

The complaint

Mrs C is legally represented. Her complaint is that Lloyds Bank PLC ('Lloyds') breached its duty of care towards her – as a Lloyds banking customer/client – when she sought its assistance in securing a high interest deposit arrangement for her capital in 2017.

What happened

Mrs C's solicitors made submissions which, alongside expert evidence in support of the compensation she claims, set out the basis for her complaint. In the main, her solicitors said:

- Mrs C did not have a financial adviser and did not have an objective related to speculation on investments. Instead she had a *Personal Banking and Advice Manager* ('PBAM') at Lloyds and her objective was to generate income from her capital through a high interest deposit-based arrangement.
- She was/is a High Net Worth ('HNW') individual. Her objective arose from the following changes of circumstances in 2017 – she sold her business [REDACTED]
[REDACTED]; so an alternative source of income – a significantly high level of income (to match the level of earned income she was accustomed to) – was required; instead of putting the sale proceeds at risk within an investment she opted for the relative safety of a deposit-based arrangement; so her objective was to generate the income she needed through interest earned, at the highest available rate, on the deposited sale proceeds.
- The sale proceeds [REDACTED] were realised around late February 2017. Prior to this, and with full instructions on Mrs C's circumstances and objective, the PBAM had advised her to open a Lloyds High Interest Cheque Account ('HICA') and a Lloyds Instant Access Investment Account ('IAIA') – which she did. The proceeds were initially deposited in the HICA, then they were promptly moved into the IAIA where they remained, from late February 2017 and until events in 2019.
- Mrs C engaged in ongoing discussions and correspondence with the PBAM, from the outset, in pursuit of the best possible interest rate for her deposit. In the course of doing so, she made explicit enquiries about offshore arrangements and, in particular, those available in Jersey. The PBAM had previous working experience offshore (in Gibraltar) and had contacts/connections in Lloyds' Jersey operations. Despite the clarity of Mrs C's objective and of her repeated enquiries about Jersey, the PBAM consistently gave her the impression that there were no viable alternatives in Jersey and/or that any such alternatives would be unduly complicated and difficult to achieve. Evidence of cross correspondence between them shows this. As a direct result, and because Mrs C wanted to remain loyal to Lloyds, her capital remained in

the IAIA earning interest at the rate of 0.35% per year. This continued until 2019.

- Around April 2019 Mrs C decided to investigate the alternatives available in Jersey herself. The PBAM was initially reluctant to introduce her to his contacts in Jersey, but he eventually did so. After meeting with said contact – at Lloyds in Jersey – and after her investigation into alternatives in Jersey, she realised that the PBAM had misinformed her since 2017. She learnt that it was relatively easy, as a UK resident, to open an offshore account in Jersey; that Lloyds in Jersey could have offered her, since 2017, a better interest rate for her capital than she received from the IAIA; that the capital she could have allocated to such an offshore account with Lloyds in Jersey would not have been limited to £5 million – she could have deposited more; and that the deposit period would not have been limited to nine months – she could have maintained a deposit in the account for much longer. These discoveries stood contrary to what the PBAM had told her since 2017.
- As a result of her trip to and enquiries in Jersey, Mrs C secured an offshore deposit account arrangement with Lloyds in Jersey at the interest rates of 1.1% (for the investment account) [REDACTED]; she also secured an offshore deposit account arrangement with Coutts in Jersey at the interest rate of 1.7% [REDACTED]. [REDACTED].
- The expert evidence that has been presented – from Mrs C's accountant – sets out the facts and calculations upon which she claims compensation for a loss of around £140,000 in interest she could have earned from a Jersey-based offshore deposit arrangement between 2017 and 2019, but for the PBAM's wrongdoings. There is also a claim for compensation in the amount of around £27,000 arising from mortgage interest payments (between 2017 and 2018) made on a property owned by Mrs C that could have been avoided – the PBAM gave her unsuitable advice in 2017 not to discharge the mortgage, when she could have, so she continued to pay the mortgage interest until 2018 when she consulted her accountant about the matter and was advised to discharge the mortgage – which she did.

Lloyds disputes the complaint. Its response letter confirms that it arranged a payment of £300 to Mrs C to complement its apology for customer service problems she faced (with regards to its handling of her complaint and with regards to its ongoing banking service). However, in terms of the complaint summarised above, Lloyds' position is that the PBAM followed due procedure which limited the advice, if any, he could give on bank account options, that he did not mislead Mrs C but gave her information from which she could have made an informed decision and that he was instrumental in using his contacts in Lloyds Jersey for her benefit and to achieve the solution she sought.

One of our investigators looked into the complaint and concluded that it should not be upheld. She was not persuaded that advice was given by the PBAM to Mrs C, so she considered that the question of whether (or not) advice was suitable is redundant. She also noted that the PBAM denies advising on Mrs C's mortgage issue and that as there is also a lack of evidence of advice in this respect it is difficult to make a finding on the matter.

Mrs C and her solicitors disagreed with this outcome and they made their respective submissions to the effect. Initially, Mrs C mainly said:

- In order to simplify her case, she withdraws her banking service-related claim and she does the same with regards to the mortgage advice related claim.

- It should also be noted that her engagement with the PBAM did not reach the point of a formal recommendation, so her complaint is not about *advice* – even though, as a matter of fact, advice was given to her by the PBAM. Instead, it is about Lloyds' provision of information, which it concedes it can do and that it did.
- Her complaint is that Lloyds misinformed her and unreasonably withheld information that was directly relevant to her enquiries; and that, by doing both, Lloyds breached its regulatory obligations towards her as set out by the regulator's Principles 1, 2, 5, 6 and 7.
- This service need not accept her account of events – even though it is a sincere and true account – instead there is ample documentary evidence, with which her account of events is consistent, establishing key elements of her complaint. Those elements being – her income generating objective, the PBAM's awareness of it, her ongoing engagement with him for the purpose of resolving that objective, her express enquiries about finding a solution in Jersey and his express responses and comments on that prospect. Relevant correspondence evidence [from which Mrs C quoted within her submissions] proves that the PBAM misinformed her in relation to her enquiries and withheld information directly relevant to those enquiries – as set out in her solicitors' main complaint submissions. In the face of such clear evidence, her complaint must surely be upheld.

Her solicitors then added, mainly, as follows:

- Neither party disputes that Mrs C was dissatisfied with the rate of interest her capital earned in the IAIA, that the PBAM was aware of this and that he was also aware she was actively looking for a better rate of interest; that he promised in one of his emails that if he could find her "... a *higher rate of interest without compromises* ..." he would; that he was aware of her enquiries about Lloyds in Jersey; that he had a regulatory duty to have due regard to her interests and to treat her fairly; and that the PBAM *did not* inform Mrs C she may be able to achieve a better rate of interest in Lloyds in Jersey than he could offer in the HICA and IAIA, despite his full awareness that she may be able to do so.
- It is a matter of fact that when, in 2019, Mrs C discovered better rates of interest in Jersey she reacted positively and without delay by moving her capital there.
- There should be no confusion over the fact that Mrs C's access related requirement of the deposit-based arrangement at the time was to avoid withdrawal penalties and to be able to use some of her capital within the initial nine months in order to pay a tax liability that arose from the business sale. This did not set a minimum or desired deposit term within her objective.

The matter was referred to me and I reached the preliminary conclusion that the complaint – as simplified by Mrs C – should be upheld. I was persuaded by her and her solicitors' submissions and by the available documentary evidence which supports their submissions.

The investigator assisted me in conveying this preliminary view to both parties, alongside notice that whilst I was considering an award of £750 to Mrs C for the trouble and upset caused to her by Lloyds' failed service to her (based on the misinformation and withholding of relevant information committed by the PBAM) and whilst I could also consider an award for a refund of fees, if any, directly relevant to the failed service, I was not persuaded by her claim for financial loss. I considered it speculative.

Both parties were invited to comment on my preliminary views. Lloyds was also invited to provide a response to the submissions from Mrs C and her solicitors which I found persuasive. Lloyds does not appear to have responded to or commented on my preliminary views or the submissions from Mrs C and her solicitors.

Mrs C's solicitors commented on my preliminary views, especially with regards to redress. They welcomed the news that I was persuaded to uphold the complaint. They reminded me that the PBAM's failings were not isolated; that, instead, they were continuous over 27 months, during which he maintained the misinformation he had given Mrs C and during which he continued to withhold information directly relevant to her queries about Jersey that he could have given her at the outset; and that Mrs C mitigated her position in the matter as soon as she discovered the interest rates available in Jersey.

Mrs C's solicitors disagreed with my preliminary view on her claim for financial loss. They argued that there is nothing speculative about it; that it is rooted in the idea of putting her into the position she would be in but for Lloyds' wrongdoing; that this service awards compensation in such circumstances; and that the expert evidence already provides a basis to calculate compensation for the loss and Lloyds can be ordered to do the same. They also made a claim, on Mrs C's behalf, for the recovery of legal and expert evidence costs from Lloyds. In response to my reference to fees, they confirmed that she is unaware of any such banking fees.

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.

I retain my preliminary views on the complaint.

Merits

With regards to the merits of the complaint, I acknowledge that it is wholly based on the PBAM's conduct in the course of Mrs C's requests for information and enquiries about her objective and in the course of his responses – as part of the banking service he provided in his *personal banking and advisory* role – to those requests and enquiries.

Overall and on balance, I am satisfied with the following:

- Available evidence that gives insight into Mrs C's profile and circumstances in 2017, her objective at the time and the personal needs that gave rise to that objective at the time – all as summarised in the background section above.
- Available documentary evidence showing the PBAM's awareness of Mrs C's circumstances and objective in 2017 and, in particular, her need for a deposit-based arrangement that offered the highest available interest rate.
- Available documentary evidence of the enquiries Mrs C put to the PBAM with regards to achieving her objective. In particular, the correspondence in which her Jersey related enquiries were put to him and, as she and her solicitors have asserted, in response to which he appears to have discouraged the idea.
- That the PBAM had strict regulatory duties, prominent and unyielding within his role, to uphold Mrs C's best interests in the course of the service he provided to her and to treat her fairly in the same context.

- That the PBAM failed to discharge these duties by failing to do at the outset in 2017 what he did, seemingly under pressure from Mrs C, in 2019.

The crux of Mrs C's case is not complicated. Her circumstances, following the sale of her business, were quite clear and relatively straightforward. They were known to the PBAM. Her need for income could have been met by exploring investments but there was nothing controversial in her preference to avoid speculation on investments and to instead explore high interest deposit-based arrangements – the higher the available rate of interest the better, given the significant level of income she required and, in simple terms, in order to *do justice* to the significant amount of capital that was to be deposited. All of this was known to the PBAM.

Mrs C's case does not even require consideration of whether (or not) the PBAM should have *volunteered* information about alternatives in Jersey. He was asked specifically, and repeatedly, about finding a solution for Mrs C in Jersey. He had previous and relevant working experience in an offshore banking jurisdiction (in Gibraltar) and he had professional contacts in Lloyds in Jersey. What he ought reasonably to have done is share with Mrs C any relevant knowledge obtained from his offshore banking experience and, most importantly, he should have informed her, as much as he could, about alternatives available in Jersey and referred her to his contacts in Lloyds in Jersey in response to her first query in that respect. She should not have had to repeat that query in order for him to give such a meaningful response.

The PBAM was supposed to provide a *personal banking* service to Mrs C. His contacts were part of the Lloyds group of companies and she was an existing Lloyds banking customer. A referral would have been (in 2017) – and was (in 2019) – essentially internal, within the wider Lloyds entity. On balance, I consider it indefensible that he failed to do that and withheld information about that from Mrs C in 2017 and over the following two years. Even without the misrepresentation that Mrs C alleges – which, on balance, I also find in favour of given that the PBAM appears to have given her the overall impression that the offshore or Jersey option was not viable, when it was – I consider that this matter of withholding very relevant information that he could and should have readily shared with her at the outset is enough to uphold her complaint.

Overall, on balance and for the above reasons, I uphold Mrs C's complaint.

Redress

The simplified complaint – without the issues that Mrs C has withdrawn – is only about what I will refer to as *the Jersey issue*. I consider that she should receive the amount of £750 from Lloyds in recognition of the trouble and upset caused to her by the PBAM's failings in the personal banking service he provided to her. I am satisfied that this is broadly consistent with the sort of awards for trouble and upset made in this service in comparable cases, and that it is a reasonable amount to reflect the distress and inconvenience she faced as a result of the failed service. This award is distinct and separate from the £300 that Lloyds says it has already paid her for other service failings on its part.

The expert's calculations for Mrs C's claim of financial loss have been competently presented. However, it remains the case that the basis for the claim does not persuade me.

It is Mrs C's evidence that, from the outset and up to 2019, she sought to remain loyal to Lloyds and to achieve a solution to her objective through Lloyds. Nevertheless, it is also within her evidence that, from or around the outset, she made enquiries beyond Lloyds. There is evidence of her sharing with the PBAM information on interest rates available,

through a third-party bank (UBS), from other banks and from high interest deposit accounts they offered – ‘*the UBS alternatives*’. Within this information were options that offered better rates of interest than her deposit was earning in the IAIA.

In the context of such evidence, the argument that Mrs C incurred a financial loss – in the form of lost interest earning opportunity – that would not have happened but for the PBAM’s failings is speculative or arguably without merit. In either case, a compensation award cannot reasonably be justified.

It is *possible* that had Mrs C been referred to Lloyds in Jersey at the outset she might have moved her capital there immediately, but I am not persuaded to conclude that this was *probable*. I note evidence that the interest rates Lloyds in Jersey could have offered in February 2017 (for 12 months) and then in February 2018 (for another 12 months) are not as high as those it offered her in April 2019 – the expert’s calculations refer to 0.50% in the current account prior to August 2018 and then 0.75% thereafter; and to 0.85% in what appears to be the investment account for both 12 months periods (as opposed to 1.1% from April 2019).

Importantly, the UBS alternatives offered arguably comparable rates (at least on a gross basis, prior to deduction of UBS’ 0.25% introducer’s fee), and they were better than what the IAIA offered. However, Mrs C did not move her capital at the time. She could argue that this was because of her loyalty to Lloyds, but *Lloyds International* was one of the banks she could have been introduced to in the UBS alternatives and it offered one of the highest rates at 0.80%. It appears that this would have served her objective and her loyalty to Lloyds, but she did not use this option at the time. The reason(s) why are unclear, but the conclusion that follows is that, overall, it does not appear certain or probable that, but for the PBAM’s failings, Mrs C would have moved her capital in 2017 in the way she did in 2019. On balance, I retain the view that the notion is speculative.

In the alternative, it could be argued that Mrs C’s claim for compensation for financial loss is without merit because she had a duty to mitigate her position earlier than 2019 but did not do so. The UBS alternatives offered her higher interest rates than her capital was earning in the IAIA, yet she did not use any of those alternatives at the time. The duty she had to mitigate was not diluted by her sense of loyalty to Lloyds. Her objective was her priority and any such loyalty does not amount to justification for foregoing the chance of a better rate of interest that could have better served her objective – and avoided most or all the lost interest she now claims. Lloyds could therefore argue, reasonably in my view, that any financial loss incurred was wholly or partly self-inflicted.

In reaching the above findings, I am mindful that Mrs C could say she was discouraged by the PBAM from exploring the UBS alternatives further. However, I do not consider that evidence shows the PBAM had such a level of influence over her at the time – evident from the fact that she exercised her discretion to find the UBS alternatives on her own in 2017 and from the fact that she chose, against the PBAM’s comments, to explore what was available in Jersey in 2019.

I do not uphold Mrs C’s claim for compensation for financial loss.

I also do not uphold her claim for costs. As I said above, her case is not complicated and, as her solicitors have acknowledged, Lloyds could be ordered to carry out the relevant calculations [if compensation for lost interest was to be awarded]. In this context, I do not consider that her solicitors’ representation and her expert evidence were requirements for the complaint. I acknowledge that both have been helpful, but they were not necessary. Costs awards are made in this service only in exceptional circumstances and I do not find that Mrs C’s case has presented such circumstances.

Putting things right

I order Lloyds to pay Mrs C £750 for the trouble and upset caused to her. It is common for this service to consider a refund of fees paid for a firm's service where there has been a failing in or within that service. There is no call to consider such a refund in this case because Mrs C has confirmed unawareness of any fees being charged, so there is no evidence of fees to consider.

My final decision

For the reasons given above (and in my preliminary view) I uphold Mrs C's complaint and I order Lloyds Bank PLC to pay her £750 for the trouble and upset caused to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 5 August 2021.

Roy Kuku
Ombudsman