

Complaint

Mr C has complained that Lloyds Bank PLC (“Lloyds”) unfairly continued applying charges to his overdraft even when it was clear that he was in financial difficulty and failing to see a credit balance for an extended period.

Mr C is being represented in his complaint by a Claims Management Company who I’ll refer to as “the representative”.

Background

Mr C had an overdraft with an overdraft limit of £750. In August 2023, the representative, on behalf of Mr C complained to Lloyds. It said the charges applied to Mr C’s account were unfair as there was a failure to take account of his patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on Mr C.

When it investigated Mr C’s complaint and issued its final response in October 2023, Lloyds agreed that it shouldn’t have allowed Mr C to continue using his overdraft from August 2023. So it agreed to refund the overdraft charges Mr C paid from August 2023 onwards. Mr C remained dissatisfied and the representative on his behalf referred his complaint to our service.

One of our investigators looked at this complaint and she thought that Lloyds ought to have realised that Mr C was experiencing difficulty in August 2022 and therefore shouldn’t have added the charges it did from this point onwards.

Neither Lloyds nor the representative, on Mr C’s behalf, accepted the investigator’s assessment. Lloyds was of the view that what it had already agreed to do to put things right was fair and reasonable in all the circumstances of the case. Whereas, the representative felt that Mr C had been in difficulty from as far back as 2019.

While Lloyds did not ask for an ombudsman’s decision, as the parties were unable to reach agreement and the representative did ask for an ombudsman’s consideration of the case, Mr C’s 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 do think that Lloyds needs to do a bit more to put things right for Mr C. I’ll explain why in a little more detail.

Lloyds will be familiar with all the rules, regulations and industry codes of 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 in this decision.

Why I think that Lloyds ought to have realised that Mr C may have been in difficulty by August 2022

Having carefully considered everything provided, I'm satisfied that Lloyds acted unfairly when it continued charging overdraft interest and associated fees from August 2022 onwards. While Mr C might not have got in touch to confirm this, nonetheless by this point, it was evident Mr C's overdraft had become demonstrably unsustainable for him.

Mr C's statements leading up to this period show that he'd been hardcore borrowing for an extended period. In other words, he was using his overdraft over an extended period and in a way which suggested that he would struggle to return to credit from his income or any savings.

I say this particularly as there doesn't appear to be a steady income going into the account and credits entitled loans appeared to be keeping him from exceeding his limit. These appear to be from accounts in different names to Mr C. As this is the case, I'm not persuaded that the 'loans' were account transfers.

In these circumstances, I don't think that it was reasonable for Lloyds to have believed that Mr C would be able to clear what he owed within a reasonable period of time. Indeed, it should also be noted that the returned direct payments which Lloyds itself has referred to appear to be for council tax payments. I would suggest that this is a sign of difficulty most individuals do not choose not to make their council tax payments.

As Lloyds didn't react to Mr C's account usage and have regard to his account activity, when renewing his overdraft in August 2022, I'm satisfied that it failed to act fairly and reasonably towards him.

Mr C ended up paying interest, fees and charges at a time when his overdraft was already unsustainable. So I'm satisfied that Mr C lost out because of what Lloyds did wrong and it should now put things right.

Why I don't think that Lloyds needs to refund the charges it added prior to August 2022

In reaching my conclusions, I've also considered the representative's arguments that the investigator hadn't fully considered the impact of CONC 5D in her assessment of Mr C's complaint. The representative's arguments appear to suggest that Mr C's complaint should be upheld from 2018.

However, it's worth noting that CONC 5D did not come into force until 18 December 2019. So I don't think it is a relevant consideration prior to then and I wouldn't have expected Lloyds to have factored CONC 5D into its reviews of Mr C's overdraft until the August 2020 review at the earliest. Even then the pandemic saw the regulator issue temporary guidance regarding the suspension of credit facilities and the fact that this should be considered as a last resort, not as a first option.

I'm also mindful that in both 2020 and 2021, Mr C's account was receiving credits which significantly exceeded the overdraft and suggested that facility could be repaid within a reasonable period of time. In these circumstances, it is difficult to see how Lloyds would have been justified in taking corrective action on the overdraft (i.e. going straight to a final resort), given the limit on the facility, the credits going into the account and the transactions been made.

I've also seen that the representative has said that it has obtained account data, which it has

provided, which it says shows that Mr C was significantly indebted and experiencing difficulty. In the first instance, the representative hasn't disclosed where this data has come from. I say this because it hasn't provided current account statements, it has provided transactions lists in a spreadsheet. As a starting point, it is difficult for me to know the appropriate level of weight I can place on this information in circumstances where the source has been disclosed.

In any event and most importantly the account data the representative appears to be most reliant on, isn't the account data for the account that it, on behalf of Mr C, has complained about. The account data it is relying on appears to be for another account which Mr C holds with a joint party. The sort code for this account also suggests that this is a Lloyds account held at a different Lloyds branch.

It isn't clear whether the representative believes that the activity on this account should have been considered at the time of the reviews on the account complained about. However, for the sake of completeness, I wish to make it clear that the fact that this was a Lloyds account held at a different branch means that I wouldn't have expected any close scrutiny of it to have taken place as part of any overdraft reviews carried out on this account.

Equally, as the representative has provided the statements for a joint account, as evidence of Mr C's extensive indebtedness, it isn't even clear to me that the credit commitments it has referred to are Mr C's. These commitments could well be for the joint party, which hasn't given their authority for me to consider a complaint about any overdraft on that account. So I'm satisfied that the account data that the representative has provided, for the joint account, is of limited use. And I'm not persuaded that its content means that Lloyds ought to have acted in relation to Mr C's overdraft prior to August 2022.

In reaching my conclusions, I've also considered whether the lending relationship between Lloyds and Mr C might have been unfair to Mr C under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Lloyds to do, in the following section of this final decision, results in fair compensation for Mr C given the overall circumstances of his 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 Mr C

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

- Reworking Mr C's current overdraft balance so that all interest, fees and charges applied to it from August 2022 onwards (and which have not already been refunded) are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Lloyds should contact Mr C to arrange a suitable repayment plan, Mr C is 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 Mr C's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in August 2022. Lloyds can also reduce Mr C's overdraft limit by the amount of any

refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- 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 Mr C 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 Mr C's credit file. Lloyds can also reduce Mr C'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 Mr C 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 C'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 Mr C to accept or reject my decision before 14 April 2025.

Jeshen Narayanan
Ombudsman