

## **complaint**

Mr E complains that Lloyds Bank PLC has wrongly applied interest and charges to his business current account.

## **background**

Mr E was a sole trader and had a business current account with Lloyds. In 2009 the account was closed when the £100,000 overdrawn balance was repaid with the proceeds from a personal loan.

In June 2013 Mr E complained to the bank, asking it to refund over £17,000 of charges and interest applied to the account between 2002 and 2009. He said that the charges were unlawful under the Unfair Terms in Consumer Contracts Regulations (UTCCRs) and the overdraft should have been regularised as a proper loan. The bank said its review of his account showed that no mistake had been made with the amount he had been charged, and the charges were not unlawful. Mr E was not satisfied by the bank's response and referred his complaint to this service.

Our adjudicator said that she was unable to recommend that the complaint should be upheld. Briefly, she said:

- The account charges appear to have been applied in line with the terms and conditions.
- The courts had ruled that unauthorised overdraft fees could not be challenged under the UTCCRs for being unfair or too high.
- She could not say the bank acted unreasonably in applying interest to the account, given that it was overdrawn.
- The decision whether or not to lend is a matter for the bank's commercial discretion. We would not normally interfere with the decision whether, and on what terms, the bank will make a loan.
- There are no grounds on which to tell the bank to refund the charges and interest applied to the account.

Mr E disagreed with the adjudicator's conclusions. He said that the charges and interest applied over the years resulted from failures by his 'business partner' at the bank to arrange his payments and borrowings in a satisfactory manner. He said this was opportunistic management and effective plundering of his account to generate management fees, higher interest rates and multiple account charges.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusions as the adjudicator and for much the same reasons.

Looking back at his past statements, Mr E is upset at how much he paid in charges and interest on his business account between 2002 and 2009. He has calculated that they

amounted to over three per cent of his income and he says they were excessive. I can understand why he wishes he had not paid the charges and interest and why he would like a refund, but the question I must answer is whether the bank charged him unfairly or unreasonably.

The bank has said that the charges and interest were applied in line with the agreed terms and conditions of the account and the overdraft facility agreements. That seems to be the case. Mr E has not argued that the interest and charges were applied in error – rather, he says that they were the result of poor and devious management of his affairs by the bank staff. He feels the bank should have given him a loan rather than allowing his business overdraft to grow, should not have allowed payments which resulted in unauthorised overdraft charges, and should have arranged his borrowing differently to reduce his costs.

I agree with the adjudicator that the bank was under no obligation to offer Mr E a loan. I would regard such lending decisions as the legitimate exercise of its commercial judgement. At the time Mr E agreed to the renewal and extensions of his business overdraft facility.

I am satisfied that Mr E was given all the required information about the charges and interest that would be applied to the account, including those described in the overdraft facility agreements. I am also satisfied that during the life of the account, he would have been notified of all of the charges when they were incurred. He also received regular statements. I therefore believe that the bank gave him all the information he needed to understand what was happening on his business account during the period in question. This would have informed his own use of the account and permitted him, if he wished, to challenge the arrangements at the time. I cannot hold the bank responsible for Mr E's own spending decisions on the account, and I am not persuaded that the interest and charges were the result of manipulation of his account by the business partner at the bank.

I realise that Mr E will be disappointed by my decision and I appreciate the strength of his feelings about this matter. But I believe the interest and charges were applied correctly to Mr E's account and I do not find that the bank acted unreasonably or unfairly, so I cannot order Lloyds to make a refund.

### **my final decision**

My final decision is that I do not uphold this complaint.

Colin Brown  
**ombudsman**