

The complaint

Mrs F says Lloyds Bank PLC acted unlawfully when it refused to allow her to open a new account.

What happened

Mr and Mrs F visited one of the bank's branches on 16 February 2022 for a meeting to review Mrs F's existing accounts. She wanted to open a new account to ensure she was earning as much interest as possible. Mrs F suffers with dementia and during the meeting Lloyds became concerned she may not remember opening the account and so decided not to proceed at that time.

Mrs F complained to Lloyds saying it had shown unlawful discrimination and failed to make reasonable adjustments which was very distressing for her. In its final response letter Lloyds said it could not proceed as it was unable to confirm Mrs F had the capacity to make the decision, or be sure the instructions to open the account were hers. It then set out a number of options that could be put in place to help manage Mrs F's accounts going forward.

Mrs F maintains the bank's decision was discriminatory and in breach of the Equality Act 2010. She wants Lloyds to be fined for its misconduct and seeks compensation in the region of £30,000, in addition to compensation for lost interest on her savings of around £6,400. She also wants the bank's relevant policies to be changed, saying they will be detrimentally impacting many other customers.

Our investigator upheld Mrs F's complaint in part. He explained that he had been able to listen to the recording of the meeting at the branch. And he set out in full what had happened during the interview. I note neither party disputed that his description was an accurate representation of the meeting so I won't repeat it in full here, rather I will set out a summary.

During the interview Mr F said he would need to enter Mrs F's PIN for her as she had dementia. The branch staff explained as they now knew this, to meet their Duty of Care, they had to be sure that Mrs F fully understood everything. They also suggested Mr F obtain Third Party access or Power of Attorney. Mr F commented that getting Mrs F to remember anything was virtually impossible.

The branch staff offered to place a Support Need note on Mrs F's accounts, she was initially unsure about this but then agreed. The branch also arranged for her to receive a signature debit card to avoid any ongoing PIN issues.

At this point, the staff member conducting the interview said she didn't want to continue with the account opening as she was concerned Mrs F wouldn't remember opening the account. There was further discussion about Mr F obtaining power of attorney. The branch staff member reiterated to Mr and Mrs F they weren't comfortable continuing with the account opening interview due to Mrs F's dementia. The branch manager joined the meeting and confirmed the interview would not continue based on the information shared about Mrs F's mental health and her role in the meeting so far. Mr F was unhappy with this decision, communication subsequently broke down between the parties and Mr and Mrs F left the

branch.

The investigator found that Lloyds had largely followed its guidance for customers with mental capacity limitations. He noted Mrs F's involvement in the meeting was very limited, and said the bank was right to be concerned about this, but he did think Lloyds could have tried more to interact with her directly. Given how the meeting went, he thought it was reasonable for Lloyds to suggest Mr F obtained a Power of Attorney, although he accepted the guidelines don't say this is mandatory in such circumstances, just that it may help. He felt the bank should have better reflected this nuance. He said whilst it had offered solutions in its final response letter it ought to have done more at the time of the meeting to understand the impact of Mrs F's condition and possible solutions. And as it had not done so, or managed its decision as sensitively as it could have, it recommended Lloyds pay Mrs F £200 compensation for the distress she suffered.

He also explained that only the courts can decide if a business has acted unlawfully and only the regulator can review the bank's systems, processes and policies.

Lloyds agreed with this assessment. Mrs F did not. In summary, she said the level of compensation needed further consideration. Mr F referenced a similar case he'd been involved in that went through the courts and resulted in a £30,000 payment and the imposition of a series of £1,000 'unless orders'. Mrs F said Lloyds must retrain its staff to properly understand and apply their duty of care. Its policies that discriminate against people with disabilities must be changed. And the losses Mrs F had suffered by being unable to open the new account with its higher interest rate must be taken into account. She has also had no access to her pension or disability benefits since this happened as she is not comfortable visiting the branches any more. And she should have the right to ask Mr F to speak on her behalf.

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 have thought carefully about all of Mr and Mrs F's comments. And I mean no discourtesy by this, but in keeping with our role as an informal dispute resolution service - and as our rules allow - I will focus here on the issues I find to be material to the outcome of Mrs F's complaint.

I also want to confirm the scope of this decision. Mrs F has raised concerns with policy issues and requested the bank be fined. The powers we have allow us to look at the circumstances of an individual case, to decide if the bank has made an error and if so, how it must put things right. We can award compensation to cover financial losses and to recognise distress and inconvenience. We cannot make punitive awards. It is the role of the regulator, the Financial Conduct Authority, to review systems, processes and policies across the industry - and where necessary to fine banks for systemic failings.

I am upholding Mrs F's complaint in part. To reach this conclusion I have listened to the recording of the meeting and reviewed extracts from Lloyds' internal policy for supporting customers with mental capacity limitations. I have done this to check that it applied its internal guidelines in a fair and consistent way. The extracts I have seen set out that customers with mental capacity limitations may be able to act independently and may not need delegated access. However, they also say the bank must make sure the customer can understand the decisions they are making.

From listening to the recording, I think Lloyds' concerns were reasonable – Mr F led the

conversation, he confirmed Mrs F remembers very little now, and Mrs F sounded uncertain and confused at times. So, I think it was reasonable for Lloyds to conclude it could not be certain from that interaction that Mrs F had the mental capacity to make financial decisions. Mr F has challenged whether that should be the bank's concern, but as a responsible bank it very much should be. Mrs F said more recently she should be allowed to ask Mr F to speak on her behalf, and whilst I understand that may be her preference and in future her need, Lloyds still needs to ensure this is done within the correct framework – as per the the options it set out in its final response letter.

So I find it was, on balance, reasonable for Lloyds to conclude that it should not proceed and open a new account for Mrs F. I want to be clear my finding is not about whether Mrs F had the mental capacity, or not, at that time. Rather it recognises that based on the interaction Lloyds had with Mrs F its decision not to proceed, as it did not have the assurances it needed, was fair. I also note the adviser tried to provide appropriate support by suggesting and organizing a signature card earlier in the meeting.

I do agree however that Lloyds could have managed its decision not to proceed with the appointment more empathetically and it could have ensured the meeting was closed out in a more appropriate way given Mrs F's circumstances. For the distress this caused Mrs F I award £200 compensation.

Mrs F has also said she has lost around £6,400 in interest by not being able to open the new account in February 2022. But as I have not found that Lloyds was wrong not to open an account at that meeting, I will not be considering these claimed losses.

More recently Mr F said that Mrs F felt forced to have the *Support Need* notes added to her account and this is wrong as the bank should have made reasonable adjustments rather than forcing this on her. I accept Mrs F may have not felt comfortable with this solution, but I find the bank's intention was solely to ensure reasonable adjustments were made when bank staff interacted with Mrs F.

With regards access to her pension and benefits I can't see Lloyds has done anything to restrict Mrs F's access to her monies. I can understand she might not want to revisit that same branch, but there are other ways she can access her funds.

In terms of Mrs F's points about discrimination, it is for the Courts to determine if a business has acted unlawfully. Our role is to decide what's fair and reasonable in all the circumstances of each case. In reaching that decision, we will consider various factors including relevant law and what we see as good industry practice from the time.

So although it's for the Courts to say whether or not Lloyds has breached the Equality Act 2010, I'm required to take it into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of this complaint. In this case, Mr F has said that Lloyds's decision not to open a bank account for Mrs F amounted to disability discrimination. There are various forms of discrimination, but in summary this means treating Mrs F less favourably because she has a disability – which includes dementia – or failing to make a reasonable adjustment to allow her to access its services. But it doesn't mean that Lloyds can't take it into account at all.

As I've explained, while Lloyds did take into account Mrs F's dementia in how it treated her, I think it did so for good reason. Its staff were concerned about whether she was able to understand and agree to opening a new account. I think this was appropriate and not unfair. And Lloyds also explained what adjustments it could make – such as giving Mrs F a signature card, giving Mr F his own card and third-party access to Mrs F's account, and explaining about power of attorney. So while I've taken into account what the law says, I'm

satisfied Lloyds treated Mrs F fairly and reasonably in line with its internal policies to support customers as required.

I am sorry Mrs F has found the whole experience so distressing, and I know this isn't the answer Mrs F was hoping for, but I hope she can take some comfort from what I've said and the knowledge that an independent third-party has reviewed Lloyds' actions.

Putting things right

Lloyds must pay Mrs F £200 as compensation for the distress she suffered.

My final decision

I am upholding Mrs F's complaint in part. Lloyds Bank PLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 20 February 2023.

Rebecca Connelley
Ombudsman