

complaint

Mr E complains Lloyds Bank PLC (“Lloyds”) continued charging him excessive amounts for his overdraft after he’d notified it of a change in his personal circumstances.

Mr E is being assisted by his wife, Mrs E, in bringing this complaint to our service.

background

In October 2018, Mr E wrote to Lloyds to inform it about a change in his personal circumstances that meant he was unable to repay his overdraft for the foreseeable future. Mr E requested Lloyds to suspend interest and charges for a period of several years until his circumstances changed again. He also asked Lloyds to correspond with his wife about this matter.

Mrs E complained to Lloyds in December 2018, when she noticed Mr E’s account hadn’t been frozen and he was still being charged a daily overdraft fee. Lloyds said it hadn’t heard from her or Mr E since her phone call in October 2018, when it told her it needed a letter of authority from Mr E. As a gesture of goodwill, Lloyds refunded all daily fees applied to the account since November 2018 and suspended any fees for the next two months.

Unhappy with this response, Mrs E referred Mr E’s complaint to our service. While the complaint was with this office, Lloyds started charging the daily overdraft fees again once the two-month period lapsed in February 2019. It wrote to Mr E in June 2019 when the account balance went over the arranged overdraft limit. Then in July 2019, it sent a formal demand notice for the outstanding balance. The debt was sold to a third party in October 2019.

Our adjudicator thought Lloyds ought to have realised by December 2018 that Mr E’s circumstances meant he wasn’t in a position to repay his overdraft. She noted the bank statements didn’t show any income or other credits going into his account. So, Lloyds shouldn’t have added any more interest, fees and charges from this point onwards. Lloyds didn’t respond by the deadline given, so the case was passed to an ombudsman.

I issued a provisional decision in July 2021. I set out I was intending to uphold Mr E’s complaint. I considered it ought to have been clear to Lloyds that Mr E wasn’t in a position to sustainably repay what he owed within a reasonable period of time.

I found that by December 2018 at the latest, Lloyds was reasonably aware Mr E was having difficulty with his finances, and that the charges being added were making this worse. I thought in these circumstances, Lloyds ought to have offered assistance and treated Mr E with forbearance rather than add even more interest, fees and charges to his overdraft. I accepted Lloyds refunded the fees it had charged in the previous month and suspended further fees for two months. But I didn’t think this went far enough.

I also noted Mr E was hardcore borrowing. In other words, he hadn’t seen or maintained a credit balance for an extended period of time. I explained Lloyds’ own literature suggested overdrafts are for unforeseen emergency borrowing, not prolonged day-to-day expenditure. I thought Mr E’s overdraft usage should have prompted Lloyds to have realised he wasn’t using his overdraft as intended and shouldn’t have continued offering it on the same terms – especially after he reached out for help.

As Lloyds didn't react to Mr E's overdraft usage or his change in circumstances and instead continued charging in the same way (albeit following a brief suspension), I found that it failed to act fairly and reasonably. And I thought Lloyds ought to have taken corrective action in relation to this overdraft.

I invited both parties to make any final comments ahead of my final decision.

Mrs E didn't respond to my provisional decision. Lloyds said it was unfortunate the provisional decision was issued on the day it responded to the adjudicator's view, accepting it in the main with the only disagreement being backdating the default date. Lloyds said the process it followed in applying the default at a later date was correct as it required information about Mr E's full situation before taking further action. It also said it seemed I agreed with its view on this matter according to my provisional decision.

my findings

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

I thank Lloyds for its response to my provisional decision. I'm pleased to see its agreed to refund the overdraft fees and associated charges. But Lloyds' belief I agree with its stance on backdating the default date is incorrect. So, I've carefully considered what it's said about not backdating the default.

Lloyds has said it needed to give Mr E time to provide documentation around his personal circumstances to see what options were available to him and to avoid a default.

I agree a business should get a better understanding of its customer's circumstances to explore the best course of action. But in this case, I consider Mr E's letter dated 26 October 2018, which Lloyds ought to have received by 7 December 2018 at the latest when Mrs E complained on his behalf, sets out his personal circumstances adequately. He states he's not in any position to repay his overdraft for the foreseeable future and asks for all interest and bank charges to be suspended [my emphasis]. In this letter, Mr E also asks Lloyds to contact Mrs E.

In its final response letter dated 11 December 2018, Lloyds asked Mr E to contact its Customer Support Unit (CSU) directly or send a letter of authority for Mrs E to be able to discuss suitable support options. The letter also explained the CSU couldn't freeze fees for several years and instead would discuss repayment arrangement options to reduce the arranged overdraft. And if this wasn't possible, Lloyds would begin to transfer Mr E's account to its Recoveries Team which would involve – amongst other things – a default being applied.

But Mr E had already said he wasn't in any position to repay his overdraft for several years. Given Lloyds couldn't freeze the fees on Mr E's account for such an extended time as he'd requested, it ought fairly and reasonably to have started taking corrective action on his overdraft upon receipt of Mr E's letter instead of asking him to contact the CSU. Lloyds didn't issue a formal demand notice until July 2019, once additional overdraft charges had been added and Mr E's account had exceeded the agreed limit.

In the circumstances, the assertion that Lloyds needed to give Mr E seven months to provide further information about his personal circumstances, before serving him notice of intention

to default, doesn't feel fair or reasonable. I consider Lloyds should backdate the default to the point it ought to have known there was no prospect of Mr E repaying the debt in a reasonable period. I consider this to be December 2018.

Lloyds has also said it doesn't think the default date should be backdated as it would be required to provide the necessary notice period to apply such an event. A business is required to give notice of its intention to default, this is to give the customer an opportunity to bring the account back in order. But here, I'm not requiring Lloyds to register a new default on Mr E's credit file. I'm telling it to correct the date of the existing default. It's already given him notice of its intention to default. So, it doesn't need to do this again.

For the sake of completeness, had Lloyds given the 14-day notice to Mr E in December 2018 like it did in July 2019, the required notice period would have ended in December 2018. So, I consider the default date should be backdated to December 2018.

In conclusion, having carefully considered Lloyds' further points, I'm still upholding Mr E's complaint. And Lloyds needs to put things right.

Fair compensation – what Lloyds needs to do to put things right for Mr E.

From the information I've seen, I can't see additional charges were added to the outstanding balance when the debt was sold on to a third party. Having thought about everything, I think it would be fair and reasonable in all the circumstances of Mr E's complaint for Lloyds to put things right by:

- Buying back the debt from the third party and reworking Mr E's current overdraft balance so that all interest, fees and charges applied to it from December 2018 are removed. Once these adjustments have been made, Lloyds should contact Mrs E, as Mr E's representative, to discuss the possibility of arranging a suitable repayment plan for this. Lloyds should also backdate the default date to December 2018.

OR

- Contacting the third party to arrange for the debt to be reduced by the amount of interest, fees and charges applied to Mr E's overdraft balance from December 2018. Lloyds should also arrange for the default date to be backdated to December 2018.

With either option, 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 E 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 amend (or arrange to amend) Mr E's credit file.

† HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Mr E a certificate showing how much tax it has taken off if he, or Mrs E as his representative, asks for one.

my final decision

For the reasons I've explained, I'm upholding Mr E's complaint. Lloyds Bank PLC should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E on behalf of Mr E to accept or reject my decision before 12 September 2021.

Gagandeep Singh
ombudsman