

Complaint

Mr T has complained that Lloyds Bank PLC ("Lloyds") continued to allow him to use his overdraft over an extended period and even when he was in financial difficulty.

Background

Lloyds increased Mr T's overdraft limit to £1,500.00 in February 2010. The limit went on to be increased to £2,000.00 in June 2017.

In September 2023, Mr T complained that Lloyds continued allowing him to use his overdraft in the same way and charged him for doing so, despite it being clear that the overdraft had become unsustainable for him.

One of our investigators looked at Mr T's complaint and thought that Lloyds should have realised that Mr T's overdraft had become demonstrably unsustainable for him by February 2016. So he upheld Mr T's complaint and that Lloyds needed to refund all the interest, fees and charges it added to his account from February 2016 onwards.

Lloyds disagreed with the investigator's view and so the 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'm upholding Mr T's complaint. I'll explain why this is the case in a little more detail.

Lloyds will be familiar with all the rules, regulations and good industry 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 here.

Having carefully considered everything provided, I think Lloyds acted unfairly when it continued charging overdraft interest, fees and any associated charges on Mr T's facility from February 2016. I consider that by this point, Lloyds ought to have Mr been concerned by the way that Mr T was managing the overdraft on his account.

In response to our investigator's assessment, Lloyds has calculated a retrospective income and expenditure assessment which it says shows that Mr T was consciously choosing to remain in his overdraft. I do accept that when considered in isolation, Mr T had a salary that was arguably sufficient to repay this overdraft within a reasonable period of time.

However, it's worth noting that Mr T had a number of sole and joint accounts with Lloyds. And the payments Mr T was making to his creditors and other essential expenditure from this account weren't the only ones he was making. So I don't think that this is a case that it is Mr T's non-essential spending alone that is responsible for him using his overdraft.

Furthermore, I think that it is also fair to say that Mr T had exceeded his limit on multiple occasions leading up to the overdraft review in February 2016. I appreciate that Lloyds has said that this wasn't itself enough to be concerning. I'm also mindful that Lloyds' customer notes for Mr T show that he appeared to have been provided with more than one consolidation loan in order to make his debt position more manageable.

These same customer notes show that Mr T had applied for a repayment holiday on a Lloyds loan in September 2015, which was within six months of when the overdraft was reviewed, as well. In my view, Lloyds ought to have been concerned with Mr T regularly exceeding his limit and managing this overdraft so poorly in these circumstances.

Equally, I don't think that it was fair and reasonable to go on to increase the limit by a further £500 in June 2017 in circumstances where Mr T was proving himself incapable of managing the £1,500.00 limit that he already had. I note that Mr T was billed for unarranged overdraft fees the day before Lloyds agreed to increase his overdraft. It's not entirely clear to me how and why Mr T was able to increase his overdraft and then permitted to use it in the way that he was in circumstances where he had been provided with multiple loans in order to clear his overdraft balance.

I can also see that Lloyds has referred to individual transactions and commented over what these may or may not have been for. However, Lloyds ought to have taken steps to question what was going on at the time of the February 2016 review and not wait for a number of years to pass before speculating over this.

While I've noted what Lloyds has said about Mr T having the ability to clear the balance within a reasonable period of time, not only was he not doing so (and not remaining in a credit balance despite having been provided with loans to clear the overdraft), I can also see that he went on - albeit after February 2016 - to start making regular payments to at least one debt collector.

In these circumstances, I think that by February 2016, at the absolute latest, Lloyds should have stopped providing the overdraft on the same terms and treated Mr T with forbearance rather than adding even more interest, fees and charges on the overdraft.

In reaching my conclusions, I've thought about the fact that Lloyds sent Mr T letters about his overdraft usage. Indeed, if I take Lloyds' argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Mr T because it had sent Mr T a number of letters as it had identified that his overdraft usage had become a problem. And because Mr T didn't respond to the letters it was reasonable to continue allowing Mr T to use his overdraft in the same way.

This is despite the fact that Mr T hadn't provided any indication that he'd be able to clear the persistent debt he was in and so Lloyds' actions (and Mr T's continued usage of overdraft in the same way) were never likely to remedy the situation. On the contrary, the payments to the debt collector was indicative of Mr T's position worsening not improving and in my view was in itself demonstrative of there being a problem, irrespective of a lack of response that Lloyds may have received to its letters.

In my view, this ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not responding to letters or not wanting to discuss the situation. I have to query just how many unanswered letters it would have needed to send in order to conclude that there may have been a problem. Furthermore, this fails to take into account that a lender should be taking steps to prevent a facility becoming unsustainable for a customer, not waiting until the problem is completely irretrievable before doing so.

I also think that this fails to take any account of the fact that there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't.

While Mr T didn't contact Lloyds, most likely because he didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for Lloyds to conclude that he would be able to clear the persistent debt he was in, or that the lack of a response to its letters meant that there wasn't a problem.

In my view, all Lloyds' actions here were likely to result in (in sending Mr T letters and hoping he'd eventually respond irrespective of everything else that was unfolding in front of it), was Mr T paying high amounts of interest and charges (relative to the amount he owed) for the privilege of being allowed to continue holding, what Mr T's actions suggested, was a debt that had become unsustainable.

So as far as I'm concerned Lloyds' actions in allowing Mr T to continue using his overdraft and incurring further charges, when everything it had was suggesting he would struggle to be able to repay what he owed, worsened Mr T's problem rather than helped him.

Overall and having considered Lloyds' arguments, I'm satisfied that it failed to act fairly and reasonably towards Mr T by not taking corrective action in relation to his overdraft when it ought reasonably to have realised he was struggling to repay what had become a problem debt by February 2016 at the latest. It follows that I'm upholding Mr T's complaint.

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

However, I'm satisfied that what I'm directing Lloyds to do results in fair compensation for Mr T 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 T

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

- Reworking Mr T's current overdraft balance so that all interest, fees and charges added from February 2016 onwards are removed. This is to reflect the fact that Lloyds ought to have realised that the overdraft had become demonstrably unsustainable for Mr T by this stage at the latest and he should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once the adjustments set out above have been made Lloyds should contact Mr T to arrange a suitable repayment plan. Mr T is encouraged to get in contact with and cooperate with Lloyds to reach a suitable agreement for this. If Lloyds considers it appropriate to record negative information on Mr T's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in February 2016. Lloyds can also reduce Mr T'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 carrying out the above adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr T 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 T's credit file. Lloyds can also reduce Mr T'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 T 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 T'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 T to accept or reject my decision before 13 May 2025.

Jeshen Narayanan
Ombudsman