DRN-5311833

The complaint

Miss W's complaint concerns unfair bank charges levied by Lloyds on her overdraft. She also complains that she paid in £250 over the counter in 1999, but it was never credited to her account.

What happened

Miss W had a current account with Lloyds since the 1990's. She tells us that in 1999 she was allowed to go overdrawn by "over £2,000+" and Lloyds began to charge her £34 per day. In 2004, a consolidation loan was agreed to clear the overdraft, but Miss W tells us that failed and she had to sell her car to cut costs. Her accounts with Lloyds were closed in 2007 and transferred to a debt collector. Miss W has provided a letter from the debt collector dated 19 August 2023 showing an outstanding balance of £4,566.13.

On 17 November 2023, Miss W complained to Lloyds. She said the loan was essentially to consolidate its own charges and suggested it should be written off as the charges were unfair. She says Lloyds treated her unfairly. Miss W also complained about a cash deposit she'd made in August 1999 for £250 which had been the final payment on another loan she'd had with it. She said that money had never reached her account, so she asked to be reimbursed for it.

Lloyds looked into Miss W's complaint. It said it believed she had brought the complaint too late for it to be considered under the complaint handling rules set by the industry regulator, the Financial Conduct Authority (FCA).

Miss W didn't accept Lloyds' response, so she referred her complaint to our service. One of our investigators looked into it. He has explained to Miss W that despite Lloyds' objections, he feels we can technically look into the complaint, but that even if we do, it is unlikely we would be able to make any award in her favour. Miss W has rejected what our investigator has said, so the complaint has been passed to me for a decision.

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 our investigator hadn't sent his view of the complaint to Lloyds, I issued a provisional decision saying:

"There are time limits for referring a complaint to the Financial Ombudsman Service, and Lloyds thinks this complaint was referred to us too late. The rules Lloyds refers to are set out in the Handbook of the FCA in the Dispute Resolution Section (DISP). DISP 2.8.2 sets out the time limits in which we have to work. The parts of the rule relevant to this case are that we cannot consider a complaint brought to the respondent business or to us more than:

- *six years after the event complained of; or (if later)*
- *three years from the date on which the complainant became aware (or ought*

reasonably to have become aware) of their cause for complaint, unless

- *the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*

unless

- *in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances; or*
- *the respondent business consents (Lloyds hasn't consented).*

In this case, Miss W raised her complaint on 17 November 2023. It's evident that the lending decisions, charges and missing deposit all took place before 17 November 2017. So it's clear the complaint was raised more than six years after those events and that Miss W has brought her complaint too late to be considered under the six-year part of the rule.

But I need to consider the three-year part of the rule (the second point above). That is, I need to consider when Miss W became aware (or ought reasonably to have become aware) of her cause for complaint. When we say, "cause for complaint", we mean that the customer had, or ought reasonably to have, knowledge of the following:

- *a problem;*
- *that they have suffered or may have suffered a loss; and*
- *someone else is responsible for this problem (and who that someone is).*

A customer doesn't have to know that something has definitely gone wrong. They just ought reasonably to have been aware of a cause for complaint for the time limits to start.

We asked Miss W some questions to establish when she became aware (or ought reasonably to have become aware) of her cause for complaint. She told us she was aware of the problems at the time and tried to raise complaints about them. Unfortunately however, she hasn't been able to provide any evidence of having raised those complaints. I've carefully reviewed contact notes provided to us by Lloyds but haven't been able to see any evidence of these complaints. Without evidence from either party of the complaint having been raised sooner, I can't reasonably say it was.

So having considered what Miss W has told us, it is evident that she has brought this complaint outside the three-year time limit described in the rules above. And as she says she complained at the time about her concerns, I can't see that there would be any exceptional circumstances that would have prevented her from referring her complaint to our service at that stage either.

It's clear therefore that her complaint about the £250 cash deposit at least, has been brought too late for us to be able to consider it.

But our investigator has expressed to Miss W that it may be reasonable to consider her complaint about the charges as being about an unfair relationship (as described in Section 140 of the Consumer Credit Act 1974) because of the affect they had on her financial and health situation. He explained to her that this meant this aspect of her complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Miss W says the charges levied caused her financial and health issues. The charges may have made the relationship unfair as she had to pay more than she could afford and was unable to reduce the debt.

We haven't shared this information with Lloyds – part of the reason that I've issued this provisional decision. But as I don't think there is any prospect of us making an award against Lloyds in the circumstances, I don't intend to comment on our jurisdiction further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Miss W's complaint can be reasonably interpreted as being about the fairness of her relationship with Lloyds, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Lloyds) and the debtor (Miss W), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- *any of the terms of the agreement;*
- *the way in which the creditor has exercised or enforced any of his rights under the agreement;*
- *any other thing done or not done by or on behalf of the creditor.*

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. While the account was closed more than six years ago, the debt remains outstanding – as evidenced by the letter Miss W has provided from the debt collector - and Lloyds remains the owner of it; therefore the credit relationship still exists. This means that I have the power under our rules to consider the whole of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Miss W has complained about, I need to consider whether Lloyds' decision to lend to her, or its later actions, created unfairness in the relationship between her and Lloyds such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

In order to uphold Miss W's complaint, I would need persuasive evidence of unfairness in the relationship. But due to the time elapsed since the account was closed and passed to debt collectors, quite reasonably, neither Lloyds nor Miss W have any useful information such as bank statements from when the account was active. In the absence of such evidence, I'm not able to make a finding that Lloyds treated Miss W unfairly.

But even if such evidence existed, I don't think further investigation would result in a substantially different outcome for Miss W.

The law around s.140 has been clarified in a recent court case - Smith v Royal Bank of Scotland Plc [2023] UKSC 34. In its judgement of that case, the Supreme Court said that remedies for unfair relationships are in the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making the claim.

So when deciding a fair and reasonable outcome to Miss W's complaint and fair redress, it's important for me to take this into account as relevant law. The Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a

situation where the claimant delayed more than six years after knowing the facts.

In other words, if the complainant knew – or ought to have known – that there was unfairness but didn't complain for more than six years, then it's unlikely that the court would make an award. So where a complaint is raised outside that timeframe and we think the complainant was (or ought to have been) aware of the relevant facts of the case some time ago, we would limit any redress to charges and interest incurred for the six-year period prior to the complaint being raised.

In Miss W's case, it is evident that she knew about the issues which led to any potential unfairness in the credit relationship some time ago. She says she complained at the time, but we have no evidence of those complaints from either party. Even if she didn't complain, I think it more likely than not that she would have been aware that the relationship felt unfair and she would certainly have been aware of the charges.

Bearing in mind what the Supreme Court said in the Smith judgement, even if we were to uphold Miss W's complaint, we would limit any redress to the six-year period prior to the complaint being raised. But Miss W's accounts were closed in 2007 and passed to debt collectors, so no charges or interest have been levied since then. Therefore, if I were to find in favour of Miss W, there is no prospect of her benefiting from any award I could make.

So I'm sorry to disappoint Miss W but, while I think we can look at her complaint about her relationship with Lloyds, I can't reasonably uphold it."

Lloyds replied to my provisional decision and pointed out that Miss W's debt was sold to a third-party debt collector in August 2024. This does have a bearing on our jurisdiction to consider the complaint, but as it hasn't changed my thoughts on the case and Lloyds has accepted what I said, I've continued with the process.

Miss W also replied to my provisional decision. She has provided lots of information about problems she has faced in her life from 1999 onwards in terms of her health and financial wellbeing. She has pointed out the affect her difficulties with Lloyds have had in this regard. I have every sympathy with what she has been through and don't doubt any of what she says. But I can only work within the powers I have and, for the reasons explained above, I am unable to uphold her complaint.

My final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 19 March 2025.
Richard Hale
Ombudsman