

## The complaint

Miss M has complained that Lloyds Bank PLC (Lloyds) provided her with an overdraft without doing the right affordability checks. She says the overdraft was unaffordable and has asked for all interest and charges incurred on the overdraft to be refunded.

## What happened

Miss M took out an overdraft of £100 with Lloyds in October 2019. The overdraft limit increased over time until Miss M complained to Lloyds in 2023 about unaffordable lending.

In its response to Miss M, Lloyds agreed that it shouldn't have provided her with an overdraft. It offered to refund all interest and charges from the overdraft being approved in 2019 to September 2021, when it contacted Miss M about the account usage for the second time. Lloyds also took the decision to remove the overdraft as it shouldn't have been agreed in the first place.

Lloyds said it contacted Miss M in 2021 and she didn't respond, so it couldn't take any further action without potentially causing detriment to Miss M. Lloyds have also said it would have been reasonable for Miss M to respond to these letters.

Miss M was unhappy with Lloyds' response and feels it should refund all the charges and interest she has incurred to date. So, she referred the complaint to this service.

One of our investigators looked into the complaint and agreed that Lloyds had acted fairly. Miss M didn't accept the investigators opinion and asked an ombudsman to review the case.

## What I've decided – and why

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

Having done so, I didn't agree with our investigator. I issued a provisional decision saying:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I'm minded to reach a different conclusion to the investigator in this case.*

*Lloyds has agreed it shouldn't have lent to Miss M, as this point isn't in dispute I won't comment on this further here. Rather I will focus on whether Lloyd's decision to only refund the interest and charges applied to the account between October 2019 and September 2021 is fair.*

*The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 5D.2 and 5D.3 set out what a business must do to intervene where a customer is repeatedly using their overdraft.*

CONC 5D.2 sets out a business's obligation to identify and monitor repeat use of overdrafts and its obligation to identify customers in actual or potential financial difficulty. Some examples of things that might indicate financial difficulties are given here. For instance, use of other products which may indicate a fall in disposable income, an upward trend in a customer's use of the overdraft over time or where a customer has become or remained overdrawn in every month over a 12-month period.

CONC 5D.3 sets out what interventions the business should take in cases of repeat overdraft users.

Where there are signs that a customer is (or might potentially be) suffering financial difficulties, CONC 5D.3 sets out that the business must:

- Communicate with the customer highlighting the pattern of use and whether this is resulting in high avoidable costs AND encourage the customer to contact them about their situation AND provide contact details of debt advice charities.
- If after a reasonable period of time the pattern continues and the customer hasn't made contact, the business must take reasonable steps to contact the customer to set out suitable options designed to help the customer.
- If the customer still doesn't engage with the business the business must after a reasonable period, consider whether to continue offering the overdraft facility and whether to reduce it, so long as this doesn't cause the customer financial hardship.

Given this, I've considered whether Lloyds has acted fairly and in line with its obligations under CONC.

Lloyds said it wrote to Miss M twice in 2021 about her overdraft – once in March 2021 and once in September 2021. I've read these letters and I can see that they made Miss M aware of the cost of using her overdraft, offered to discuss her finances if she wished and provided details of debt advice charities.

Looking at the account statements I can see that Miss M consistently used her overdraft throughout 2021, 2022 and 2023. For much of this time, she was overdrawn by more than £1,000.

I can see that the overdraft was cleared on occasion, but except for a brief period in December 2021, and a few days in the early months of 2022, the account remained overdrawn between September 2021 and October 2022. At this point Miss M transferred £7,000 to the account from a credit card. These funds were used to pay other debts and for general living costs. Throughout 2023, Miss M was still reliant on the overdraft albeit not to the same extent.

It's clear from her transactions that she was paying other debts from this account as well as using it for essential spending. So, I think from the information available to it Lloyds should have identified that Miss M was in financial difficulty.

I understand Lloyds' reluctance to cause detriment to Miss M by taking any drastic action. However, taking into consideration Lloyds' obligations under CONC, I'm not satisfied it did enough to support Miss M by sending the two letters in 2021. I've seen no evidence that Lloyds took any steps to contact Miss M with suitable options to

*help her reduce her reliance on the overdraft. So, it follows I don't think Lloyds have acted fairly in offering the appropriate support to Miss M.*

*Given this, I don't think Lloyds' decision not to refund all interest and charges because Miss M didn't contact it in 2021, is fair. I say this because I think Miss M was showing signs of financial difficulty and Lloyds should have done more to help her to explore different options to reduce the debt.*

*Lloyds accepted it shouldn't have provided Miss M with an overdraft. But as it didn't follow the guidance as set out in CONC, I don't think it did enough to help her when Miss M's account was showing signs of financial difficulties. So, I don't think Lloyds' decision to only refund charges between October 2019 and September 2021 is fair and reasonable.*

### **My provisional decision**

*For the reasons set out, I think it's fair and reasonable for Lloyds to refund all interest and charges incurred by Miss M as a result of the credit unfairly extended to her, therefore Lloyds should rework the account and:*

- Refund any interest and charges incurred as a result of the overdraft. This refund should be used to reduce any outstanding balance on the account.*
- Lloyds should work out how much Miss M would have owed after the above adjustments.*
- If the refund clears the adjusted balance any funds remaining should be refunded to Miss M along with 8% simple interest per year\* - calculated from the date of overpayment to the date of settlement.*
- If after all adjustments have been made Miss M no longer owes any money, then all adverse information regarding this account should be removed from her credit file from October 2019.*
- Or, if an outstanding balance remains, Lloyds should look to arrange an affordable payment plan with Miss M for the outstanding amount. If any debt has been sold to a third party, Lloyds should either repurchase the debt or liaise with the third party to ensure the above steps are undertaken. Once Miss M has cleared the balance, any adverse information because of the unfair lending should be removed from the credit file.*

*\*HM Revenue & Customs requires Lloyds to deduct tax from any award of interest. It must give Miss M a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax."*

Lloyds accepted my provisional decision but pointed out a refund of charges and interest for the period between October 2019 and September 2021 had already been made. Miss M responded to say she had nothing further to add.

Having taken account of Lloyds comments and in the absence of any further evidence or arguments, I see no reason to depart from my provisional decision. However, I have slightly amended my award to account for the refund that Lloyds has told me it's already made. Lloyds should:

- Refund any remaining interest and charges incurred as a result of the overdraft. This refund should be used to reduce any outstanding balance on the account.
- Lloyds should work out how much Miss M would have owed after the above adjustments.
- If the refund clears the adjusted balance any funds remaining should be refunded to Miss M along with 8% simple interest per year\* - calculated from the date of overpayment to the date of settlement.
- If after all adjustments have been made Miss M no longer owes any money, then all adverse information regarding this account should be removed from her credit file from October 2019.
- Or, if an outstanding balance remains, Lloyds should look to arrange an affordable payment plan with Miss M for the outstanding amount. If any debt has been sold to a third party, Lloyds should either repurchase the debt or liaise with the third party to ensure the above steps are undertaken. Once Miss M has cleared the balance, any adverse information because of the unfair lending should be removed from the credit file.

\*HM Revenue & Customs requires Lloyds to deduct tax from any award of interest. It must give Miss M a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

### **My final decision**

My final decision is that I uphold this complaint and require Lloyds Bank PLC to settle the case as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 March 2024.

Charlotte Roberts  
**Ombudsman**