DRN-4441650

The complaint

A partnership, which I will refer to as E, complains about Lloyds Bank Plc. Its partners say:

- Lloyds failed to rename one of E's accounts to include the word "client" (and allow E to comply with its regulator's requirements).
- Lloyds refused to allow E to place monies held in its USD account on interest bearing deposit.
- Lloyds unfairly and without good reason closed all of E's accounts.

What happened

E's partners told us:

- E is a German limited professional partnership (a Rechtsanwälte Partnerschaft mit beschränkter Berufshaftung), and operates in both England and Germany. It is registered with the relevant regulators in both countries, and its equity partners file tax returns in both countries.
- E began banking with Lloyds in late 2011, shortly after opening its English office.
- In February 2022 E applied to open a euro client account. E's regulators' rules mean that E is only able to receive and hold client funds in an account which includes the designation "client" (and E must not use such an account for its own funds).
- E held a total of five accounts with Lloyds: business accounts in British pounds, US dollars and euros, and client accounts in British pounds and US dollars. Three of E's partners were named as signatories on those accounts, but in practice the accounts were usually operated by an equity partner based in England.
- Lloyds unfairly and unreasonably refused to allow E's EUR account to be renamed to include the words "client account" (which would have enabled E to receive and hold client funds in compliance with its regulators' requirements).

Lloyds told us:

- It took legal advice, then decided that it was no longer prepared to provide accounts to partnerships with partners resident in Germany.
- It took some time to implement that decision. At first it simply refused to open any new accounts, or make any amendments to existing accounts, for partnerships with partners resident in Germany. Later, it issued notices to close all such existing accounts.
- In E's case, since some of E's partners are German residents the bank decided it

was no longer prepared to offer banking facilities to E. It was also unwilling to make any changes to E's existing accounts. In early 2022 it did open a new account Euro client account for E in error, but that account is not covered by this complaint and has since been closed.

One of our investigators looked at E's complaints, but did not uphold them. He said that Lloyds doesn't hold a licence allowing it to provide banking facilities to an unincorporated entity in Germany, so new accounts cannot be opened, and old accounts must be closed. He also said that Lloyds didn't have to offer E an interest-bearing facility because it was in the process of withdrawing all banking facilities from E.

E's partners disagreed with our investigator's findings, and said they thought he had made his decision on the wrong basis. They explained that they do not require Lloyds to provide banking facilities in Germany as they are acting from their London office. They requested that the matter be referred to an ombudsman.

My provisional decision

I issued a provisional decision on this matter in March 2024. I explained that I thought E had made three separate complaints, but that unless either party objected I intended to issue one final decision covering all three complaints. Briefly, my provisional findings on those complaints were:

- Lloyds acted fairly when it closed E's accounts.
- Lloyds was not required to insert the word "client" into the name of E's existing euro business account, nor was the bank required to convert that account to a client account.
- Lloyds was not required to pay interest on E's US dollar client account.

In more detail, I said:

> ***"The account closures***
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> Lloyds has decided that it no longer wishes to open accounts for partnerships with partners resident in Germany.
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> I am aware that E's partners would like Lloyds to explain why it has taken that decision. It appears that they are concerned Lloyds may have misunderstood the German regulator's rules, and they would like the opportunity to explain why the German regulator will in fact allow Lloyds to offer the accounts they want.
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> The Financial Ombudsman Service is an informal dispute resolution service. As an ombudsman, I am not required to set out exactly what Lloyds is and is not permitted to do under German law. Instead, my task is to determine E's complaint in [a] way that is, in my opinion, fair and reasonable in all the circumstances.
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> In my view, Lloyds is entitled to take the commercial decision that it is not willing to offer banking facilities to partnerships in cases where one or more of the partners is resident in Germany – and it is not required to explain its reasons for making that decision. Regardless of whether Lloyds does or does not need a licence from the German authorities to offer such facilities, Lloyds

has chosen not to offer them. It appears that Lloyds may disagree with E's partners about the risks Lloyds would be exposed to if it did choose to offer such facilities, but it wouldn't be appropriate for me to make any findings on that point. As an ombudsman, I cannot interfere with Lloyds' legitimate exercise of its commercial judgement.

The terms and conditions of all of E's accounts with Lloyds contained a section on the circumstances in which E's accounts could be closed. Broadly, they all said:

- E's partners could close E's accounts for any reason by giving one month's notice in writing.

- Lloyds could close E's accounts without giving any notice at all in certain limited circumstances (for example if it reasonably considered that there was illegal or fraudulent activity on the account, or if the account holder behaved in a threatening or abusive way).

- If Lloyds wanted to close E's accounts for any other reason, it could do so by giving two months' notice in writing.

I have noted E's partners' comments about the absence of the words "without prejudice to [previous clauses]" in the term relating to Lloyds' right to close E's accounts after giving notice. But I consider that Lloyds' terms make clear that it has the right to close accounts immediately in some circumstances, and after giving two months' notice in all other circumstances.

Here, there is no suggestion that E's partners did anything wrong or behaved improperly in any way. But Lloyds still wished to close E's accounts. I understand from E's partners that they received a call from the bank on 31 January 2023 informing them of Lloyds' decision, and that was followed by a 2 February 2023 email and a 3 February 2023 letter giving 60 days' notice. In the circumstances, I don't think it would be fair for me to criticise Lloyds for closing E's accounts after the expiry of that notice period.

I acknowledge E's partners' concern that Lloyds had previously reassured them that it had no intention of closing E's existing accounts. But Lloyds changed its mind, which is something it was entitled to do.

Failure to convert to a client account

E's partners say that its own regulators have detailed rules on how E should treat its clients' money. I am not familiar with the German regulations, but I understand from E that – at least with respect to the requirement for firms in E's industry to hold client money in designated client accounts – the requirements of the German regulator have similarities with those of the UK regulators. I consider it unlikely that the specific requirements of the German regulator are likely to have a bearing on this complaint, but if E's partners disagree on that point, I ask them to explain why in their response to this provisional decision.

In the circumstances, I understand why it was very important to E to have client accounts. The international nature of E's business meant that it would have been impractical (and perhaps even impossible) for it to operate without client accounts in various currencies. Lloyds says that it was entitled to refuse

> to convert E's existing account to a client account. I am satisfied that that is true; I am not aware of any law or regulation which would have required Lloyds to convert the account. In any event, given that Lloyds had already made the decision to stop providing banking services to partnerships like E (with partners living in Germany), I consider that it was reasonable for Lloyds to refuse to make changes to an account that it knew it would soon be giving notice to close.
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> ***Failure to pay interest on US dollar client account***
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> Similarly, I consider that it was fair for Lloyds to refuse E's partners' January 2023 request to change its US dollar client account to an interest-bearing account. At that point Lloyds knew that it was intending to close all of E's accounts in the near future, and so I think it was reasonable for Lloyds to refuse to make any changes to those accounts."

Lloyds confirmed receipt of my provisional decision, but it did not make any further comments.

E's representatives did not accept my provisional decision. Briefly, they said:

- As a background point, one of their regulators requires that if they hold client funds at all, they must do so in a properly designated client account with a bank in England. That was known to Lloyds.

- They also note that I appear to regard debanking as fair and reasonable in principle. They consider that suggests I may be "somewhat out of touch with the man on the Clapham omnibus' views on this subject", and that I may be applying my own subjective test of what is reasonable. They ask that I apply a standard test of reasonableness, to the debanking issue as well as all others.

- Even if Lloyds was ordinarily entitled to decide to withdraw banking facilities without giving reasons, in this case the bank did give reasons. The bank said that it would be illegal to provide facilities to E. That is untrue as a matter of law, and it is not credible that Lloyds believed it to be true. If the bank had believed that offering banking facilities was unlawful, it is unlikely that it would have taken so long for the bank to withdraw those facilities. By knowingly giving an untrue reason for closing E's accounts, Lloyds' actions were not fair and reasonable in E's case even if, had Lloyds acted differently, it might have been entitled to withdraw E's banking facilities.

- They consider that my provisional findings ignore Lloyds' correspondence of 9 August 2022, which "expressly stated that the bank was committed to being the best bank for its clients". That correspondence was structured as an offer which, if accepted, would ensure that the bank delivered on that commitment. E accepted and provided the requisite consideration, effectively creating a contractual commitment by Lloyds to being the best bank that it could be for its client E.

- If Lloyds had already made the decision to stop providing banking facilities to partnerships like E, then its correspondence of August 2022 would amount to a misrepresentation (and possibly a fraudulent misrepresentation).

- It was not fair for Lloyds to refuse E's January 2023 request to change its US dollar client account to an interest bearing account. E was operating under the express commitment of Lloyds to being the best bank it could be for us. As such, E had the

right to expect that Lloyds would place its funds on deposit in accordance with normal banking practices. At the time, E's relationship manager confirmed that for any other customer the bank would have placed the funds on deposit if the customer had so requested. Meanwhile, because E had relied on Lloyds' assurances regarding their commitment to providing E with banking services, they were unable to move the funds elsewhere at short notice once Lloyds refused their request.

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 have come to the same conclusions as I did in my provisional decision. My reasons are as set out in my provisional decision and expanded on below. I now confirm those provisional conclusions as final.

Our rules require an ombudsman to "determine a complaint by reference to what is, in [her] opinion, fair and reasonable in all the circumstances of the case". The words "in [her] opinion" make clear that I may be subjective in arriving at my opinion of the fair and reasonable outcome.

I am also required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I acknowledge that debanking is an emotive issue, and one about which many people feel very strongly. But there is nothing in any of the relevant rules or regulations that prevents a bank like Lloyds from deciding that it no longer wishes to provide banking services to customers in E's position. The terms and conditions of E's accounts with Lloyds required the bank to give appropriate notice if it decided to close E's accounts, and for the reasons I gave in my provisional decision I am satisfied that Lloyds did give appropriate notice.

When Lloyds sent E notice to close E's various accounts, the reasons it gave in writing included:

- "As you are aware, we continually review the information we hold on our customers, to ensure that we have a full and up to date understanding of their businesses. Following a review of that information in conjunction with our cross boarder [sic] policy we are unable to continue with your transactional banking facilities noted below."

- "We need to close your account because Compliance- Cross border policy."

I am therefore satisfied that the reason Lloyds decided to close E's accounts was that the bank had made a commercial decision that it no longer wished to provide banking services to customers in E's circumstances. It is not appropriate for me as an ombudsman to investigate why Lloyds made that decision. As I said in my provisional decision, it appears that E's representatives and Lloyds disagree as to the risks to which Lloyds would be exposed if the bank did continue to offer services to E. However, ultimately Lloyds simply does not wish to offer banking services to partnerships in E's position. Lloyds was entitled to make that decision, and I will not interfere with it.

I acknowledge E's representatives' disappointment that Lloyds decided to close their accounts even after sending its August 2022 correspondence. But I see nothing to suggest that Lloyds was required to keep E's accounts open indefinitely – nor do I see anything to

suggest that either party believed that Lloyds' August 2022 correspondence overrode Lloyds' Terms and Conditions (which set out notice the parties had to give if either of them chose to end their relationship).

Lloyds has already said that it should have closed E's accounts earlier (in summer 2022, when it closed the client currency account it had erroneously opened for E earlier in 2022). Lloyds has apologised for that delay. But E's concerns here are not about the delay in closing its accounts; E says that Lloyds should not have closed its accounts at all. I see no basis on which I could award any compensation for Lloyds' delay in closing E's other accounts.

It is clear from both Lloyds' correspondence and its actions that it took the decision to close accounts for customers in E's circumstances some time before it gave E notice of its intention to close E's accounts. I do not criticise Lloyds for that delay; I would not expect a bank to act instantly on such a decision. Similarly, Lloyds appears to have decided to decline to open any new accounts for customers in E's position before it started giving notice to close existing accounts. Again, that is common practice, and I do not criticise Lloyds for leaving E's accounts open for longer than it could have done.

My final decision

My final decision is that I do not uphold E's complaints about Lloyds Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 28 May 2024.

Laura Colman
Ombudsman