

## The complaint

A company, which I'll refer to as R, complains that Lloyds Bank PLC (Lloyds) unfairly withdrew its overdraft.

In bringing this complaint, R is represented by its director who I'll refer to as Mr B

## What happened

There's little dispute between the parties about the core events in this case - which I summarise:

- R operated a business bank account with Lloyds, with an authorised overdraft of £8,000 (the Overdraft)
- The Overdraft was due for renewal on 16 January 2024. And in the lead up to that renewal, on 27 November 2023, Lloyds wrote to R to remind it of that position.
- Further reminders were also sent to R on 7 and 19 December 2023.
- On 4 January 2024, Mr B contacted Lloyds. The bank told him they needed to conduct a review of the Overdraft, including the limit and to assist them, the bank needed various items of information such as up to date financial information in respect of R
- On 15 January 2024, Mr B contacted the bank to say up to date company accounts for R were being prepared by its accountants and would be ready in a week's time. So, Lloyds agreed a month's temporary extension of the Overdraft until 16 February 2024 for which Mr B paid a fee of £13.27.
- On 6 February 2024, Lloyds texted Mr B to remind him of the imminent expiry of the Overdraft and a couple of days later, on 8 February 2024 Mr B sent R's accounts to the bank.
- In the accompanying e-mail Mr B told Lloyds that he was:

“currently on leave and have no access to telephone.” He also added: “If necessary, I will telephone [on] my return around the 24 March”
- On 16 February the Overdraft extension period ended. At the time, the overdrawn balance stood at just over £7,000. The bank terminated the Overdraft which meant the facility entered into an unarranged overdraft position.

- Because Mr B was away, subsequent attempts to contact him by phone and letters were unsuccessful. Also, direct debit demands went unpaid.
- Mr B returned to the UK on 23 March 2024. On 26 March, he contacted Lloyds about the various letters he'd been sent during his time away regarding the Overdraft. He told the bank that the reason it hadn't been able to contact him was because he'd been away for the past six weeks. He said he wanted to apply for an agreed overdraft to address the unauthorised overdraft position that now existed.
- But Lloyds declined to extend a new overdraft to R. And on 14 June 2024, the bank served R with a formal demand requiring the repayment of the unauthorised overdraft in full which then stood at £7,053.75.

Mr B believed Lloyds acted unfairly towards R when they took the decision to terminate the Overdraft and so he complained. He was also unhappy about the bank's decision not to extend a new arranged overdraft facility to R and so complained about that too.

That being said, by way of a resolution, Mr B simply wanted to enter into an arrangement with Lloyds whereby R would be allowed to repay £100 to the bank per month until the unarranged overdraft amount was cleared.

In their response to R's complaint, Lloyds didn't think they'd done anything wrong. In summary, they said:

- When Mr B contacted Lloyds in January 2024 regarding the renewal of the Overdraft, as well as letting him know they needed B's financial information, they also told him they'd need to speak to him to conduct their review and that the call would take approximately 90 minutes.
- There was nothing the bank could do with the financial information that Mr B later sent because it needed to speak to Mr B as part of its review of the Overdraft, whereas Mr B wasn't available.
- In relation to the decision to decline the application to renew the arranged overdraft to R, the bank followed its process. Lloyds explained this involves using their system to review the customer's eligibility, taking account of the length of time the customer has held an account with the bank, and how the account is conducted. In that process and based on the available information the system generates an indicative decision.
- By employing that process, the bank is able to quickly answer lending enquiries without needing to complete a full credit search or asking for more information unnecessarily. It is only in circumstances where the bank's initial criteria and checks are satisfied – which did not happen on this occasion - that a full application is proceeded with.
- The bank did, however, agree R did receive some poor service from Lloyds. For example, there were times when calls between the bank and Mr B ended unexpectedly. And by way of an apology the bank paid R £50 compensation.

But as R's complaint remained unresolved, Mr B referred it to this service to look into.

Our investigator didn't uphold the complaint because she didn't think Lloyds had made an error. She said – in summary:

- The terms and conditions of the account explain that Lloyds can withdraw the Overdraft at any time. And for overdraft renewal, the bank may require the customer to complete an interview and provide accounts.
- Lloyds sent Mr B various letters about the Overdraft expiry date which gave him enough time to get in touch and make the necessary arrangements for renewal.
- In the phone call Mr B had with the bank on 4 January he was told that he would need to provide financial information and that a review call would be necessary. Later, on 15 January after paying for a temporary overdraft extension to 16 February, he was told there would be no further extensions.
- Although Mr B sent the bank R's accounts on 8 February, this didn't mean that the Overdraft would be renewed. In particular, because before it expired on 16 February a review call was necessary and this did not take place. So, by the time Mr B called the bank on 26 March to request the renewal, it was too late.
- The £50 Lloyds paid to R in recognition of the inconvenience caused by their acknowledged poor service seems fair and reasonable

In addition, in view of Mr B's indication of how he'd like to resolve R's dispute with Lloyds, the investigator put Mr B's proposal to the bank. In other words, this was in an attempt to determine whether Lloyds would be prepared to allow R to pay £100 per month towards clearing the outstanding amount R owed to the bank. Lloyds responded as follows:

*'This is something the customer would need to discuss with either our Business Banking Financial Assistance team or our Recoveries area once the account has been transferred to their management. We are not in a position to discuss repayment proposals whilst a complaint remains active.'*

The bank's response was shared with R. Overall, however, R did not accept the investigator's conclusions.

And although on its behalf Mr B acknowledged he had no new evidence to present in support of R's case, nonetheless he has asked for an ombudsman's review of it. It has, therefore, been passed to me for that purpose.

### **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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I begin by acknowledging this has been a difficult time for R. It now faces having to repay a £7,000 unarranged overdraft to Lloyds and I sympathise with the difficulty that poses.

But for me to find in favour of R in this case, I would need to be satisfied that in their dealings with R regarding the Overdraft, Lloyds made an error or acted unreasonably – and I don't think they did. What that means therefore, is that I've come to the same overall conclusion as the investigator and for broadly the same reasons. I'll now explain why in a little more detail.

I start with the terms and conditions of the account and those relating to the Overdraft. The account terms and conditions say:

"11. Borrowing from us

11.1 If we agree to give you an Authorised Overdraft, we will give you a separate facility letter setting out the overdraft terms and conditions, including the interest rate."

The separately issued overdraft facility letter which accompanied the Overdraft had the following relevant clauses:

"Availability The Facility is available on an open-ended basis which means it will continue until ended by you or by us. You may end the Facility at any time by telling us. If you end the Facility, you must repay any amount you owe under your facility immediately.

We have the unconditional right to terminate the Facility without notice at any time. We can also require you to repay all of the amount you owe under the Facility in full on demand at any time without terminating the Facility

Annual Review We will undertake an annual review of the facility and can also review the Facility if there are any changes which (alone or together) cause us to believe that you may have difficulty with repayment.

In light of the above, I am satisfied that under the terms and conditions of the Overdraft, Lloyds not only had the right to review the Overdraft, but the right to terminate it also. When therefore, in February 2024, Lloyds took the decision to terminate the facility, I cannot conclude that they acted contrary to the terms and conditions I've just highlighted.

I have however, gone on to consider whether in the circumstances of this case, Lloyds acted unfairly when they did so. And in that determination, I think an important consideration is the conversations that took place between Lloyds and Mr B in January 2024. Before I come to those conversations, I'll make a couple of observations:

It is clear Mr B knew the Overdraft was up for renewal and the date the facility expired. He was repeatedly reminded of that fact. But I note he has said in his testimony that he assumed the renewal would be a 'tick box' exercise given that historically the Overdraft was automatically renewed.

Lloyds' case is that whilst it is true that the Overdraft was automatically renewed in the past, nonetheless, they're obliged to act as a responsible lender. And that means they are expected to ensure that lending is appropriate for the customer, meaning, the bank does need periodically to review overdraft borrowing without simply auto-renewing it. I think the bank's decision to review the Overdraft rather than automatically renewing it is not unreasonable. Moreover, it gave R ample notice of its decision to do so.

I come now to the January 2024 phone calls. There are two important phone calls that Lloyds have referred to that took place between them and Mr B.

On 4 January 2024 Lloyds say that when Mr B contacted them regarding the Overdraft renewal, he was told a formal review needed to take place and that this could take around an hour or more. Lloyds say Mr B wasn't happy about that.

Lloyds don't have the call recording but have shared the notes that were made of the call on their system.

The notes confirm there were two calls on 4 January. The notes of the first call support the bank's testimony that Mr B was told a full review was necessary. There was then a second call from Mr B where he presented accounts figures for R that were seemingly out of date. I'm satisfied that on 4 January 2024 Mr B knew the overdraft wouldn't be renewed automatically and that he needed to provide the bank with financial accounts in relation to R for that to happen.

I'm also satisfied that Mr B knew he needed to speak to the bank in connection with the review. Mr B attempted to do so in the second phone call but the information to hand at the time was out of date. That second phone call by Mr B to Lloyds with figures tends on balance to support the bank's position that Mr B was told this was the process he needed to observe. So, I don't think Mr B could reasonably have assumed the 2024 renewal was merely a tick box exercise.

The bank's internal records of 15 January 2024, show the day before the overdraft was due to end, that Mr B again called Lloyds.

The note records as is indicated above that Mr B told the bank that R's financial accounts would be ready within the week. And it's recorded that an extension had been granted. The notes also state the following:

*"Customer to [ call ] back for full review and advised no further extensions can be provided."*

So, I'm persuaded that the notes of the conversations on 4 and 15 January 2024, that Mr B knew the Overdraft would not be renewed automatically as in previous years. And furthermore, that as well as providing financial information relating to R, he needed to speak to the bank in the conduct of its review. Indeed, Mr B's email of 8 February 2024 seem to leave open the possibility that he would do so on his return to the UK in March 2024, which was some five weeks after the 16 February Overdraft renewal date.

Lloyds have shared details of the review process once all the information requested is received. The process includes, together with the customer, conducting a review of the account, business performance and ability to repay the borrowing as well as any expected changes to the customer's circumstances and business needs. This persuades me that indeed Lloyds did need to speak to Mr B as part of the renewal process of the Overdraft.

But although Mr B provided the financial information to Lloyds on 8 February, he did not call the bank. And knowing, as I'm satisfied, he did that the renewal of the Overdraft was not a 'tick box' exercise, and a conversation with the bank was an important component of the review, reasonably, I'd have expected him not just to send the information to Lloyds but to also call the bank to discuss it before the renewal date expired.

It was an unfortunate missed opportunity by Mr B to do so. And although I noted in his initial testimony, he said he left the UK two days after sending R's accounts to the bank, ie 10 February 2024, when asked why he did not use those two days as his opportunity to speak to the bank, he has since said he made an error with the dates. He now says he left the UK on 3 February 2024.

But whatever the correct date that Mr B left the UK, the evidence from the bank shows there were exchanges of correspondence between Lloyds and Mr B after 3 February - including a text message reminder to his phone on 6 February after which B's financial accounts were sent by e-mail.

In the circumstances, since Lloyds were unable to speak to Mr B which was part of their review process, when therefore, the Overdraft expired on 16 February 2024, I don't think Lloyds acted unreasonably when they took the decision to withdraw the facility.

Finally, I come to Lloyds' decision not to grant a new overdraft to R after Mr B requested this on his return to the UK in March 2024.

To begin with, it's worth pointing out that lending decisions are a matter for the bank's commercial discretion. And furthermore, the legitimate exercise of that discretion isn't something I'd interfere with.

Lloyds have explained they'd have used all the information Mr B provided in relation to R, and the data they already held to determine whether to grant a new overdraft to R. They've told us R's credit score, days its account was in excess and repayment ability were flagged on its system as being of concerns. In light of this I cannot safely conclude the bank's decision not to renew R's overdraft was not a legitimate exercise of its commercial discretion.

All that being said, I know, to its credit, R is keen to repay the outstanding overdraft amount. Mr B has suggested a monthly amount he thinks B would be able to contribute. For their part, on conclusion of R's complaint to our service, Lloyds are willing to discuss R proposal further. To that end therefore, I would urge Mr B to contact the bank further.

### **My final decision**

I acknowledge that R will be very disappointed with my decision. But for the reasons I've set out above my final decision is I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 30 September 2024.

Asher Gordon  
**Ombudsman**