

Complaint

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

Background

Mr D opened an account with Lloyds in March 2014. As part of this, he successfully applied for an overdraft which had a limit of £1,000.00. In August 2020, Mr D’s overdraft limit was increased to £2,000.00 before it was once again increased to £3,500.00 in November 2021.

In December 2023, the representative, on behalf of Mr D complained to Lloyds. It said the charges applied to Mr D’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 D.

One of our investigators looked at this complaint and he thought that Lloyds ought to have realised that Mr D was experiencing difficulty in March 2023 and therefore shouldn’t have added the charges it did from this point onwards. Neither Lloyds nor the representative, on Mr D’s behalf, accepted the investigator’s assessment. Lloyds was of the view that it hadn’t applied any of the charges unfairly. Whereas, the representative felt that Mr D had been in difficulty from as far back as 2017.

Although 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 D’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’m partially upholding Mr D’s complaint. 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 D may have been in difficulty by March 2023

Having carefully considered everything provided, I’m satisfied that Lloyds acted unfairly

when it continued charging overdraft interest and associated fees from March 2023 onwards. While Mr D might not have got in touch to confirm this, nonetheless by this point, it was evident Mr D's overdraft had become demonstrably unsustainable for him.

Mr D'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 what can be classed as income going into the account has reduced and Mr D spend far longer overdrawn and at higher amounts. The income credits being received don't appear sufficient to repay the overdraft in a reasonable period of time and credits entitled loans appear to have been keeping Mr D from exceeding his limit.

I accept that these loans won't have shown up on any credit searches Lloyds may have carried out. But the payments themselves have such references. Even then some of these payments were insufficient to prevent Mr D from being unable to make scheduled payments to creditors from his account.

In these circumstances, I don't think that it was reasonable for Lloyds to have believed that Mr D would be able to clear what he owed within a reasonable period of time. Indeed, I think it's likely that one of the returned direct payments appears to be for a mortgage payment. I would suggest that this is a sign of difficulty most, as individuals do not choose not to make their mortgage payments.

As Lloyds didn't react to Mr D's account usage and have regard to his account activity, when renewing his overdraft in March 2023, I'm satisfied that it failed to act fairly and reasonably towards him.

Mr D ended up paying interest, fees and charges at a time when his overdraft was already unsustainable. So I'm satisfied that Mr D 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 March 2023

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 his assessment of Mr D's complaint. The representative's arguments appear to suggest that Mr D's complaint should be upheld from 2017.

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 D's overdraft until the March 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 D's account was receiving credits which did return his account to a credit balance. Indeed, the payments credited to Mr D's account as dividends, were clearly sufficient to repay the overdraft 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 referred to Mr D having had an essential payment

of £7,355.99 returned in the period up to the March 2022 review and that this was a clear indication that he was in financial difficulty. In the first instance, this payment significantly was more than double Mr D's overdraft limit. So I don't think that Mr D's overdraft usage, or his overdrawn balance, in themselves can be held responsible for this payment being returned.

In any event and most importantly while I accept that this was a returned direct debit, bearing in mind the intended recipient and the amount of the previous payments made, it seems pretty clear that this was an optional final payment for a car finance agreement. This wasn't a committed expense as Mr D had the option of deciding not to make this payment. So ultimately it was for Mr D to consider his financial position and whether he had the funds to complete his purchase.

I don't think the fact that Mr D didn't have the funds in his account for an especially large payment which is likely to have been optional, is indicative of him being in financial difficulty, or that his overdraft shouldn't have been renewed in March 2022 in the way that the representative argues.

This is particularly bearing in mind that Mr D does deposit £7,500.00 into his account for the payment to be taken by debit card a few days later. In my view, Mr D could have cleared his overdraft rather than making what is likely to have been an optional payment if he wished to do so. So I'm not persuaded that the returned payment is an indication that Lloyds shouldn't have renewed Mr D's overdraft in March 2022.

In reaching my conclusions, I've also considered whether the lending relationship between Lloyds and Mr D might have been unfair to Mr D 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 D 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 D

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

- Reworking Mr D's current overdraft balance so that all interest, fees and charges applied to it from March 2023 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 D to arrange a suitable repayment plan, Mr D 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 D's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in March 2023. Lloyds can also reduce Mr D'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 D 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 D's credit file. Lloyds can also reduce Mr D'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 D 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 D'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 D to accept or reject my decision before 15 August 2025.

Jeshen Narayanan
Ombudsman