

Complaint

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

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

The representative has 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 him.

Background

Lloyds’ earliest records show that Mr D had an overdraft on his current account from at least 2002. Mr D’s limit was increased on a number of occasions until it reached £2,370.00 in August 2008.

In February 2024, Mr D 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 partially upheld Mr D’s complaint. It did not think that it had done anything wrong or treated Mr D unfairly in the period up until February 2020. However, it accepted that it shouldn’t have allowed Mr D to continue using his overdraft from February 2020 onwards as it ought to have realised that it had become unsustainable for him. So Lloyds agreed to refund the overdraft interest, fees and charges applied to Mr D’s account from February 2020.

Mr D was dissatisfied at Lloyds’ response and referred his complaint to our service. One of our investigators reviewed what Mr D and Lloyds had told us. She reached the conclusion that Lloyds had acted unfairly, from May 2019 onwards, by allowing Mr D to use his overdraft in a way that was unsustainable or otherwise harmful. So the investigator thought that Lloyds also needed to refund the interest, fees and charges added from May 2019 onwards, in order to put things right for Mr D in a way that was fair and reasonable in all the circumstances of his case.

Lloyds disagreed with the investigator and as per the next stage of our dispute resolution process the case was passed to an ombudsman for review.

My provisional decision of 28 July 2025

I issued a provisional decision – on 28 July 2025 - setting out why I wasn't intending to uphold Mr D's complaint.

In summary, I was satisfied that Lloyds hadn't unfairly allowed Mr D to continue using his overdraft, in circumstances where it ought to have realised that it was unsustainable or otherwise harmful for him, prior to February 2020. Furthermore, as Lloyds had already refunded the interest, fees and charges added to the overdraft from February 2020 onwards, I was of the view that it hadn't treated Mr D unfairly or unreasonably.

Lloyds' response to my provisional decision

Lloyds responded to my provisional decision confirming that it agreed with it and that it had nothing further to add.

Mr D's response to my provisional decision

The representative, on behalf of Mr D, responded to say that it disagreed with my provisional decision. In summary this is because it considered that:

- the funds I referred to in my provisional decision were from a lump sum Mr D received when retiring from his job. He received these funds at a time when he was going through a difficult period.
- the complaint it made, on behalf of Mr D, was also to do with breaches of the Consumer Credit Act 1974 and Lloyds unfairly allowing him to use an overdraft over an extended period. Any unfairness continues until the relationship ends and Mr D's relationship hasn't ended because his overdraft is still running.

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, including the responses to my provisional decision, I remain satisfied that what Lloyds has already done to put things right is fair and reasonable in all the circumstances. Therefore, I'm not requiring it to do anything more or anything further and I'm still not upholding Mr D's complaint.

Did Lloyds unfairly allow Mr D to continue using his overdraft in a way that was unsustainable or otherwise harmful for him prior to February 2020?

Before I go any further, as this essentially boils down to a complaint that Mr D 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 D if it applied this interest, fees and charges to Mr D's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr D was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Lloyds didn't treat Mr D fairly and reasonably.

In other words, I've considered whether there were periods prior to February 2020 where Lloyds continued charging Mr D 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. In light of the representative's comment that Mr D's relationship with Lloyds is still ongoing, I wish to make it clear that I've not limited my consideration of Mr D's complaint to the six years prior to Mr D's complaint as it's never been said that the complaint was made outside the relevant time limit.

Nevertheless having looked through Mr D's account statements throughout the period concerned and up until February 2020, I don't think that it is clear cut that Lloyds ought reasonably to have realised that Mr D 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 D's overdraft. I'll explain why I think this is the case in a little more detail.

There is no dispute that Mr D used his overdraft regularly. The representative's arguments appear to suggest that this in itself means that Mr D was experiencing financial difficulty and therefore the complaint should be upheld. It's also clear that our investigator believes Lloyds ought to have stepped in May 2019 bearing in mind his use of the overdraft. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

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.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr D's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdraft, based on this. I think that if Mr D was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

The first thing for me to say is that prior to February 2020, Mr D was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Therefore, I'm satisfied that Mr D's case isn't one where the borrower was in and overdraft with no hope of being able to exit it. It's worth noting that Mr D had significant credit balances at stages in 2019. Indeed, he had such a balance a mere matter of weeks prior to May 2019. Although I do accept that there were times where Mr D 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. Although as Mr D's complaint has already been upheld in relation to events from February 2020 onwards, it does have limited relevance here. In any event, 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 D lost out as a result of any potential failing.

I've also therefore considered whether Mr D'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 D expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr D's account. That said, there isn't a prohibition on providing a customer with an overdraft in such circumstances and it could be fair for a lender to do so should there be other indications that the customer is able to manage. Having considered everything, I think that such circumstances existed here.

I say this because Mr D received an influx of close to £40,000.00 in August 2018. I appreciate that Mr D received these funds at a time where things were difficult for him. I'm sorry that Mr D had a difficult time and really sympathise with what he has told us. However, Lloyds won't have known about Mr D's situation and it would quite reasonably have been entitled to believe that he was in a position to clear his overdraft balance and remove the overdraft.

I accept none of these things in themselves (or when taken together) mean that Mr D wasn't experiencing difficulty. But I don't agree that it is incontrovertible that Mr D was unavoidably reliant on credit, or his overdraft, prior to February 2020. The funds he received left him in a position where he was able to make any essential commitments without using his overdraft. However, he chose to use his overdraft to make discretionary transactions.

Given the repeat usage letters Mr D 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 D had no choice other than to use his overdraft to get by as the representative says.

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 D was in receipt of and the balances he had in the period leading up to the May 2019 review, I'm not persuaded that Lloyds ought reasonably to have realised that Mr D's overdraft usage was causing him harm at this stage.

Overall and having considered everything, I don't think that it was unreasonable for Lloyds to have proceeded adding the charges that it did prior to February 2020. 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, would have been disproportionate. I say this because I don't think that it would have been proportionate for Lloyds to demand that Mr D immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr D 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 D would have argued that it would be unfair, bearing in mind the consequences of such action being taken, in circumstances where he was using the overdraft in line with the terms and

conditions and the influx of funds he received appeared to show that he could afford to use it in the way he was.

As this is the case, I'm satisfied that what Lloyds has already done to put things right for Mr D is fair and reasonable in all the circumstances. I'm therefore not intending to require Lloyds to anything more or anything further.

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 s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I'm currently not persuaded that Lloyds irresponsibly lent to Mr D or otherwise unfairly allowed him to continue using his overdraft prior to February 2020. And any unfairness caused past this point has since been rectified by the interest fees, and charges that Lloyds has already refunded. I haven't seen anything to suggest that s140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So overall and having considered everything, while I can understand Mr D's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr D. 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 above and in my provisional decision of 28 July 2025, I'm satisfied that what Lloyds Bank PLC has already done to put things right for Mr D is fair and reasonable in all the circumstances. So I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 September 2025.

Jeshen Narayanan
Ombudsman