

## **complaint**

Mr T and Mrs H complain that Lloyds Bank PLC increased the level of the fees charged for when they use the overdraft facility on their current account.

## **background**

In the summer of 2017, Lloyds wrote to Mr T and Mrs H to tell them that the terms and conditions of their current account were going to change. The changes were to take place in November 2017. Lloyds told Mr T and Mrs H that the charging structure for the overdraft facility on their current account would mean a daily usage fee would be applied, depending on how much of the overdraft was being used.

Lloyds didn't introduce the change straight away for Mr T and Mrs H's overdraft facility. Instead, they agreed a three month period, where an interim interest rate was applied to the facility. This meant Mr T and Mrs W would be charged less each month than they ordinarily would, under the change to the charging structure. Lloyds say they did this to allow time for Mr T and Mrs H to repay the overdraft balance if they wished to.

In late 2017, Mr T and Mrs H made a payment into their current account which repaid the majority of their overdraft balance at the time. By early 2018, Lloyds had ended the three month period they had agreed with Mr T and Mrs H, and the new charging structure was applied to their overdraft facility.

Soon after, Mr T and Mrs H spoke to Lloyds to ask them if they could use the overdraft facility, with reduced charges for a further period. At that time, Mr T and Mrs H's account was nearing the overdraft limit. Lloyds agreed to waive any overdraft fees over the following 30 days, whilst Mr T and Mrs H thought further about their options.

Mr T and Mrs H complained to Lloyds about the changes to the charging structure of their overdraft facility in April 2018. They said that Lloyds had made the changes, but hadn't negotiated with them, in light of the increased fees they would have to pay. Mr T and Mrs H said that they needed a further period, where lower overdraft usage fees could be applied to their account, so they could repay the overdraft balance. They told Lloyds it may take them six to nine months to do that.

In their final response to Mr T and Mrs H's complaint, Lloyds said that they didn't hear back from them, when Mr T and Mrs H spoke to them in early 2018. They said that the charging structure for the overdraft facility wouldn't be changed and that fees hadn't been charged in error to the account. Lloyds said they gave sufficient notice about the introduction of the new charging structure to Mr T and Mrs H. Lloyds also offered to talk to Mr T and Mrs H about their financial circumstances, to see what other help they'd be able to offer.

Mr T and Mrs H disagreed and reiterated their plan to Lloyds, to repay the overdraft over a period of time. They also referred their complaint to us as they were unhappy that Lloyds had refused to change their policy on the overdraft fees, at a time when they needed some respite.

Our investigator looked into Mr T and Mrs H's complaint and concluded that Lloyds had given them enough notice about the changes to the charging structure. She said that Lloyds were able to change the terms and conditions of the account and that Mr T and Mrs H had previously been able, and were in the process of, repaying the overdraft balance. The

investigator also found that Lloyds had done enough to help Mr T and Mrs H, by occasionally waiving fees.

Mr T and Mrs H didn't accept that conclusion. They said that they are not in financial difficulty, but the changes to the charging structure are not in the spirit of the industry's borrowing rules. Mr T and Mrs H said that Lloyds weren't treating them fairly.

The investigator didn't change her conclusions and now the case has been passed to me to make a final decision. It has been quite some time since that happened, and Mr T and Mrs H have told us that they have now repaid the balance of the overdraft facility.

### **my findings**

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

I'd like to be clear, that I haven't considered whether the charging structures, past or present, that Lloyds have applied to Mr T and Mrs H's current account are fair and reasonable. The amount Lloyds choose to charge, for the use of an overdraft, is a commercial decision made by them.

But, I have considered if Lloyds have acted fairly and reasonably to Mr T and Mrs H, by notifying them appropriately of the changes to the charging structure. I've also considered the fairness of Lloyds' actions once they became aware of Mr T and Mrs H's concerns and the effect the changes had on their financial circumstances.

Lloyds have regulatory obligations, but they also should follow good industry practice and guidelines, such as the Standards of Lending Practice, which replaced The Lending Code in July 2016. So, along with Lloyds' own terms and conditions for Mr T and Mrs H's account, I've thought about the wider obligations on Lloyds and how they have applied them to this case.

#### *The changing of the terms and conditions*

Page seven, point six of The Standards of Lending Practice for personal customers says that lenders should:

*“inform customers of any changes to the interest rates and fees on their overdraft. To help the customer compare costs. The old interest rates and fees should be included within the information”.*

Page nine, point six of The Standards of Lending Practice for personal customers, Information for Practitioners – Account maintenance and servicing says:

*“Customers should be personally notified at least 30 days before any increase in an overdraft charge or the introduction of a new overdraft charge”.*

Having considered the wider obligations on Lloyds, I think the onus was on them to tell Mr T and Mrs H about the changes to the charging structure of their overdraft, at least 30 days before the changes were put into place.

Page 21, point 11.1 of Lloyds' own terms and conditions say:

*“We can change the general or additional conditions that apply to a particular account, benefit or service”.*

I think the terms and conditions of Mr T and Mrs H’s account, allow for Lloyds to make changes from time to time. On the following page, Lloyds’ terms and conditions go on to say that they will notify customers at least two months before any change to an overdraft charging structure.

I can see from the documents that Mr T and Mrs H and Lloyds have sent to us, that Lloyds notified them of the upcoming changes to the charging structure of their overdraft facility on 13 August 2017. The changes to the charging structure then took place on 2 November 2017, which was over two months, after the notification was sent.

So, I think Lloyds gave Mr T and Mrs H the 30 day notice, covered in The Standards of Lending Practice guidelines. I also think the notification period given to Mr T and Mrs H was longer than detailed in Lloyds’ own terms and conditions.

In all the circumstances, I think Lloyds treated Mr T and Mrs H fairly here, and gave them more notice about the changes to the charging structure, than they could have normally expected.

#### *Lloyds’ awareness of Mr T and Mrs H’s circumstances*

I have looked at Mr T and Mrs H’s account to see how they used their overdraft facility, when the changes to the charging structure were explained to them. I’ve done this to see if Lloyds should have treated Mr T and Mrs H any differently, based on their financial circumstances.

Between September and November 2017, Mr T and Mrs H made use of their overdraft facility every day. The balance of the account was often close to the limit of the overdraft facility and exceeded the limit on four separate occasions. Mr T and Mrs H paid funds into the account, when the limit was exceeded, within a few days and there aren’t any records of unpaid direct debits or standing orders over this period.

The majority of the payments leaving Mr T and Mrs H’s account were day to day living expenses. And there were regular payments coming into the account. I cannot see that there were significant payments to other lenders at the time, which may have shown that Mr T and Mrs H had borrowing elsewhere. I have also looked at Lloyds’ contact notes from this time and they don’t show any contact was from Mr T and Mrs H, to say that they were experiencing financial difficulties.

Mr T and Mrs H have explained to us that their circumstances in November 2017 were such that Mrs H was unable to work due serious ill health. They also said that Mr T was looking for new employment. So, I note that they were not receiving as much income as they usually would. However, I also note that Lloyds were not made aware of these circumstances at this point.

Having considered everything here, I recognise Mr T and Mrs H always made use of their overdraft facility, often towards the higher end of the limit. But, I don’t think Lloyds ought to have noticed any financial difficulties, prior to November 2017, which meant that they needed to treat Mr T and Mrs H any differently than they did.

A payment was made into Mr T and Mrs H's account in late November 2017. This repaid most of the overdraft facility and the account usage continued as before. Where by eventually, the account neared the overdraft limit in February 2018. Within this timescale, the transactions on the account were consistent with those prior to November 2017. And there wasn't any returned direct debit or standing orders.

Having considered the further usage of the account's overdraft facility, I think Mr T and Mrs H were able to show that they could repay the balance when they chose to. And I don't think there was any suggestion from them, which placed a responsibility on Lloyds to help with any financial difficulties. So, I don't think Lloyds ought to have been aware of Mr T and Mrs H's circumstances at this time.

Lloyds' records show that Mr T spoke to Lloyds in February 2018 and said that he and Mrs H cannot manage repaying the overdraft facility with the new charging structure in place. Mr T and Mrs H have told us that Lloyds discussed the possibility of a consolidation loan with them, in February 2018.

I think it was at this point, Lloyds ought to have been aware of Mr T and Mrs H's concerns about how long it would take them to reduce the balance of the overdraft, with the new charging structure in place. In all the circumstances, I think Lloyds spoke with Mr T and Mrs H at the appropriate time, to see if they could do more to help. So, I don't think Lloyds treated Mr T and Mrs H unfairly prior to February 2018.

*Lloyds' actions to help Mr T and Mrs H.*

Mr T and Mrs H have sent us a very detailed summary of the overdraft facility charges applied to their account and of their conversations with Lloyds. This corresponds with Lloyds' own records, where we can see what arrangements were made, whilst Mr T and Mrs H were looking to repay the balance of the overdraft facility.

Page four, point two of The Standards of Lending Practice for personal customers, Information for Practitioners – Financial difficulty says:

*“The appropriate level of intervention/support required will be dependent upon the individual customer's position and the information obtained.”*

The guidance goes on to say that lenders should consider referring a customer to a free debt advice agency, applying breathing space and to go through an affordability assessment. Also, the guidance suggests a customer should be given the opportunity to talk to a dedicated team, or to look at restructuring the account onto a loan.

When Lloyds initially advised Mr T and Mrs H about the changes to the charging structure, they said the changes would take place on 2 November 2017. However, Lloyds didn't make the changes on that date for Mr T and Mrs H's account. Instead, Lloyds extended the existing charging structure on that account for a further three months, until February 2018.

I've concluded that Lloyds didn't need to take any action with Mr T and Mrs H's account prior to February 2018. But, by giving them a grace period of three months, I think Lloyds have treated Mr T and Mrs H fairly. I think this period allowed Mr T and Mrs H time to repay the overdraft, which they subsequently did, by making a lump sum payment in early November 2017. I acknowledge though, that this was done mainly to take some pressure off from the account, when Mrs H was recovering from ill health and Mr T was looking for further income.

I've carefully considered Mr T and Mrs H's use of the overdraft in the years up to November 2017 to understand if they regularly supported the limit they were given by Lloyds. I can see that monthly payments were made the account, which reduced the balance of the facility on a regular basis. So, I think Mr T and Mrs H were able to service the overdraft facility limit and reduce the balance when they needed to.

Lloyds' records show that when Mr T and Mrs H wrote to them in February 2018, they suggested various things to try and help. The prospect of a consolidation loan, a downgrade to a different account, a further 30 day hold on future overdraft charges and a review of income and expenditure were offered. Mr T and Mrs H didn't take up the options put forward at this time, but did accept the offer to suspend overdraft charges for a further 30 days.

I think that in February 2018, Mr T and Mrs H clearly told Lloyds that they would find it difficult to manage repaying the balance of the overdraft facility, with the new charging structure in place. So, I think there was a responsibility on Lloyds to make some options available.

Having considered the range of assistance available to lenders, I think the measures suggested by Lloyds are consistent with that guidance. I think Lloyds offered to review Mr T and Mrs H's income and expenditure to see if they could still support the facility limit. But, Mr T and Mrs H have said they weren't in financial difficulties and I think their actions to repay the balance at several points in time, support that. So, I think the options Lloyds chose, of suggesting a consolidation loan or downgrading the account, were the most reasonable.

I acknowledge that Mr T and Mrs H didn't find the options given to them acceptable. But, I don't think this means Lloyds treated them unfairly, given their previous action with the grace period and the further suspension of overdraft charges.

I've also considered the correspondence between Mr T and Mrs H from February to May 2018. Within Lloyds' letters to Mr T and Mrs H, similar options were made available. I can see that during Mr T and Mrs H's complaint, Lloyds have continued to offer to review their financial circumstances, with a view to exploring the consolidation loan option again.

I understand Mr T and Mrs H have now managed to repay the balance of the overdraft facility without any further assistance from Lloyds. Looking at the statements for the account, over several years, I think Mr T and Mrs H have always been able reduce the balance when they chose to.

But, I think Lloyds treated Mr T and Mrs H positively and sympathetically, when they became aware of their wish to try and pay it off gradually.

*Have Lloyds treated Mr T and Mrs H fairly?*

Having considered everything, I think that Lloyds were able to change the terms and conditions of the overdraft facility on Mr T and Mrs H's account and that they gave sufficient notice, before they made the changes. I also think Lloyds offered reasonable options, given Mr T and Mrs H's situation, when they became aware of their concerns. In all the circumstances, I think Lloyds have treated Mr T and Mrs H fairly when the charging structure changed for their overdraft facility.

**my final decision**

My final decision is I do not uphold Mr T and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs H to accept or reject my decision before 25 February 2021.

Sam Wedderburn  
**ombudsman**