

The complaint

P, a limited company, complained that Lloyds Bank PLC ('Lloyds') closed their merchant account without good cause and without notifying them.

What happened

P had a merchant account with Lloyds for some years that was used to take subscription payments online. In January 2019 Lloyds closed the account.

P noticed in August 2019 that their online subscription service was no longer working. They investigated whether it was an issue with their software but contacted Lloyds on 18 October 2019 when it was apparent the problem was with the Lloyds account. P were told the account was closed and so complained to Lloyds, as they said they hadn't received a closure notice or other correspondence. P were also told the old account couldn't be reopened, so they applied for a new account.

Lloyds wrote to P on 24 October 2019 and said it had accepted P's application for a new merchant account and sent a new merchant ID. P gave this merchant ID to their third party card handler but was told on 29 October 2019 that it wasn't working.

P said they tried to contact Lloyds on 30 and 31 October 2019 to discuss the new merchant account but couldn't get through. When they spoke to Lloyds on 1 November 2019 they were told Lloyds' underwriters hadn't approved their application. Lloyds wrote to P on the same day and explained that the application hadn't been successful as the risk was too high for it to offer merchant services to P.

Lloyds sent a separate letter, also on 1 November 2019, in which it responded to P's complaint. It said the complaint was about two of P's merchant accounts being closed without P being advised. Lloyds didn't uphold the complaint. It said P was sent multiple collection letters in relation to one of the accounts, requesting an overdue payment. When this wasn't made, a final demand letter was sent on 30 January 2019 advising that the account had been closed. The other account had been closed in May 2013.

P wrote to Lloyds on 6 November 2019. P said the merchant account statements for January and February 2019 didn't mention any overdue or unpaid amounts and made no reference to the account closure. P asked for the collection letters mentioned by Lloyds to be sent to them. P said they thought the lack of charges in 2019 was due to a change in Lloyds' policy because of P's low usage, rather than because of the closure of the account. P also queried why they received letters from Lloyds regarding merchant services in April and July 2019 if the account was already closed.

P said they had gone through the annual Payment Card Industry Data Security Standard (PCIDSS) compliance assessment in January 2019 and they wouldn't have done this for an account that was about to be closed. P told Lloyds that if it transpired they owed money to Lloyds this would be settled by return. P also said that when P's clients tried to make payments that weren't successful, they would have got a message that said "unknown seller". And P thinks this would, and did deter, some clients from subscribing to their service.

P then brought the complaint to this Service. They said while they were unaware that their account had been closed, they were paying a third party to process their payments, when there were no payments to process. P outlined the losses – including software charges and declined payments – incurred since the account was closed.

Our Investigator looked into the complaint and didn't uphold it.

As P didn't agree with what our Investigator said, this complaint came to me for a decision.

I contacted both parties after reviewing the case and said I intended to uphold the complaint. I thought Lloyds had acted unfairly when it decided to close the merchant account for non-payment of charges. I said this because I thought Lloyds hadn't actually told P about several debts that were overdue, and it should have done this. I thought that if P had been told, then the overdue amounts would have been paid and the account would not have been closed.

In order to put things right, I looked at the financial losses suffered by P as a result of the incorrect account closure and said I intended to ask Lloyds to compensate P for the losses. These were:

- An amount of £25.82 paid monthly by P to facilitate the processing of payments, as this had been paid by P until October 2019, when P noticed the account had been closed.
- An amount of 750EUR to cover the cost of the software changes needed to accommodate a new merchant provider.
- An as yet undecided amount to cover lost sales, subject to further information being provided by P.
- Compensation of £100 for the inconvenience caused.

I gave both parties the opportunity to respond. Lloyds said it didn't agree that it should pay the monthly cost of £25.82 incurred by P between February and October 2019, as the merchant account was closed on 30 January 2019 and there was no need for P to continue making this payment. Lloyds agreed to pay the £100 compensation for the inconvenience caused.

P responded and provided the following:

- Additional information about their subscription service and the declined payments that led to clients not signing up for the service.
- They asked for three invoices regarding software changes necessary after the account closure was discovered to be taken into consideration.
- They asked for an apology from Lloyds
- They asked to be reimbursed for a payment of £29.99 made in December 2018 for a PCIDSS compliance check.

I am now in a position to issue my final decision.

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 I am upholding this complaint

I first of all want to clarify that although Lloyds' complaint response letter addressed the closure of a merchant account in P's name in 2013, P has said this complaint is not about

the closure of that account – it is just about the more recent closure of their account in 2019. So this decision will deal only with the later account closure.

Lloyds said it cancelled P's merchant services account in 2019 because P owed £137.72 in outstanding charges. It said it relied on the account term entitling it to close the account immediately if *"you fail to pay any amounts that are due to us under the Agreement;"*

In order to assess if Lloyds acted fairly when it closed the account, I've first of all looked at whether P owed this money and, from the information provided by Lloyds, it seems they did.

I've then looked at whether Lloyds told P they owed this money. P can't pay outstanding amounts if they aren't aware of them and Lloyds needed to let them know of any amounts owed. The outstanding amount of £137.72 was made up of £40 of very recent charges, namely £25 for a rejected direct debit and a £15 collection fee in December 2018 and a total of £97.72 of historical debts. I can't see that P were ever told by Lloyds that they owed the £97.72 in historical debts. P can't be held responsible for failing to pay amounts due under the agreement if they aren't informed that these amounts are due.

Just for clarity, I'm referring to the £97.72 as historical debts as they were over a year old at the point in time the account was closed and Lloyds was not chasing the debt in any way.

I'll explain why I'm saying that Lloyds didn't let P know about the historical debts. In October 2017 Lloyds sent P a letter telling them they owed £117.65. P then rang Lloyds in the same month and paid this amount by card. They weren't happy with the service provided by Lloyds and so complained. In their complaint letter dated 24 October 2017, P queried whether they'd actually paid enough to clear their account balance in its entirety. They said *"I spent a very frustrating 25 minutes trying to sort this matter out, and am still not convinced that we have paid you what is owed. Please be so kind as to confirm the following: Our account is now in good standing."*

In its response to that particular point, in its letter dated 18 December 2017, Lloyds said *"I can confirm that service charges and fee for September totalling £92.65 and for October totalling £25.00 totalling £117.65 were successfully taken via Debit Card on the 23rd October."* Lloyds didn't properly answer the question about whether the account was in good standing, but I think any reasonable consumer reading that letter would assume all was well with the account. But all was not well with the account. In fact £50 was still outstanding. I think it's fair to say at this stage P had no idea this money was owed. It was up to Lloyds to tell them it was owed, as P gave Lloyds the opportunity to do in October 2017.

Looking at the rest of the historical debts, a direct debit for an amount of £32.72 was returned unpaid in January 2018. And a £15 collections fee was applied. However, Lloyds didn't tell P this amount was owed. And, as with the £50 above, these two amounts are included in the £137.72 Lloyds said was overdue. As I said, Lloyds did not inform P that it owed the historical debt of £97.72 and it should have done this. So, it acted unfairly when it took the historical debt into consideration when it made the decision to close the account.

The remainder of the £137.72 was made up of a £25 direct debit that was returned unpaid in December 2018 and the £15 collections fee that applied to it. If this had been the only outstanding debt owed by P in January 2019 then I think it's highly unlikely Lloyds would have closed the account in January 2019 because of this amount. I say that because P had a good history of paying any direct debits that had been returned and Lloyds would most likely have given them the chance to do this, as it had done several times in the past.

And I think if Lloyds had informed P of the historical debt, then I'm satisfied they would have paid that off given that P had historically cleared all debts they was notified of.

So given that I'm satisfied that Lloyds would not have closed the account if the £40 outstanding for the recently returned direct debit and charge had been the only amount outstanding, and that it should not have taken the historical debt into consideration when making the decision to close the account as it hadn't told P about this debt, it follows that I'm satisfied that Lloyds' decision to close the account on the basis that P hadn't paid outstanding amounts was unfair.

The position P should have been in is that the account should not have been closed when it was. So I've looked at whether P experienced any financial losses specifically because of the closure. I've address these in turn.

Monthly payment processing costs

P told this Service that they continued to pay monthly charges of £25.82 to a third-party business to facilitate the processing of card payments for a period of nine months after the Lloyds account was closed. When I contacted both parties, I said I was satisfied Lloyds should refund these to P as the costs were incurred by P even though they didn't need and didn't have the benefit of the payment processing service. I know that Lloyds has objected to this as it said there was no need for P to continue paying for this service once the account had been closed. I've considered this but have decided these costs should be reimbursed to P. I'll explain why.

P wasn't aware that the account had closed and this is why they continued to make the monthly payments. I can see that Lloyds sent an account closure letter in January 2019. This was not entirely correctly addressed, but I think it was clearly enough addressed that it's likely it would have reached P. And it would usually be the case that once a business can show a letter has been sent, I would conclude that the consumer in question was likely to have received it. But, in dealing with this particular complaint, I have to balance this against the fact that P was sent other correspondence after this closure letter that suggested the account was still open. Namely, letters sent in April and July 2019 informing P of changes to the merchant agreement and how the service operates. And I can see the statement P was sent in February 2019, so after the account was closed because of unpaid charges, did not mention anything about amounts outstanding. So I think it's fair to say that when P received each of these pieces of correspondence, they likely had no reason to think anything was amiss with the merchant account.

I also think that if P knew about the account closure, then they wouldn't have simply done nothing – I think they would have contacted Lloyds and done whatever was necessary to get merchant services up and running again. So I require Lloyds to reimburse P for these costs.

Lost subscriptions

P provided this service with information about what they say were attempts made by clients to make subscription payments through their website, but these were declined. P said these particular consumers did not contact P to subscribe to the service in a different way, and so these declined payments equate to lost sales.

P provided additional information after I shared my initial thoughts with both parties. Having considered this, I've decided that P should be reimbursed a total of £2,610 in lost subscription charges – which is the amount of three missed subscriptions. I'll explain why.

P told this service, as well as Lloyds in P's 2019 complaint, that when the payments couldn't be made, their clients weren't simply told the payment was declined. They were told either that the retailer was unknown or the seller was unknown. And P believes this is why these

three potential subscribers did not contact P to arrange payment in another way. P said the majority of subscription payments are taken by bank transfer, and this accounts for there being only three declined payments over a nine-month period.

P hasn't been able to provide any other information to show that the clients in question didn't subscribe in a different way. And I can't see that there's any way they could show this. So I've looked at what I think is most likely to have happened, on the balance of probabilities. Having done so, I agree that a message telling clients that a seller is unknown would likely deter them from making further attempts to pay. I understand how a client might be reluctant to part with, in one case, a considerable amount of money to subscribe to a service run by a seller that might potentially, not exist. So I'm satisfied it's more likely than not that none of the three clients contacted P after their subscription payment was declined.

This means that I require Lloyds to reimburse P an amount of £2,610.

Software updates

P provided information about software charges incurred as a result of them having to make amendments to their IT systems to accommodate a new merchant provider. Three invoices have been forwarded to this service. But two of these are in the name of a limited company closely connected to P, but not P. This means I can't take these into consideration when assessing losses experienced by P. It wouldn't be fair to ask Lloyds to reimburse for costs when invoices are clearly in the name of another limited company.

The one invoice in P's name was for an amount of 750EUR. I asked P to provide me with evidence of how much this cost them in sterling, as I intended to ask Lloyds to reimburse that amount. P told me that they had paid the bill in euros and so weren't certain of the sterling amount. But they looked at the exchange rate, commission and charges and estimated the transaction would have cost £654. I think it's fair to allow Lloyds the opportunity to check this amount, and it should pay that to P.

Inconvenience

I think that Lloyds caused P unnecessary inconvenience when P told it in October 2019 that they intended to apply for a new account with Lloyds and the Lloyds advisor didn't let them know that the accounts had been closed because money was owed. If the advisor had done this then it would have been clear why a further application wouldn't have been successful. P wasted time submitting the application. So I think it's fair to award an amount of £100 compensation for the inconvenience caused.

PCIDSS reimbursement

P asked for the cost of the PCIDSS security checks carried out in December 2018 to be reimbursed. But I don't think that Lloyds need to do that. This is because, regardless of what later happened with the account, this annual check needed to have been carried out when it was. So it was a cost P was going to incur irrespective of whether the account remained open or was later closed.

Apology

P asked whether Lloyds would apologise to them. I don't think this is an unreasonable request, but I don't intend to tell Lloyds to apologise. Things have certainly gone wrong here, but I have focused on dealing with the impact this has had on P – so the financial losses and inconvenience – which are the bigger issues. I will leave it to Lloyds to decide whether an apology is appropriate here.

To summarise, I require Lloyds to pay the following amounts to P:

- Nine payments of £25.82, totalling £232.38
- £2,610 in lost subscription charges
- The sterling equivalent of 750EUR
- £100 compensation for inconvenience

Lloyds should be allowed to deduct any amounts it is owed by P from the amounts I've awarded.

My final decision

It's my final decision that I uphold this complaint and require Lloyds Bank PLC to pay P the amounts outlined above, less any amounts owed by P.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 27 April 2022.

Martina Ryan
Ombudsman