

Complaint

Mr and Mrs T have complained about the overdraft charges Lloyds Bank PLC (“Lloyds”) applied to their current account. They’ve effectively said that Lloyds unfairly applied increased overdraft charges to their account during a time that they were experiencing difficulty and without checking that the overdraft itself was affordable.

Background

Mr and Mrs T had a joint current account with Lloyds which had an overdraft with a limit of £15,000.00. As I understand it, Lloyds initially agreed to provide this overdraft limit in 2014. The account statements provided show that the overdraft wasn’t being used up until the early part in 2020. At the end of March 2020, Mr and Mrs T began using the overdraft facility.

Mr and Mrs T made contact with Lloyds on a number of occasions regarding their ability to pay the overdraft charges and the impact that this was having on their ability to repay their overdraft. It’s fair to say that Lloyds applied a number of temporary payment plans and holds to interest being added on the account and on occasion some of the fees that had been applied were refunded too.

However, in September 2023, Lloyds concluded that the overdraft was no longer sustainable for Mr and Mrs T. As a result, it notified Mr and Mrs T that it would proceed to take steps to either remove the overdraft or return to applying the contractual terms. Mr and Mrs T were unhappy with the impact that this would have on them and complained.

Lloyds didn’t uphold Mr and Mrs T’s complaint. It was satisfied that it had made reasonable attempts to help Mr and Mrs T repay the balance on their account and as this was unsuccessful it considered it appropriate to withdraw the facility. Mr and Mrs T remained dissatisfied and referred the complaint to our service.

Mr and Mrs T’s complaint was looked at by one of our investigators. He thought that Lloyds ought to have realised that the overdraft had become unsustainable for Mr and Mrs T by March 2021 and therefore taken corrective action in relation to the facility at that point. He recommended that Lloyds refunded the interest it added to Mr and Mrs T’s account from March 2021 onwards.

He also said that Lloyds should backdate any adverse information it proposes to report to credit reference agencies to this point and also work with Mr and Mrs T to set up an affordable payment plan for the outstanding balance that would remain on the facility to be repaid.

Lloyds accepted the investigator’s assessment. However, when pushed on whether they accepted the investigator’s assessment Mr and Mrs T did not confirm acceptance. So the complaint was passed to an ombudsman for a final decision as per the next stage of our dispute resolution process.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Preliminary matters

I've read and considered everything provided. I accept and acknowledge that Mr and Mrs T have referred to a number of different issues that now extend past Lloyds' decision to apply increased charges to their overdraft from 2020 onwards. For example, they've now sought to add that the overdraft should never have been granted to them in the first place, in 2014.

However, as our investigator has explained, we can only get involved in a dispute once a respondent firm has had the chance to consider the matter. Some of what Mr and Mrs T are now seeking a response to wasn't part of their original complaint. And I'm simply not in a position to consider matters that weren't part of the original complaint to Lloyds.

I also note that Mr and Mrs T have referred to a number of Financial Conduct Authority ("FCA") publications which it believes that Lloyds hasn't adhered to, or at the very least hasn't evidenced adhering to. However, it isn't my role to punish a firm for non-compliance with rules, guidance or FCA publications. Ultimately these are matters for the FCA and not for me to consider here.

I therefore want to reassure Mr and Mrs T that where I haven't commented on a specific issue that they've raised, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because it either wasn't part of their original complaint, or I don't think I need to do so, in order to reach what I think is the right outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

My thoughts on Mr and Mrs T's complaint

Having carefully considered everything provided, I'm satisfied that what Lloyds has already agreed to do to put things right for Mr and Mrs T is fair and reasonable in all the circumstances of their complaint. I'm therefore not requiring Lloyds to do anything more or anything further and I leave it up to Mr and Mrs T to determine whether they wish to accept Lloyds' offer.

Our typical approach to putting things right in cases such as Mr and Mrs T's

Lloyds has agreed that it shouldn't have allowed Mr and Mrs T to continue using their overdraft from March 2021 onwards. It has agreed to remove all the interest, fees and charges it added from that point, in order to put things right. As explained, it will also close the overdraft and set up a repayment plan for the balance as well as backdate any adverse information that it reports to credit reference agencies.

It may help for me to explain that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced because typically those funds will have already been spent.

So we have to look at a way of asking a lender to put things right in some other fair and reasonable way. And where a business provided credit which it should have realised was

unaffordable or unsustainable for a customer, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added as a result of any credit that it should not have provided. And if those interest and charges were paid also add 8% simple interest per year. We'd also expect a lender to reflect the position that the customer will be left in now. This is even if it results in adverse information being reported to credit reference agencies. After all lenders are under an obligation to report accurate information.

Lloyds has agreed to do all of this. It is therefore fair to say that Lloyds has agreed to put things right in a way that I'd typically expect a lender to, bearing in mind what went wrong in this instance.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it initially provided, or continued to provide, credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr and Mrs T believe that Lloyds should do more here. They are unhappy that they were allowed to keep the overdraft once Lloyds implemented the change to its pricing structure in 2020. Secondly, they are also unhappy that as a balance will be left to repay on the overdraft Lloyds proposes to commence the process of closing their overdraft and account (along with recording corresponding adverse information with credit reference agencies) once their complaint has been finalised.

What happened when Lloyds notified Mr and Mrs T that it would be changing its overdraft pricing structure towards the end of 2019 and should this have resulted in an assessment of whether the overdraft was affordable?

At the end of 2019, Lloyds wrote to Mr and Mrs T and told them that the way it was charging for overdrafts was changing. There would no longer be a distinction between arranged and unarranged overdrafts to reflect the fact that the regulator had changed the rules. Furthermore, one of two potential APRs would apply to their overdraft. The rate that would apply to them depended on their circumstances.

I understand that in determining the APR that it would apply to the account, Lloyds will have considered a number of factors when making its decision including, amongst other things, Mr and Mrs T's relationship with the bank, credit file data, their existing overdraft limit and their usage of the facility. Lloyds deemed that Mr and Mrs T qualified for the lowest overdraft interest rate it offered. As I understand it, Mr and Mrs T say that given their credit file data may well have played a part in Lloyds' decision on which rate to provide them with, it should also have carried out an assessment of affordability in January 2020.

However, I wouldn't necessarily expect a lender to carry out an affordability assessment on a revolving credit facility simply because it is varying the terms and conditions on it. Indeed, while Mr and Mrs T have referred to section 5.2A.4 R of the Consumer Credit Sourcebook ("CONC"), as a reason why an assessment should have taken place, the content of this provision makes it clear that a firm needs to carry out an assessment of affordability, on a running credit account, where it is entering into such an agreement, or it is significantly increasing the credit limit.

Mr and Mrs T's overdraft was granted with a credit limit of £15,000.00 in 2014 and the limit wasn't altered at the time of the change to the pricing structure in 2020. So I'm satisfied that there weren't any events necessitating an assessment of affordability taking place at the time of Lloyds' proposed changes.

I also think that it is worth bearing in mind that Mr and Mrs T weren't using the overdraft at the time Lloyds notified them that it was changing the pricing structure either. So if they were unhappy with the new terms proposed – notwithstanding the fact they were likely to be paying less under the new structure than they were under the previous one – it is fair to say that they did have the opportunity to terminate the facility at that point in time.

Bearing in mind all of this, I'm satisfied that Lloyds wasn't required to carry out a further assessment of affordability at the time it changed its overdraft pricing structure. I accept that Lloyds was required to do this when initially providing the overdraft in 2014 and I appreciate that Mr and Mrs T have said that their ability to repay the overdraft wasn't considered at this point. However, this wasn't part of the original complaint to Lloyds and this is therefore outside the scope of what I am considering as part of this complaint.

Did Lloyds owe Mr and Mrs T any other obligations as a result of continuing to offer them an overdraft after it changed its pricing structure?

While I don't think that Lloyds was required to assess the affordability of Mr and Mrs T's overdraft limit in January 2020, that is not to say that didn't have any obligations at all in relation to the facility once it implemented the changes to its pricing structure.

I say this because as well as having an obligation to assess whether the overdraft was affordable for Mr and Mrs T when it first provided it, Lloyds also had an ongoing duty to review Mr and Mrs T's overdraft and consider whether it was fair and reasonable to continue allowing them to use the overdraft, in light of the way it was being used. It is my understanding that Lloyds did review Mr and Mrs T's overdraft on an annual basis.

I use the term review loosely because this wasn't a case of contacting Mr and Mrs T before assessing their finances at a micro level and providing them with advice. It was a simply a case of Lloyds considering things like the frequency Mr and Mrs T used their overdraft; how much of it they used when they did use it; and whether its algorithms picked up any of the signs of financial difficulties, set out in the regulator's guidance on financial difficulty, in their account transactions.

Lloyds would have needed to consider whether any of this information suggested that the overdraft had become unsustainable for Mr and Mrs T. The information I've been provided suggests that the first time Mr and Mrs T's account will have been reviewed after the change to the pricing structure was on 11 March 2020. This is presumably because the overdraft was first granted in March. In any event, the important thing here is that a review took place in March of each year and it's not important to know why the review took place in March of each year.

What the review in March 2020 is likely to have shown

Having manually looked through Mr and Mrs T's account statements in the lead up to 11 March 2020, which Lloyds in any event is unlikely to have gone as far as doing, I can't see anything to suggest that Lloyds ought reasonably to have realised that the overdraft may have become unsustainable for Mr and Mrs T. I primarily say this because Mr and Mrs T hadn't used their overdraft for some time prior to 11 March 2020. Furthermore, their healthy credit balance during this period suggested that they were managing their account well.

I'm also mindful that I've not seen any indication of 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 and Mrs T failing to meet consecutive payments to credit, or Mr and Mrs T failing to meet their commitments out of their disposable income – present in their account transactions.

In these circumstances, I don't think Lloyds had any reason to suspect that Mr and Mrs T were dependent on credit, that the overdraft had become demonstrably unsustainable for them, or that they may have been experiencing financial difficulty. As this is the case, I don't think that it was unfair or unreasonable for Lloyds to have renewed Mr and Mrs T's overdraft in March 2020.

The position after March 2020

It's fair to say that Mr and Mrs T's circumstances did change shortly after the onset of the pandemic in March 2020. As a result, they started to use their overdraft far more regularly and to a much greater depth from late March 2020 onwards. However, this happened after the decision to renew Mr and Mrs T's overdraft took place. So I don't think that Lloyds could have anticipated that this would happen, or have factored this into its decision on renewing the overdraft.

Lloyds now accepts that there were a number of reasons why it shouldn't have renewed Mr and Mrs T's overdraft on 11 March 2021. I realise that the timing of the reviews has meant that Mr and Mrs were able to use their overdraft unsustainably for almost a year. However, while Mr and Mrs T applied for the special pandemic measures to be applied to their account for the first three months this was available, they did not get in contact about renewing this despite being invited to do so. I'm therefore satisfied that Lloyds wouldn't have needed to act unilaterally until the next review of the overdraft was due in March 2021.

Bearing all of this in mind, I'm satisfied that placing Mr and Mrs T, as close as possible, to the position that they would be in had their overdraft not been renewed in March 2021, is fair and reasonable in all the circumstances of this complaint.

Removing the overdraft, defaulting the account and setting up an affordable payment plan

It isn't in dispute that by September 2023, which is when Lloyds wanted to start the process of removing the overdraft, Mr and Mrs T have been in contact with Lloyds for some time to explain that they were having difficulty paying the interest that they were being charged for using their overdraft.

Once a lender is told, or it realises, that a borrower is experiencing financial difficulties we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations. Lloyds placed a number of temporary 30-day holds on interest being added to the overdraft and also refunded some of the fees applied in order to provide Mr and Mrs T with the breathing space to find a more sustainable method of repaying his overdraft.

I'm satisfied that these were fair and reasonable first steps to what Mr and Mrs T had told Lloyds about their change in circumstances. However, interest holds and fee refunds can only ever be temporary measures. And these methods won't address repaying the capital amount already owed. So Lloyds has attempted to complete income and expenditure assessments with Mr and Mrs T in order to find a more long term solution.

The results of this have shown Lloyds that Mr and Mrs T are not in a position where they will be able to repay the balance that will remain within a reasonable period of time. It is worth

noting that this will remain the case even after the refund that will be applied to the account once this complaint has concluded.

As a result of this, Lloyds decided to begin corrective action in relation to removing the overdraft and closing the account as it was entitled to do and I would expect it to. I do sympathise with what Mr and Mrs T have told us. I fully appreciate they've been through a difficult situation, why they are unhappy with adverse information being recorded on their credit files and worried about the impact this will have going forward.

But by September 2023, which is when Lloyds told Mr and Mrs T that it would begin this process, it was clear that any difficulty Mr and Mrs T had repaying their overdraft wasn't temporary. I don't think it would have been fair, reasonable or proportionate for Lloyds to continue ignoring Mr and Mrs T's obvious and apparent difficulty, or the fact that the overdraft had become demonstrably unsustainable for them, indefinitely.

Indeed, everyone accepts that by March 2021 Lloyds probably ought to have taken corrective action in the way that it now proposes to do. After all, while withdrawing a facility and recording a default or other adverse information, might be viewed negatively by other lenders, it does offer the borrower certain protections in relation to the overdraft debt. And asking Lloyds not to default the overdraft and keep Mr and Mrs T's account open, when it is now accepted that the overdraft was unsustainable in March 2021, would be counterproductive and not in Mr and Mrs T's interests or arguably that of any future lender.

I realise that Lloyds' decision will be very disappointing to Mr and Mrs T and I can appreciate why the closure of their overdraft and this account will cause them inconvenience. But despite this, I'm simply not in a position to be able to tell Lloyds it has to continue offering them a current account in circumstances where Mr and Mrs T's overdraft defaulting has led to it deciding it no longer wishes to provide them with one.

So I'm satisfied that it is fair and reasonable for Lloyds to begin the process of taking corrective action in relation to Mr and Mrs T's overdraft upon conclusion of this complaint. I'm satisfied that Lloyds is entitled to withdraw Mr and Mrs T's overdraft, close their account and reflect what would have been recorded on Mr and Mrs T's credit file had it started the process of taking corrective action on the overdraft in March 2021.

That said, Lloyds should contact Mr and Mrs T to arrange a suitable repayment plan for the balance that will remain once all adjustments are made. Mr and Mrs T are encouraged to get in contact with and cooperate with Lloyds to reach a suitable agreement for this. I would also remind Lloyds of its obligation to ensure that any payments on a repayment plan will need to be sustainable for Mr and Mrs T.

Finally, I've also considered whether the lending relationship between Mr and Mrs T and Lloyds might have been unfair to Mr and Mrs T under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what Lloyds has agreed to do results in fair compensation for Mr and Mrs T 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.

As this is the case, I'm satisfied that what Lloyds has already agreed to do to put things right for Mr and Mrs T is fair and reasonable in all the circumstances and I'm not requiring it to do anything more or anything further. I appreciate that this will be very disappointing for Mr and Mrs T as it's clear that the pandemic left them in a difficult situation and their finances

are still recovering from this. But I hope they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

Fair compensation – what Lloyds needs to do to put things right for Mr and Mrs T

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr and Mrs T's complaint for Lloyds to put things right by:

- Reworking Mr and Mrs T's current overdraft balance so that from March 2021 onwards all overdraft interest, fees and charges are removed.

AND

- Lloyds should contact Mr and Mrs T to arrange a suitable repayment plan to repay the outstanding balance that will remain on the overdraft once these adjustments have been made. Mr and Mrs T are strongly 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 and Mrs T's credit files, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in March 2021.

My final decision

For the reasons I've explained, I'm satisfied that what Lloyds Bank Plc has already agreed to do to put things right for Mr and Mrs T is fair and reasonable in all the circumstances of their complaint. I'm therefore not requiring it to do anything more or anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before **2 May 2025**.

If Mr and Mrs T do not accept my decision before **2 May 2025** it will not be binding on Lloyds. Should Mr and Mrs T seek to accept the decision at a later date, it will be a matter for Lloyds to decide whether it is willing to settle the complaint in line in the way that it has agreed to.

Jeshen Narayanan
Ombudsman