

The complaint

A sole trader, who I'll call Mr H, complains that Lloyds Bank PLC lent him money he could not afford in the form of a business overdraft and a bounce back loan ("BBL").

What happened

Mr H was a personal customer of Lloyds. In May 2019, he opened a business bank account and successfully applied for an overdraft of £4,000 at the same time.

In October 2019 and April 2020, Mr H requested further lending. This was declined at enquiry by the bank.

Mr H successfully applied for a £4,000 BBL in May 2020, later topping it up to £8,000 through the BBL top-up scheme.

In May 2022, Lloyds contacted Mr H to review his business overdraft. Following this review, the bank declined to renew the overdraft.

In June 2023, Mr H complained. He said that the overdraft and BBL should never have been approved and that the bank had acted irresponsibly in lending to him, as he had been in persistent debt for some time.

Lloyds didn't uphold Mr H's complaint, saying that it had followed its lending procedures correctly.

Mr H asked the Financial Ombudsman to look into things. I issued a provisional decision on 27 June 2024, in which I upheld the complaint in part and said:

Business overdraft

Mr H is a sole trader and he borrowed £4,000. I could see any reason why this would have been exempt from the regulations relating to consumer borrowing. So I think the overdraft would legally have been a regulated credit agreement as defined by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This in turn meant that the bank had to comply with the regulations contained in the Financial Conduct Authority's handbook relating to consumer credit. So I had considered these regulations in deciding whether the bank acted responsibly when it lent to Mr H.

In May 2019, Mr H met with his relationship manager and requested a business overdraft. Lloyds has provided me with its notes from this meeting, which I had used to decide whether the bank carried out reasonable and proportionate checks before deciding to lend to Mr H.

The bank recorded that Mr H said he had been trading for six years and had seen his turnover increase in the last three to £30,000 a year. According to the bank, Mr H also said that he was looking to use the funds to drive a marketing campaign to gain clients and also repay the borrowing on his personal accounts. Profitability and income were also discussed as well as monthly expenditure (figures for main outlays were recorded). Lloyds' records indicate that a credit check was carried out and that it was aware of the balances on his two personal accounts. It also recorded that Mr H's tax was up to date and he had a £3,000 car loan and two credit cards. I thought all this suggested that the checks carried out were reasonable and proportionate.

Next I needed to consider whether the bank used the information gathered appropriately to make a fair lending decision.

I didn't have a copy of the credit check so I can't know exactly what it showed at that time. Mr H has provided evidence that he did have some financial difficulties prior to this date, including a County Court Judgment ("CCJ") that was satisfied in 2016 and a notice of intended repossession proceedings from the council, also from 2016. I thought it more likely than not that the CCJ would have been recorded on his credit file even if there were no other adverse information. I also thought it likely that other applications for credit would have been reported, as Mr H also had borrowing elsewhere by this time. But I didn't have any evidence of unresolved defaults or arrears at that time. So I hadn't seen evidence that the credit check would have shown enough adverse information to make lending clearly unsuitable.

However, I had looked at the conduct of Mr H's two personal accounts with Lloyds and I could see that his main account, which had a £2,000 overdraft limit, had been overdrawn for the vast majority of the previous two years, only occasionally going marginally into credit. I thought this should have suggested that Mr H was under some financial pressure and was heavily reliant on his overdraft.

Lloyds' records – and Mr H's comments – suggested that the business overdraft was also granted on the basis that the £2,000 overdraft on the personal account was going to be repaid from the business overdraft and then removed. This did not happen and I hadn't seen an explanation why that was the case. If the £2,000 limit had been removed, then obviously Mr H's overall borrowing would only have increased by £2,000 and the financial pressure on his personal overdraft (and the higher interest rate on that account) would have been removed. But that is not what happened.

I was minded to think that, lending Mr H a further £4,000, on top of the £2,500 of personal borrowing he was already heavily relying on (as well as the credit cards and car loan elsewhere), was not a responsible lending decision based on the information held.

Mr H has had the use and benefit of the overdraft. So I thought it fair that he should pay back the amount he borrowed. But where I conclude that lending was not affordable, I generally didn't think it was fair for banks to be able to charge any interest or charges under the credit agreement. My intention here is therefore to direct the bank to refund all interest and charges on Mr H's business current account from inception.

Mr H also said that he had contacted Lloyds in 2022 with a repayment offer of £30 per month and that the bank had declined this and told him that he could “trade his way out”. I could see that Mr H had several conversations with the bank in 2022 and was open about the state of his finances. I could also see that he told the bank that he was still trading, but that his business banking was now going through a different bank. I hadn’t seen any reference to trading his way out, but I could see that the bank tried to get Mr H to complete an income and expenditure review on several occasions, which I considered would have been in line with usual banking practice in this area, where someone is in financial difficulties but is still trading.

Mr H appeared to have declined to go through an income and expenditure process and both parties seemed to have agreed that a formal demand would therefore be issued, which took place in September 2022. This all seemed to me to be in line with normal banking procedures and I didn’t think the bank did anything wrong in following this process.

Mr H had mentioned to us that the bank had still not transferred him to its recoveries function, which he felt was unfair. This might reflect the bank putting things “on hold” while his complaint is with our service. I was not sure if it remained the case, but I’m afraid if so that it wasn’t part of the complaint I was considering here.

The bounce back loan

Mr H had argued that, if the bank wasn’t aware of his financial hardship in 2019, then it should have been in 2020, when he told the bank he was in difficulties as a result of the pandemic. However, as our investigator pointed out, the Government introduced the BBL scheme precisely to help businesses in difficulties in the pandemic. Mr H then took advantage of this scheme in the manner for which it was designed.

BBLs were a unique form of lending, developed in a hurry in the pandemic to give businesses a life-line to keep them going until trading returned to normal. So that they could be delivered at pace, BBLs were not subject to all the checks that apply to normal bank lending, but were self-attested. They were also specifically exempt from being regulated under article 60C (4A) of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

In short, as our investigator said, this means that there was no obligation on the bank to ask Mr H for any additional information or to assess the conduct of his existing bank accounts. Neither was the bank expected to double-check the information, such as turnover, that he declared.

I appreciated that, in retrospect, this scheme enabled Mr H to take on more debt that he couldn’t afford. And I could see why he felt now that there should have been some mechanism to protect him from this outcome. But for this specific scheme, the bank simply didn’t have to check if it was affordable to him. The same principles applied to the BBL top-up. So Lloyds didn’t do anything wrong.

To put things right, I intended to direct Lloyds Bank PLC to carry out a calculation to rework Mr H’s business current account, removing all interest and fees applied since it was opened.

Both sides replied to ask for further clarification on my decision. So I am issuing this final decision to deal with their respective points below.

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, and in the absence of any new arguments or evidence from either side, I haven't been persuaded to alter my provisional findings. I still think that Lloyds made an error in providing Mr H with a business overdraft that he couldn't afford. And I still consider that the bank did nothing wrong in relation to the BBL.

The bank has asked for clarification of which charges I am directing them to refund. What I had in mind here was all charges that would not have been incurred had the overdraft not been granted, for example, overdraft usage fees and unauthorised borrowing fees. I would also expect Lloyds to refund the fees charged for the return of BBL repayments. The bank need not refund any charges incurred relating to operating a business account or providing general banking services, for example, non-sterling transaction fees.

Mr H has requested that all future interest and charges on the business overdraft and the BBL be stopped, in order to assist him in repaying his debts through a debt management plan. I agree that all future interest and charges relating to the overdraft should be stopped, for the same reasons as I am requiring the bank to refund the sums already charged.

I am not going to make a direction relating to the BBL, as I haven't found that the bank acted unreasonably regarding that loan. However, I would urge both sides to have a realistic discussion about Mr H's circumstances and what he can afford to repay. This would require Mr H to engage with an income and expenditure assessment. It should also take into account Mr H's second point about being allowed a reasonable time to repay his debts.

Mr H has also asked that all negative marks be removed from both his business and personal credit files. I would only consider this fair if the entire debt was made up of interest and charges. In this case, I don't think there's any doubt that there will still remain a material amount for Mr H to repay. So I don't think it would be fair to remove any negative information. In addition, if his credit file was wiped clean and he then fell behind again on any arrangement to repay the business overdraft and BBL, the bank would be within its rights to record fresh defaults on his file, which would result in it being impaired for longer. This would not be in his best interests. For all these reasons, I am not going to direct the bank to do this because I think his credit file should remain an accurate reflection of his financial circumstances, so that future lenders can take this into account.

Putting things right

Lloyds should refund all the interest, fees and charges applied to Mr H's business account as a result of the credit unfairly extended to him. This refund should be used to reduce the outstanding balance on the account.

Lloyds should also ensure no further interest, fees or charges are added to the overdraft.

Lloyds should work out how much Mr H owes after the above adjustments and contact him to arrange an affordable repayment plan for the outstanding amount, including the BBL.

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 Mr H has cleared the balance, any adverse information because of the unfair lending should be removed from his credit file.

My final decision

I uphold this complaint in part and direct Lloyds Bank PLC to settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 August 2024.

Louise Bardell
Ombudsman