

The complaint

Mr H complains that Lloyds Bank PLC added late payment markers to his credit file when his account went into a small unarranged overdraft.

What happened

Mr H applied for a current account with Lloyds. By way of an error and for reasons that are unclear, instead of opening one account, Lloyds mistakenly opened two accounts. Mr H subsequently made use of both accounts.

Mr H appears to have used one account for his daily spending ('Account 1'). The second account was used less frequently ('Account 2'). Both accounts were subject to a monthly fee of £3 which could be waived in certain circumstances.

Lloyds said that Account 2 went into an unarranged overdraft of £6 in July 2022 which was caused by the account fee being charged over two months. It classed this unarranged overdraft as a late payment and reported it to the credit reference agencies. The same thing happened again in September 2022.

Mr H did not think this was fair. He thought the late markers should be removed and said they could have an impact on his job.

Lloyds said it was obliged to report information to the credit reference agencies. It offered to pay £40 to Mr H to compensate him for the mistake it made in opening two accounts.

However, it did not agree to amend his credit file. It said the late payment entries had been correctly made. Even though the account had been opened in error, Lloyds said that as Mr H had used the account, he needed to manage it in line with the terms and conditions.

Our investigator looked at all of this but didn't think the complaint should be upheld. Mr H disagreed with that view. He said if the account hadn't been opened in error, the issue wouldn't have occurred in the first place. He said he was not informed of a payment date for the monthly charge and he was not informed when Account 2 went overdrawn.

As Mr H did not agree with our investigator's view, the matter was passed to me for an ombudsman's decision. I asked our investigator to make some further enquiries of Mr H and of Lloyds.

In response to that further request for information, Mr H provided a copy of the relevant entries to his credit file. Lloyds provided further information about the circumstances in which it would report late payments to a credit reference agency. It said Mr H would have been notified by text message that Account 2 had become overdrawn.

I issued a provisional decision because I thought Lloyds should take further action. I said:

As things stand, I intend to uphold the complaint and require Lloyds to remove the late payment markers from Mr H's credit file. I'll explain why.

I note from Mr H's response to our investigator that he was keen to say that Lloyds had acted unlawfully and in breach of contract. I need to make clear to Mr H that it is not the role of this service to establish whether there has been a breach of contract in

this case. Such a matter would be for a court to decide. This service is an informal dispute resolution service and whilst I have taken account of the relevant law, I have determined this complaint based upon what I consider to be fair and reasonable in all the circumstances.

Lloyds told us that its policy in reporting to credit reference agencies about current accounts was that late payments are reported after a customer has been in an unplanned position for 35 consecutive days. It says the first late payment won't be reported if the excess balance is less than £5. Further late payments will be reported if the balance is £1 or more over the unarranged overdraft.

Looking at Mr H's statements, I can see Account 2 went into an overdrawn position of £3 on 6 June 2022. A further £3 was debited on 4 July 2022, which took the account £6 overdrawn until 11 July 2022 when Mr H paid £6. The balance was then brought back to £0. By my calculations, the account would have been in an overdrawn position by exactly 35 days. But it would not have been in an overdrawn position of more than £5 for that length of time.

On 2 August 2022, the £3 fee was debited again and Mr H's account was again overdrawn. The fee was debited again on 2 September 2022, making the account £6 overdrawn. Mr H transferred £6 into the account on 11 September 2022 and the balance was returned to £0 that day. By my calculation, the account was in an overdrawn position for approximately 40 days. But again, it wouldn't have been in an overdrawn position of more than £5 for 35 days.

From the information provided to me, it is not entirely clear whether the account would have to be more than £5 overdrawn for more than 35 days before Lloyds would usually report a missed payment to the credit reference agencies.

Lloyds terms and conditions say that it will notify Mr H when his account goes into an unarranged overdraft position. I asked Lloyds to provide evidence that Mr H was notified about this for Account 2. It provided a copy of a text message from September 2022, but this appears to refer to the arranged overdraft Mr H had on Account 1.

I also note from Lloyds terms and conditions that it may have been possible for Lloyds to change Mr H's account if he did not pay the monthly account fee twice in a row. As Mr H had missed two payments in a row in July 2022, it is not clear to me why Lloyds did not consider changing Account 2 to one that did not attract a fee. Had it done so, it is possible the late payment marker in September 2022 could have been avoided.

Looking at all of this in the round, I agree with Lloyds that as Mr H was using the second account, it was his responsibility to use that account in line with the terms and conditions. That said, it seems to me that Mr H's failure to pay the account fees of £3 was effectively an administrative oversight on his part, rather than an inability to pay the fees or an indication of financial difficulties.

When balancing this against the error Lloyds said it made in opening the second account in the first place, alongside the other matters I have set out above, it seems to me that the fair and proportionate response in the particular circumstances of this case is for the late payment markers to be removed from Mr H's credit file.

Both Mr H and Lloyds responded to say they agreed with my provisional findings. Lloyds said it had now been in touch with the credit reference agencies to remove the disputed late payment markers.

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.

As both parties have indicated they agree with my provisional decision, I see no reason to depart from those provisional findings.

So, for the reasons set out above, I uphold this complaint and require Lloyds to take action to put things right.

Putting things right

If it has not already done so, I require Lloyds to instruct the credit reference agencies to remove the late payment markers from Mr H's credit file for July and September 2022 in respect of Account 2.

My final decision

I uphold this complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 August 2023.

Nicola Bowes
Ombudsman