I'm satisfied that Lloyds did not lend irresponsibly or act unfairly in allowing Mr O to use his overdraft in the way that he did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Mr O's complaint. I appreciate that this will be very disappointing for Mr O – particularly as the investigator suggested that the complaint should be upheld. But I hope he'll understand the reasons for my likely decision and that he'll at least feel his concerns have been listened to.

As I have mentioned, Mr O's statements show that his account was due to be reviewed at the end of December 2024. I've also said that I've noted that his position appears to have worsened in the period leading up to this review. I don't know what the conclusion of this review was given it was only due to take place a short time ago.

However, Mr O is encouraged to get in contact with and cooperate with Lloyds to reach a suitable agreement for repaying what he owes in the event that the facility is now unsustainable for him. Mr O may be able to complain to us – subject to any jurisdiction concerns – should he be unhappy with Lloyds' actions in relation to exercising forbearance on his balance.

My final decision

For the reasons I've explained above and in my provisional decision of 15 January 2025, I'm not upholding Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 3 March 2025.

Jeshen Narayanan
Ombudsman