

## **Complaint**

Mr R has complained about the overdraft charges Lloyds Bank PLC (“Lloyds”) applied to his current account. He’s said the charges were applied unfairly as he was allowed to use his overdraft for a prolonged period.

Mr R is being represented in his complaint.

## **Background**

Lloyds provided Mr R with an overdraft in August 2019. He was given an overdraft limit of £300. This limit was steadily increased over the course of the following sixteen months until it reached £800 in December 2020. Mr R’s overdraft limit was then reduced in April 2021 until it was steadily increased until it reached £1,130.00 in February 2023. Mr R has since reduced his limit to £250 and this is where it currently sits.

Mr R’s complaint was looked at by one of our investigators. She thought that Lloyds ought to have realised that it shouldn’t have continued allowing Mr R to use his overdraft by June 2021. Therefore it needed to refund all of the interest, fees and charges added to Mr R’s overdraft from this point onwards.

Lloyds disagreed with the investigator and asked for an ombudsman’s decision.

## **My provisional decision of 2 December 2024**

I issued a provisional decision – on 2 December 2024 - setting out why I was not intending to uphold Mr R’s complaint.

In summary, I wasn’t intending to uphold Mr R’s complaint because I was satisfied that Lloyds hadn’t increased Mr R’s overdraft limit and continued providing an overdraft to him, in circumstances where it ought reasonably to have realised that he was experiencing financial difficulty.

## **Lloyds’ response to my provisional decision**

Lloyds responded to confirm that it agreed with my provisional decision and that it had nothing further to add ahead of my final.

## **Mr R’s response to my provisional decision**

The representative disagreed with my provisional decision. In summary it:

- said whether Mr R was using his overdraft for discretionary spending is irrelevant and this is supported by an ombudsman’s decision on another case.
- copied and pasted a paragraph from a final decision I issued on another case, where I said that simply sending letters wasn’t enough as evidence that Lloyds ought to have done more here.

## My findings

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

Having carefully considered everything provided, including what has happened since my provisional decision, I'm not upholding Mr R's complaint. I'll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mr R was unfairly charged by being allowed to continue using his overdraft, I want to be clear in saying that I haven't considered whether the various amounts Lloyds charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at Lloyds' charging structure per se, it won't have acted fairly and reasonably towards Mr R if it applied this interest, fees and charges to Mr R's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr R was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Lloyds didn't treat Mr R fairly and reasonably.

In other words, I've considered whether there were periods where Lloyds continued charging Mr R even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

I've looked through Mr R's account statements throughout the period concerned. And I can't see that Lloyds ought reasonably to have reached the conclusion that it needed to take unilateral measures to correct Mr R's use of his overdraft.

It's fair to say that Mr R used his overdraft and the representative appears to be suggesting that this in itself was an indication that Lloyds ought to have taken action. But it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use.

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. So, in this case, I've considered Mr R's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for him to have stopped using his overdraft, based on this.

After all if Mr R was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

The first thing for me to say is that Mr R only ever had an overdraft limit that was significantly lower than his monthly salary. In these circumstances, Mr R's scope for being trapped into continually using an overdraft is limited, as it is clear that his salary had the potential to clear what he could owe within a reasonable period of time.

So this isn't a case where the borrower was permanently in their overdraft. This is in contrast to the customer in the final decision which the representative has provided, where the ombudsman said and I quote the customer was '*allowed to run her account in almost constant overdraft*'. Mr R was regularly in credit – although like I said that I do accept that there were times where Mr R would have met the criteria of someone who displayed a

pattern of repeat use of their overdraft given he was in his overdraft for, at least, part of each month.

That said, even though this is the case, the question here is whether Mr R's use of his overdraft was causing him to incur high cumulative charges that were harmful to him. And having considered matters, I don't think that this is the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr R expenditure, nonetheless I can't see that it was Mr R's committed expenditure that was keeping him perpetually overdrawn. Furthermore, there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mr R's account.

Indeed, it's fair to say that a fair chunk of Mr R's expenditure was discretionary and the credits going into his account suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so. Equally, I can't see anything to indicate that the charges he was incurring for what was on the whole discretionary spending was causing him harm. For example, I can't see that he was borrowing from unsustainable sources in order to meet these charges or that his borrowing was increasing exponentially.

I accept neither of these things in themselves (or when taken together) mean that Mr R wasn't experiencing difficulty. But I don't agree that Mr R was reliant on credit in the way that the representative is suggesting. He was quite comfortably able to make his commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions.

Given the repeat usage letters Mr R is likely to have been sent by Lloyds, I think that he ought to have realised that how much he was paying for this. So I simply don't agree that Mr R was using his overdraft purely for essential spending, or because he had a reliance on credit to get by, as the representative says.

I think that Mr R repeatedly increasing and decreasing his overdraft limit shows that he was aware of what was going on and he was comfortable applying for higher limits when he wished to increase his spending. So in my view, this is a clear difference between the facts and circumstances of this case and the ones which the representative has provided the decisions on. In this case, Mr R was modifying his overdraft use, possibly in response to any letters, whereas in the other cases the content of those decisions would indicate that the borrowers weren't taking any notice of the letters being sent and continued using their facilities unsustainably.

Furthermore, if I take the representative's argument to its logical conclusion, this would mean that any customer who uses any form of credit would be reliant on it. And they should not be allowed to use an overdraft, or any other credit, in such circumstances. There is nothing in any of the regulators rules, guidance or good industry practice which indicates that it would be a matter of fact that a customer is struggling financially should they be using credit in the way that Mr R was. For the sake of completeness, I would also point out this isn't suggested in either of the final decisions that the representative has provided in response to my provisional decision either.

I say this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Mr R failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Mr R failing to meet his commitments out of his disposable income – were present in Mr R's circumstances at the time.

I've therefore not seen anything to indicate that Lloyds ought to have realised that Mr R was struggling in June 2021. Indeed, Mr R's account statements even show that he had a credit balance on his account shortly before the date the investigator has suggested Lloyds ought to have taken unilateral action in relation to the overdraft.

Overall and having considered everything, I don't think that it was unreasonable for Lloyds to have added the overdraft charges it did. This is especially bearing in mind the consequences of Lloyds taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think it would have been proportionate for Lloyds to demand that Mr R immediately repay his overdraft, in circumstances where there was not only a realistic prospect of Mr R clearing what he owed in a reasonable period of time, but he was going into a credit balance each month. Indeed, I suspect that Mr R would have been extremely unhappy if Lloyds had removed his overdraft in these circumstances and at this time. So I'm satisfied that Lloyds did not charge Mr R in circumstances where it ought to have realised that it was unfair to do so.

In reaching my conclusions, I've also considered whether the lending relationship between Lloyds and Mr R might have been unfair to Mr R under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've already explained, I'm satisfied that Lloyds did not lend irresponsibly or act unfairly in allowing Mr R to use his overdraft in the way that he did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Mr R's complaint. I appreciate that this will be very disappointing for Mr R – particularly as the investigator albeit erroneously suggested that the complaint should be upheld. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

For the reasons I've explained above and in my provisional decision of 2 December 2024, I'm not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 January 2025.

Jeshen Narayanan  
**Ombudsman**