

## **The complaint**

Mr K, who is represented by a third party in this complaint, complained to Lloyds Bank PLC ("Lloyds") in January 2024 about an overdraft facility that was first provided to him in December 2011.

Mr K says Lloyds acted irresponsibly in providing him with overdraft facilities and that they were unaffordable.

## **What happened**

Lloyds initially provided Mr K with an overdraft facility of £500 in December 2011. It then went on to agree further increases on at least 10 occasions between July 2013 and June 2019, when the overdraft limit reached £4,000.

Mr K complains that Lloyds acted irresponsibly in granting him an overdraft and the increases that followed and created an unfair relationship.

In line with the rules under which we operate, Lloyds said it wouldn't be looking into some of what happened with the overdraft because the complaint had been made more than six years since the initial overdraft had been agreed and more than three years since Mr K ought to have been reasonably aware of having cause to complain.

Our investigator noted that the initial overdraft had been granted more than six years before Mr K had started his complaint. She agreed with Lloyds that Mr K ought to have been aware that something might have gone wrong when, in November 2020, Lloyds started writing to him about his overdraft usage. So, most of the complaint has been brought too late on the basis of the time limit rules established by the Financial Conduct Authority. However, our investigator also thought Mr K's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140), which is in time under the rules. Having looked into the merits of the complaint, however, our investigator couldn't find sufficient evidence or information to make an uphold finding.

As Mr K disagrees his complaint has been passed to me for a decision.

## **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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr K's complaint.

As mentioned, our investigator has explained why, as a starting point, we can't look at part of this complaint under the time limit rules this service operates by. But our investigator has also explained why it's reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this

complaint about an allegedly unfair lending relationship had therefore been referred to us in time.

Seeing as I've decided not to uphold Mr K's complaint for broadly the same reasons as our investigator, whether Mr K referred his complaint about the lending decisions that were made more than six years ago in time or not has no impact on the outcome. I think this complaint can reasonably be considered as being about an unfair relationship given that Mr K says the overdraft facility made his situation worse for him. I acknowledge that Lloyds still doesn't agree we can look at most of this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable, I am required to take relevant law into account. Because Mr K's complaint can be reasonably interpreted as being about the fairness of his relationship with Lloyds, the relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ("CCA").

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Lloyds) and the debtor (Mr K), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement.
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr K has complained about, I therefore need to think about whether Lloyds's decision to provide Mr K with his initial overdraft as well as the increases that later followed - or other actions - may have created unfairness in the relationship between him and Lloyds, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr K's relationship with Lloyds is therefore likely to be unfair if it didn't carry out proportionate affordability checks that might have shown the provision of overdraft credit to be irresponsible or unaffordable, and if it didn't remove that unfairness if the overdraft went on to become unsustainable or otherwise harmful.

When assessing affordability, there wasn't a set list of checks that Lloyds needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, its cost, Mr K's level of reliance on it and how long it would take him to sustainably pay it off. It's on that basis that I'll first look into the decisions to lend before moving on to consider whether Lloyds did enough to help and support Mr K, especially in the way it monitored and reviewed the way he was using his overdraft.

I've seen some application data for Mr K's overdraft going forward from the December 2016 lending decision – when his overdraft was increased to £2,000 - but not for the opening in

December 2011 and the increases up to August 2014. Before that, there's only limited information available. However, I've seen that up to July 2018, Mr K's account had either student or graduate status, when it benefited from beneficial interest rates and account terms. I've also noted that Mr K was making regular use of his overdraft during this period, but I've kept in mind that he was a student and then a recent graduate, who was likely to have some level of loan debt and was beginning to receive regular income. I agree that during this time an overdraft would be helpful to some extent, given Mr K's financial situation. I would expect any indications of over-reliance on it, along with evidence suggestive of Mr K becoming financially stretched, to be a concern that Lloyds would need to act on. So, whilst I can't know exactly what Lloyds saw about Mr K's financial circumstances during this period, I haven't seen enough to be able to say that any of the overdraft lending decisions made during this period were likely to have been unfair.

Turning to the lending decisions going forwards – covering the period between December 2016 and June 2019 – given that I have details of the checks carried out, I can look to decide if they were reasonable and proportionate. For each check, Lloyds looked at Mr K's income in the previous months. It also carried out credit and affordability checks. The credit checks, looking at Mr K's existing borrowing elsewhere by way of loans and credit cards, didn't find any adverse markings on Mr K's credit file, such as details about arrears or accounts going into default. Lloyds then estimated Mr K's essential living costs in each instance by using statistical information. Given that for each lending decision Lloyds was able to verify Mr K's income and was able to monitor his recent and historical account usage, I think the checks carried out were enough to demonstrate that Mr K was likely to have enough disposable income to meet the increased overdraft without putting himself at risk of getting into financial difficulties. He was by then receiving a regular monthly income that was steadily increasing over time, which suggested that he would be able to pay off the new increase in both an affordable and sustainable way.

I've also considered whether Lloyds did enough both to help and support Mr K and to ensure that he was managing his overdraft as it was increased. From the evidence and information I've seen from these reviews, alongside the checks that were carried out for each overdraft limit increase, I can see that Lloyds was aware of Mr K's income levels – from employment as well as state benefits – and his spending patterns. Lloyds wrote to Mr K in 2014, 2015 and 2017 to let him know that he'd exceeded his planned overdraft. I've also seen that it wrote to Mr K in 2020, 2021 and 2022 to let him know when he'd gone over his existing overdraft limit and when they thought there was a risk he might be getting into persistent debt. I haven't seen anything to suggest that Mr K reached out to Lloyds as he was experiencing some level of financial hardship. I've noted that in 2021 Mr K asked about reimbursement of some charges, although I don't consider that this alone shows Mr K was experiencing difficulty that time. All of this leads me to conclude there's insufficient evidence to demonstrate that Lloyds may have acted unfairly or unreasonably in some other way.

I therefore don't find that Mr K's relationship with Lloyds is currently unfair. It's not clear enough to me that Lloyds created unfairness in its relationship with Mr K by lending to him irresponsibly. And I don't find Lloyds treated Mr K unfairly in any other way, based on what I've seen.

I acknowledge this outcome will be disappointing for Mr K. But I hope he and those representing him will understand the reasons for my decision and that Mr K will at least feel his concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 May 2025.

Michael Goldberg

**Ombudsman**