

The complaint

M, an unincorporated business, complains that Lloyds Bank PLC sold it a bulk cash service that wasn't appropriate for its needs and applied charges it hadn't agreed to.

What happened

M has a third-party's cash machine operating at its business. M contacted Lloyds about arranging for cash to be supplied for that machine and signed an agreement in August 2021. It also signed an agreement with a security company to deliver that cash to its business. M contacted Lloyds when it noticed that it was being charged a fee for bulk cash services. M says that this charge wasn't made clear to it and shouldn't apply because all it does is send an electronic payment to fund the cash for delivery.

Lloyds said it hadn't made a mistake. It said it understood that the relationship manager would have explained the service to M. And that its bank charges are in addition to the costs for the security company.

Our investigator recommended that the complaint be upheld and all charges to 30 November 2021 be refunded to M. He said that he didn't think that Lloyds could just rely on having provided its terms and conditions to an official for M when discussing different businesses. It was important that these were provided for this account and that the charges were clearly explained. But he said he'd also expect M to mitigate any costs and that M was clearly made aware what these charges were by 30 November 2021. Lloyds was charging M its standard charge for bulk cash services.

M didn't agree this was sufficient and now has a representative. It said that the cash machine at the business had nothing to do with Lloyds. The cash was sent from M's account electronically for the security company. M 'presumes' that the cash is therefore physically withdrawn from an account held by that security company and has no knowledge of that account or how it's operated. Payments made by bulk electronic transfer are free. And M says that Lloyds told it that the service would be free, and it's entitled to rely on that representation. No evidence has been provided of physical cash withdrawals from M's account despite requests.

The representative said that M has been wrongly advised about the service. And based on that it then entered into a 12-month contract with the security company and there was no possibility of early termination. It had also agreed with the cash machine owner to keep the machine filled with bank notes and there was an early termination cost of over £18,000 in relation to that contract. M had tried to find a cash provider that didn't charge it and it couldn't do so. But in any event it considers that the charges are improperly made. M said that it intended to take legal action if it couldn't resolve matters and so be compensated for all losses through this service.

my provisional decision

I issued a provisional decision on 23 December 2022. I set out below what I said.

I explained that I was intending to uphold this complaint in part. And that I would focus on what I considered are the key issues and documentation here.

Signed documents

I noted that M signed an application on 12 August 2021 for the 'Bulk Cash Till Service'. Notably that said that *"this product is not suitable for an enterprise which employs less than 10 persons and its annual turnover/ and or balance sheet total does not exceed 2 million euros"*. Additionally, the signing authority for M stated that *"by signing this form you confirm receipt of the Product & Services Terms & Conditions and agree to be bound by these together with the Relationship Terms and Conditions and General Information on Payments Charges and Contacts"*. The form gave a web address where further copies could be obtained.

M also agreed to an 'Open credit facility for bulk cash out' on 17 August 2021. And notably signed to say that *"By signing this Commercial Banking application you confirm that you (or the group of which you form part) have an annual turnover of £15m or more or that your Relationship Manager has confirmed that this service is appropriate for you."*

The relationship manager had written by email to M on 12 August 2021 to say *"I had a request come through yesterday afternoon for a cash delivery/collection service for [M]. I know we've touched on this for some of your businesses but didn't think we had looked at this service for this account? Either way I do need an application completed for this request – would you be kind enough to complete the attached with details of the service you require, [...] sign the application [...], and scan back."* He went on to say he would be away for a period and another member of staff would take this forward.

That service was subsequently established, and I noted that M signed a contract with the security company from 30 August 2021. I also noted that its contract to keep the cash machine filled up that it's provided was signed on 16 February 2021 and ran into 2023.

Terms and conditions

I saw no evidence that M was provided with a copy of the relevant terms and conditions here and the documentation. Having said that following the link given on the form I referred to above it is possible to obtain details of the product terms and conditions for the Bulk Cash Till Service. Those set out at part 5, Services Charges and payment, that *"5.1 You shall pay us the Service Charges calculated in the amounts specified in the charges schedule."* And that *"4.1 You must enter into a separate contract with the Security Company."*

Although Lloyds has provided a copy of the "Bulk Cash Till Service charges schedule" to this service I wasn't immediately able to find this online and it may be that as indicated this is only provided by relationship managers. What I could see online was a general term that charges wouldn't be altered unless two months' notice is given. The Relationship Terms and Conditions Section 9.2 state that *"We reserve the right to introduce new charges or amend our charges at any time. If we do we will provide you with two months' advance notice"*.

The operation of the service

I was clear that charges apply for this service and so I didn't agree that M can seek to say that it's actually receiving a different service. That's only relevant in so far as it didn't understand this service. My understanding from the information I'd seen in any event is that the 'transfer' from M's account is to a memorandum account in its name at the Lloyds cash centre. And that the security company withdraws cash from that account on M's instruction

under the authority of the open credit and then delivers it to M. That level of technical detail isn't necessary to support that charges are due and made for this service. And in simple terms that's because Lloyds supplies the cash for M to fill the machine.

My assessment

I took into account that this is a product primarily designed for commercial banking and businesses much larger than M. It required confirmation that it was appropriate for M from the relationship manager and he implicitly gave that in the email referred to above and by putting this product forward. That made the necessity for all the information to be supplied to M even greater. And frankly I didn't think either Lloyds or M could rely on what might have been said about a different business the official of M was involved with. I saw no evidence that M was told much at all about the product before it signed although it was in a position to see information online and ask questions.

M reasonably became aware of those charges with a first invoice on 11 October 2021. These significant charges were over £800 for the first period and then rose to over £1,500. While it may have assumed there were no charges that wasn't correct, and I can't see evidence to support where it was given a positive representation that there were no charges. On the other hand, Lloyds hasn't shown me when it clearly told M what the charges would be before signing.

I could see why our investigator said that no charges should apply before 30 November 2021 - the date when the relationship manager set out what the charges were to M. But I thought M ought to have then had a period to make alternative arrangements. And even if I was to think Lloyds had told M that there were no charges I thought it could fairly have rectified such error under the general terms and conditions with two months' notice.

I didn't think it's relevant that there were no other better arrangements for M. It had already committed to keeping the cash machine refilled in a contract running into 2023. I didn't see Lloyds ought to have offered the service for free once the issue had become known. And that would in any event not be what it had intended. M then had the information it needed to make a decision about whether this was appropriate for it or not.

So, having balanced these factors I thought it reasonable that all charges before the end of 2021 (31 December 2021) be waived. That period allowed time for M reasonably to become aware of the charges. And given I didn't find it was really made aware of them before for a sufficient 'effective' notice period of their application from Lloyds. I appreciated M says it wasn't able to mitigate them but by then it had a reasonable opportunity to do so if it could. That it instead sought to challenge the charges as incorrect or not applicable was a matter for it to decide upon.

In summary I said my provisional award compensates M for the poor information and lack of clarity about charges and allowed M time to make an informed decision about what to do given its contractual commitments and notably those to keep the machine filled.

I said that if M doesn't accept my decision when it becomes final it retains the right to take legal action subject to any relevant time limits.

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.

Lloyds said it had nothing further to add other than it was prepared to make a commercial offer to settle the complaint in line with my provisional decision.

M didn't respond, and I noted our investigator had contacted its representatives again earlier this month to remind them of the provisional decision.

In light of this I see no basis to depart from my previous assessment and for the reasons I've already given.

My final decision

My decision is that I uphold this complaint in part and require Lloyds Bank PLC to refund all its charges to M relating to the Bulk Cash service to 31 December 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 24 February 2023.

Michael Crewe
Ombudsman