

Complaint

Mr W has complained about the overdraft charges Lloyds Bank PLC (“Lloyds”) applied to his account.

Mr W is being represented, by the (“representative”), in his complaint.

The representative has said the charges applied to Mr W’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 him.

Background

Mr W first applied for an overdraft with Lloyds in 2001. The limit on the facility eventually reached £2,500.00 in September 2005. Mr W got in contact to explain that he was finding it difficult to repay his overdraft. As a result, Lloyds provided Mr W with help and support to gradually reduced his overdraft usage. This resulted in Mr W bringing the overdraft under control and he had a limit of £100 from June 2007.

In September 2011, Mr W was granted an overdraft limit of £350. This limit was then increased and decreased and it fluctuated between £350 and £1,200.00. Since July 2021, the overdraft limit on Mr W’s account has been £1,030.00.

In June 2024, Mr W complained saying that he was allowed to continue using the overdraft in a way that was unsustainable and which caused him continued financial difficulty.

Lloyds did not uphold Mr W’s complaint. It did not think that it had done anything wrong or treated Mr W unfairly in the period he had his overdraft. Mr W was dissatisfied at Lloyds’ response and referred his complaint to our service. When Mr W’s complaint was referred to our service, Lloyds told us that we couldn’t consider parts of it as it was made too late.

One of our investigators reviewed what Mr W and Lloyds had told us. She reached the conclusion that we could look at the entire period Mr W had his overdraft for but she wasn’t persuaded that Lloyds had acted unfairly by allowing Mr W to use his overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t recommend that Mr W’s complaint be upheld.

The representative, on Mr W’s behalf, disagreed with the investigator and asked for an ombudsman’s decision.

My findings

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

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Lloyds has argued that part of Mr W's complaint was made too late because he complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained Mr W's complaint was one alleging that the relationship between him and Lloyds was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr W's complaint. Given the reasons for this, I'm satisfied that whether Mr W's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr W's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mr W has not only complained about the circumstances behind the application of the individual charges, but also the fact Lloyds' failure to act during the periods he alleges it ought to have seen he was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mr W's complaint is a complaint alleging that the lending relationship between himself and Lloyds was unfair to him. I acknowledge the possibility that Lloyds may still disagree that we are able to look at the whole of Mr W's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr W's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr W's complaint can be reasonably interpreted as being about that his lending relationship with Lloyds was unfair to him, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Lloyds) and the debtor (Mr W), 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. S140B 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 Mr W's complaint, I therefore need to think about whether Lloyds' allowing Mr W to use his overdraft in the way that it did, resulted in the lending relationship between Mr W and Lloyds being unfair to Mr W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mr W's relationship with Lloyds is therefore likely to be unfair if Lloyds allowed Mr W to continue using his overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for him. And if this was the case, Lloyds didn't then remove the unfairness this created somehow.

Did Lloyds unfairly allow Mr W to continue using his overdraft in a way that was unsustainable or otherwise harmful for him after it had to help him correct his usage?

Before I go any further, as this essentially boils down to a complaint that Mr W was unfairly charged as a result of being allowed to continue using his overdraft, I want to be clear in saying that I haven't considered whether the various amounts Lloyds charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately, how much a bank charges for its services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at Lloyds' charging structure per se, it won't have acted fairly and reasonably towards Mr W if it applied this interest, fees and charges to Mr W's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr W was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Lloyds didn't treat Mr W fairly and reasonably.

To begin with, I've noted that Mr W was given access to an overdraft after he'd previously had difficulty repaying what he owed and reducing his reliance on the facility. The representative's arguments appear to suggest that this in itself means that the complaint should be upheld. But I think that it is far too simplistic to say that a customer should never be given access to credit in circumstances where they had previously had difficulty repaying what they owed.

Indeed, if I were to follow the representative's argument to its logical conclusion it would lead to the somewhat absurd situation where an individual would be permanently barred from accessing credit irrespective of how their circumstances might improve in the future. There simply isn't a prohibition on ever lending to a customer who may have had difficulty repaying credit in the past. This is even where the customer may have gone into a formal insolvency arrangement such as a bankruptcy. Therefore, I find the representative's arguments on this point to be wholly unpersuasive and I don't think that the complaint should be upheld on this basis.

Nonetheless, I've also considered whether, on the facts and circumstances, it was fair and reasonable to allow Mr W access to an overdraft and whether there were any periods where Lloyds continued charging Mr W even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

Having looked through Mr W's account statements throughout the period concerned, I can't see that Lloyds ought reasonably to have realised that Mr W was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Mr W's overdraft. I'll explain why I think this is the case in a little more detail.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

Furthermore, it is also important to keep in mind the context that Mr W knew help and support may have been available to him as he'd previously accessed such support. There is also no dispute that Mr W didn't get in contact to ask for help once he started using his overdraft again.

In these circumstances, I think it's important to look at overall circumstances of Mr W's overdraft usage in terms of his what it said about his financial position and whether his account conduct objectively demonstrated that he was in financial difficulty. I've therefore considered Mr W's incomings and outgoings as well as any overdrawn balances and thought about whether this demonstrated he was using his overdraft because he was struggling financially.

The first thing for me to say is that Mr W got into difficulty when he had an overdraft limit of £2,500.00 and his overdraft limit was never increased over £1,200.00 when he was once again provided with one. It's also worth noting that Mr W's account was always in receipt of credits that exceeded the amount of his overdraft limit. This also wasn't the case, prior to his difficulties in and around 2005 to 2007. So the account was in receipt of funds that were sufficient to clear the overdraft within a reasonable period of time.

Therefore, I'm satisfied that Mr W's case isn't one where the borrower was in and overdraft with no hope of being able to exit it. Although I do accept that there were plenty of times where Mr W met the criteria of someone who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this.

However, even if Lloyds didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender met all of its obligations, I'd still need to consider whether Mr W lost out as a result of any potential failing.

I've also therefore considered whether Mr W's use of his overdraft (and Lloyds continuing to allow him to use it) was causing him to incur high cumulative charges that were harmful to him. Having considered matters, I'm satisfied that this isn't the case in this instance. I'll now proceed to explain why.

To start with, while I'm not seeking to make retrospective value judgements over Mr W expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr W's account. Equally, I can't see that he was borrowing from unsustainable sources in order to meet his overdraft charges or that his borrowing was increasing exponentially.

Mr W did have other credit commitments but this does not mean that he was reliant on credit to meet his essential expenditure. Indeed, the representative's arguments seem to suggest that a customer using credit in itself means they are struggling. This simply isn't the case. Furthermore, there isn't a prohibition on providing a customer with an overdraft just because they may have access to credit already.

Equally, whilst I've noted that Mr W was still making payments to a debt company as a result of his historic difficulties, from what I can see he didn't go on to have any further issues. So Lloyds was reasonably entitled to believe that Mr W's position had improved and was continuing to do so. This is especially as Mr W regularly had a surplus balance on the account.

I accept neither of these things in themselves (or when taken together) mean that Mr W wasn't experiencing difficulty. But I don't agree that Mr W was reliant on credit. He was quite comfortably able to make any essential commitments without using his overdraft. However,

he was choosing to use his overdraft to make discretionary transactions and in periods where he had increased funds his discretionary expenditure increased.

Given the repeat usage letters Mr W is likely to have been sent by Lloyds, I think that he ought to have realised that how much he was paying for this. So I simply don't agree that Mr W was using his overdraft purely for essential spending, or because he had a reliance on credit to get by, as the representative says.

I say all of this while mindful that I've seen no indication that 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 W failing to meet consecutive payments to credit, or Mr W failing to meet his commitments out of his disposable income – were present in Mr W's circumstances. I would reiterate that the payments Mr W was making to a debt collector was as a result of historic issues and not indicative of recent difficulties with credit.

Given the representative's reference to CONC 5D, I also wish to make it clear that it isn't simply the case that a customer should never be allowed to make discretionary payments from an overdraft. Indeed, its argument appears to be suggesting that a corrective action should be taken against a customer every time they meet the criteria for being sent a letter, irrespective of the circumstances. However, the rules and guidance aren't as blunt a tool as this. The position is far more nuanced.

The representative's interpretation runs contrary to the purpose of the rules and guidance which is to ensure that customers are protected from high cumulative charges where they are likely to cause harm. The rules and guidance aren't to prevent the use of overdraft in all circumstances where a repeat use letter has been sent in the way that the representative's argument suggests.

Even more importantly the representative's argument is at odds with the concept of proportionality – a firm should take action proportionate to the circumstances. This concept of proportionality runs right through CONC 5 as a whole. Given the amount of funds that Mr W was in receipt of, I'm not persuaded that Lloyds ought reasonably to have realised that Mr W's overdraft usage was causing him harm.

For the reasons I've explained, in this case, I'm satisfied that Lloyds had no reason to believe that Mr W was experiencing difficulty when Mr W began using his overdraft again. There also appears to be no dispute that Mr W did not expressly reach out to Lloyds and ask it for help to repay his balance, in the way that he had previously done in 2005.

In these circumstances, I don't think that it was unreasonable for Lloyds to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of Lloyds taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have here, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Lloyds to demand that Mr W immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr W clearing what he owed in a reasonable period of time.

Indeed, I think that if Lloyds had suggested that it would take corrective action, Mr W would have argued that it would be unfair. I say this bearing in mind Mr W had previously had to deal with the consequences of significant adverse credit information, his situation had now improved, he was using the overdraft in line with the terms and conditions and most importantly of all it appears as though he could afford to use it in the way he was.

Therefore, I don't find that the relationship between Mr W and Lloyds was unfair to Mr W. I've not been persuaded that Lloyds created unfairness in its relationship with Mr W by allowing him to use his overdraft in the way that he did. Based on what I've seen, I don't find Lloyds treated Mr W unfairly in any other way either.

So overall and having considered everything, while I can understand Mr W's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr W. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 July 2025.

Jeshen Narayanan
Ombudsman