DRN-5426461

The complaint

Mr S complains Lloyds Bank PLC (Lloyds) approved him with unaffordable overdraft lending and continued to provide the facility when he was showing signs of financial difficulties.

Mr S' complaint has been brought by a professional representative, but for ease I'll refer to all submissions as though they are his own.

What happened

Lloyds provided Mr S with an overdraft facility on the following terms:

Date	Existing Limit	Increase/Decrease	New Limit
March 2002	£0	+£400	£400
February 2003	£400	+£100	£500
July 2004	£500	+£1,500	£2,000
April 2005	£2,000	+£1,000	£3,000
July 2006	£3,000	+£2,000	£5,000
February 2008	£5,000	+£2,000	£7,000
March 2017	*£7,000*	*-£2,150*	*£4,850*

**Lloyds has told us that in addition to the formal limit increases set out above Mr S' overdraft limit was also increased on an informal basis, to a maximum of £8,000 between 2005 and 2008, when it decreased back to the formal limit of £7,000.*

Mr S made an unaffordable lending complaint to Lloyds. It issued a final response letter in March 2024 saying the complaint had been made late and it wouldn't investigate his concerns. Mr S referred his complaint to our service for review.

On of our investigators looked at Mr S' complaint and upheld it. Lloyds asked for an ombudsman's review and the complaint was passed to me to decide.

I recently issued a provisional decision where I set out, with reasons, my initial thoughts on this case and what I was intending to decide.

The below is an extract from my provisional decision:

"*We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website.*

At the times Lloyds provided Mr S with the original overdraft limit and limit increases, it needed to take reasonable steps to ensure they were affordable. There isn't a set list of checks Lloyds needed to conduct, but we'd expect the checks to be proportionate to the terms of lending being provided, and the information the business knew or ought reasonably to have known about the borrower.

I've used this approach to help me decide this complaint and I've set out my findings below under separate headings for ease.

Lloyds has said it would have completed affordability checks before providing Mr S with each of these limits, in order to satisfy itself that the lending was affordable for him. But, due to the passage of time it hasn't been able to show us what these checks identified. I don't consider that to be unreasonable, especially given the data retention policies Lloyds must adhere to.

However, it does mean I can't be satisfied that reasonable checks were completed before any of these lending events. Lloyds has provided us with Mr S' bank statements from December 2001 to January 2024. So, in the absence of any other conflicting information, I've used these to build a picture of what Lloyds would more likely than not have identified through reasonable checks at the time.

<u>The original limit of £400 in March 2002 and limit increase to £500 in February 2003</u>

At the time of these lending decisions I can see Mr S was receiving a weekly wage. Looking at a three-month period before each lending decision, Mr S' income averaged around £1,550 per month leading up to the limit in 2002; and averaged around £2,350 before the limit increase in 2003.

I do note that the statements in December 2001 and January and February 2002 largely show Mr S' account being overdrawn. The first statement where an overdraft limit is evidenced is in March 2002, of £400; and this corresponds to when Lloyds has said the original limit was approved. However, the account management prior to what appears to be the first formal overdraft limit being put in place doesn't suggest it was wrong for Lloyds to provide Mr S with the initial £400 limit.

I say this because both the initial limit and the increase were relatively modest in comparison to Mr S' evidenced disposable income. In the months leading up to the overdraft first being agreed, Mr S' average non-discretionary expenditure totals around £300 per month. There are a number of cash withdrawals throughout the months, but the evidence suggests Mr S had a reasonable level of disposable income each month for other living expenses, as well as being able to repay the overdraft lending in a reasonable period of time.

In the three months leading up to the limit increase in February 2003 Mr S' evidenced non-discretionary expenditure totals around £850 per month. In addition, Mr S' balance was largely in a credit position across the period I've reviewed, going into an overdrawn position only twice; once in December 2002 and once in January 2003. In both instances it was overdrawn for a couple of days before it was brought back into credit.

So, I consider Lloyds would reasonably have taken comfort that Mr S was managing the initial modest limits well, and I don't consider there was anything from what Lloyds ought reasonably to have seen or known at the time that would have caused it concern.

It therefore follows I don't consider it made unfair lending decisions when providing Mr S with the £400 limit in March 2002, or the increased limit of £500 in 2003.

<u>The limit increases to £2,000 in July 2004 and £3,000 in April 2005</u>

Reviewing the three months leading up to both lending decisions I haven't seen anything which leads me to conclude Lloyds acted unfairly when providing these increases.

I say this because in the three months leading up to the limit increase July 2004 Mr S' average income is around £3,000, and his non-discretionary expenditure and credit commitments average around £1,050. So, Mr S is left with a reasonable level of disposable income for other day to day living costs, and repayment of this facility.

Mr S' account is run in credit across April and some of May 2004, where it then goes into an overdrawn position. But there's no evidence of persistent overdraft use, or other signs of financial difficulty that I consider ought to have caused Lloyds concern.

Mr S' income averages around £2,500 across the three months leading up to the limit increase in April 2005, and his non-discretionary expenditure and credit commitments average around £1,300. Again, Mr S is left with a relatively high level of disposable income each month for other living costs and repayment of this facility over a reasonable period of time.

Generally Mr S' account is in an overdrawn position across the three months leading up to the limit increase in 2005, and had Lloyds looked at Mr S' use of the facility it would have seen the account hadn't generally swung into a credit position since the limit increase in July 2004. However, apart from the use of the facility, there's no other signs that Mr S was in financial difficulties.

Our investigator said Lloyds shouldn't have increased the limit in April 2005, saying Mr S' account hadn't seen or maintained a credit balance for an extended period of time. While that is accurate, I have needed to take account that Mr S was paid on a weekly basis rather than monthly, which does impact how an account and facility is managed. And I don't consider an account largely running in an overdrawn position is in itself enough to suggest a customer may be experiencing financial difficulties such that increasing the limit would be a problem. This is especially the case where, as I've found above, Mr S' evidenced income and non-discretionary expenditure does provide a relatively high level of disposable income. So, it would appear Mr S was choosing to manage his account in this manner, and I can't reasonably say Lloyds shouldn't have provided Mr S with the limit increase in 2005 solely on that basis.

So, while these increases provided Mr S with a much higher available overdraft limit, I consider the evidence leading up to the events supports they were affordable for him. It therefore follows I don't consider Lloyds made unfair lending decisions when providing these limit increases.

<u>The limit increase to £5,000 in July 2006</u>

In July 2006 Lloyds approved an overdraft limit of £5,000, an increase of £2,000 on the existing limit. I don't consider Lloyds made a fair lending decision when increasing Mr S' overdraft limit in July 2006, based on the information it ought reasonably to have identified.

In the months leading up to this increase Mr S' income remains relatively consistent to previous years, averaging around £3,500 a month. Mr S' evidenced non-discretionary expenditure and credit commitments continue to leave him with a relatively high disposable income. So, the increased limit may have appeared affordable for Mr S on a strictly pounds and pence basis, and it looks like he would at least have been able to repay it within a reasonable period of time. But I don't consider his management of the overdraft facility over the previous years supported the increase.

I say this because from a more rounded review of Mr S' management of the overdraft facility it's evident that he wasn't managing his finances well, and there are signs of financial difficulties within the statements.

Lloyds has said it completed a review of Mr S' facility in October 2005 and had no concerns. The renewal date is confirmed on the statements as 31 October 2005. But in October 2005 Mr S had exceeded his limit on a number of occasions; and his utilisation of the facility since *the increase in April 2005 had been relatively high, suggesting a greater dependence on the overdraft to meet his regular commitments and day to day living costs.*

Mr S had also received funds from a loan in July 2005 which appear to have been used to consolidate credit card debt. Lloyds identified this when it considered Mr S' complaint, and while I agree this didn't appear to increase Mr S' total outstanding debt, I consider it paints a picture of the financial position he was in.

So, by the time of the increase in July 2006 Lloyds was already on notice that Mr S had been exhibiting signs of possible financial difficulties, and I therefore consider a more detailed review of the new limit being requested was warranted.

Had Lloyds completed a more detailed review it would have seen that since October 2005 Mr S was showing the same patterns of behaviour with his management of the facility. There's also evidence on the statements of Mr S making direct debit payments towards more credit card lenders, strongly suggesting he'd obtained further lending after the consolidation loan had been obtained in July 2005.

In mid-July 2006 Mr S' balance exceeds £3,000 overdrawn, and a couple of days later a direct debit is returned unpaid, stopping the account from going in excess of £3,200 overdrawn. This strongly suggests to me that Mr S' limit was still at £3,000 at this point. And this is further evidence that Mr S was continuing to struggle to manage his finances.

The pattern that was now evident to Lloyds at the time of this increase was one of a reliance on the overdraft. There are signs of persistent high utilisation of the facility, and across the previous years as the overdraft limit has been increased, Mr S's overdrawn balance has largely followed the level of the increases. Lloyds seemingly increases Mr S' limit when the utilisation gets high, and Mr L has no further space to borrow further funds through the existing overdraft facility. Whereas the initial limits were relatively modest, Mr S' behaviour shows a much heavier reliance on the overdraft lending as it increases across the years.

So, I consider by July 2006 Lloyds had enough information available to it to evidence that further lending by way of an overdraft wasn't the right solution to Mr S' financial situation. It therefore follows I don't consider it made a fair lending decision when increasing Mr S' overdraft limit in July 2006.

Looking at the account management in the years that followed the pattern is fundamentally the same. Mr S continues to run the account in a largely overdrawn position. There are multiple instances across the following years where Mr S receives credits into his account, in some instances amounts that solely repay the overdraft, and in other years larger credits which take Mr S' account into a credit position. But the credit position in most cases lasts days, or at best months, before Mr S' account once again enters an overdrawn position, generally within the thousands. Some of the credits appear to be from other lenders, suggesting Mr S was continuing to look to consolidate his debts, but ultimately he continued to use the overdraft facility that was still available to him. This suggests to me that he may have struggled to repay the overdraft he had, in a sustainable way (ie without needing to borrow further) in a reasonable period of time.

There are a couple of instances where Mr S receives significant credits, and these leave his account in a credit position for a longer period of time. But significant debits follow in the proceeding months and the account again enters an overdraft position, again in the thousands.

So, reviewing the statements from 2006 does largely evidence Mr S managing the account in an overdrawn position, generally in the thousands of pounds, even after his limit is *reduced in 2017. It doesn't seem his situation improves to the extent where an overdraft of more than £3,000 ever becomes affordable.*"

Lloyds responded and confirmed it had received the provisional decision but provided no further information or evidence; Mr S responded and disagreed. In summary he said my provisional decision made reference to signs of repeat use from the overdraft limit increase in 2005, and as such he considered the complaint should be upheld from the review in October 2005. Mr S also questioned why the proposed redress was on overdrawn balances above £3,000 from July 2006, and not the full overdraft balance given he has said there was evidence of ongoing financial difficulties.

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.

Having done so, I've not been presented with any new information or evidence which leads me to conclude I should depart from the findings reached within my provisional decision.

I say this because I consider while Mr S was overdrawn for an extended period in the lead up to the limit increase in April 2005, that this in itself wasn't enough to suggest Lloyds shouldn't have increased the limit. While Mr S' account didn't swing into a credit position between the limit increase in July 2004 to the limit increase in April 2005, Mr S' account didn't show possible signs of financial difficulties like returned payments, going over his agreed limit, or borrowing funds to supplement his income and expenditure. As set out within my provisional decision, I was also mindful that Mr S was paid on a weekly basis, which will have had a bearing on his management of the facility. So, I don't consider Lloyds acted unreasonably by continuing to provide the facility at its review in October 2005.

Within my provisional decision I explained I'd reviewed Lloyds' ongoing provision of the overdraft facility and Mr S' behaviours and management of it. I'm satisfied, based on the information and evidence I've seen, that his financial situation didn't support an overdraft of more than £3,000 being sustainably affordable – and therefore being repaid within a reasonable period of time. But Mr S' income and expenditure doesn't suggest that he wasn't able to support the previously agreed limit moving forward, which I've found was fairly provided.

Taking all the above into account it follows I'm satisfied Lloyds acted unfairly when increasing Mr S' overdraft limit to £5,000 in June 2006, and that it needs to take the below action to fairly resolve the complaint.

<u>Did Lloyds act unfairly or unreasonably in any other way</u>

I've considered Lloyds' actions as the relationship continued, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974.

However, I'm satisfied the redress I'm directing in this case, as set out below, results in fair compensation for Mr S in the circumstances of his complaint. I'm therefore satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

- Lloyds should re-work Mr S' account so that all interest, fees and charges applied to balances above £3,000 from July 2006 are removed.

AND

- If an outstanding balance remains on the account once these adjustments have been made Lloyds should contact Mr S to arrange a suitable repayment plan. If it considers it appropriate to record negative information on Mr S' credit file, it should backdate this to July 2006.

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 S, 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 S' credit file.

† HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Mr S a certificate showing how much tax it's taken off if he asks for one.

Within Lloyds' submissions there are contact notes suggesting Mr S entered an Individual Voluntary Arrangement (IVA) in around 2020. If this is the case Mr S should contact his IVA practitioner to ensure he complies with the terms of the IVA.

My final decision

My final decision is that I'm upholding Mr S' complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 April 2025.

Richard Turner
Ombudsman