

The complaint

Mrs and Mr L complain that Lloyds Bank PLC allowed breaches with their safe custody package they deposited with Lloyds.

What happened

Mrs and Mr L held a safe custody package with Lloyds. When they retrieved their envelope, they say it was no longer secured, as it was when it was lodged with them. The end of the envelope was now just folded over, the package was open, with a paper seal applied on 30 July 2019 by Lloyds totally torn through, which indicated a third party had access. They said upon checking inside, the documents stored were no longer as they had been originally packaged, with one wallet being found to be totally empty. They said after further examination the paperwork was all there, but their documents were not in their original order. Mrs and Mr L made a complaint to Lloyds.

Lloyds originally upheld the complaint and they said they would pay Mrs and Mr L £200. They said there were some packages that they'd stored with the incorrect/blank illegible details. They said they sent a group of their own employees to the secured facility to look at these items. Lloyds said that as bank employees, they are bound by their regular data and security standards. Lloyds said that some of the items were harder to identify than others and there were occasions that they'd need to open packages to identify who/whom it belonged too. Lloyds said at this point at least two staff members would be present to open the item and categorised/identify correctly, and it seems that Mrs and Mr L's envelope was one of these items. Lloyds said as the envelope contents were deemed as intrinsic, it was then sent to their other facility for intrinsic storage, with a third party security firm, and this is also why there were other reference numbers applied.

Lloyds sent Mrs and Mr L a follow up letter offering them another £200 compensation. They said from the other internal reference numbers that they can see it looks like their item was re-bagged in 2020, but they have no specific dates for this as this was done in tranches of items, and this was done as part of internal auditing. They said they expect anyone employed by them to act with due care and they would hold them to the exact same standards that they would expect from their staff. Lloyds said they can't audit what has happened here, but there doesn't look to be any additional access to Mrs and Mr L's item. Mr and Mrs L brought their complaint to our service. They sent us pictures of the packaging and terms and conditions they had managed to locate online.

Our investigator said he thought the £400 compensation was fair. He said the paper seal that Lloyds put onto Mrs and Mr L's package after the 2019 audit was torn when Mrs and Mr L received it. He said while the seal was torn, he has nothing to say conclusively that a third party has accessed the contents of their secure package, so he said it's difficult to say that Lloyds have done anything wrong in this regard. Mrs and Mr L asked for an ombudsman to review their complaint.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Firstly, I’m aware that I’ve only summarised Mrs and Mr L’s complaint points. And I’m not going to respond to every single point made by them. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I haven’t mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual point to be able to reach what I think is a fair outcome.

I must make Mrs and Mr L aware that our service has not got the scope to fine or punish a business even if Lloyds have made mistakes or have not kept clear audits of what has happened. It would be the regulator – the Financial Conduct Authority, who have the power to fine a business if they deem it necessary. Our service acts as an informal dispute resolution service for complaints about financial businesses. We look at the circumstances of individual complaints and, on a case by case basis, taking into account relevant industry guidance for example, make findings about whether a financial business has failed their customer.

I’ve considered the terms and conditions that Mrs and Mr L have found online. But I’m satisfied that they don’t apply here. These are regarding a safe deposit box, not the safe custody service. It appears these are two different things altogether. I also note that these terms only quote one branch where they can apply for a safe deposit box, and this is a significant distance away from Mrs and Mr L’s address. So I’m not persuaded these terms are applicable to Mrs and Mr L’s situation.

I’ve looked at the original terms and conditions that Mrs and Mr L provided our service. I can see section 13 says “The Bank may vary these terms and conditions at any time. The variation shall become effective upon notice being displayed in branches of the Bank or otherwise being given to the Customer in such manner as the Bank considers appropriate”. So based on this wording, Lloyds (or the original bank responsible for the safe custody service) were not necessarily required to write to Mrs and Mr L regarding any changes to the terms and conditions at any time (if notice was displayed in the bank). As my understanding is that this was placed with a different bank that Lloyds used to have ties with before they split, I asked Lloyds for any further information regarding any changes to the terms and conditions.

Lloyds have confirmed that the terms and conditions applicable to the safe custody service have been varied on a number of occasions in the past. They provided me with an example of this when the terms were being varied from 30 December 2019. The letter confirmed “Instead of keeping your items at a branch, they’re now with a storage specialist. This means when you’d like to take any of your items out, you should ask in branch. We’ll arrange for them to be delivered by secure courier to the branch you choose”. But I noticed the terms and conditions which were sent with this letter showed non-intrinsic items as opposed to intrinsic items, so I asked Lloyds to send me the notice of variation to the intrinsic terms and conditions.

Lloyds have sent me these and the example shows the letter dated in October 2019, with the changes to come into effect on 30 December 2019. As both the letters (intrinsic and non-intrinsic) Lloyds sent me were redacted, I asked them if they could send me system evidence that they sent the relevant letter to Mrs and Mr L. Lloyds have admitted that they can’t see that the mailing was actually sent to Mrs and Mr L. They said mailings were only sent to customers where an account number was recorded on the Safe Custody Database at that time, and they did not believe such was the case for this safe custody item. Lloyds said the database has a field to capture the date a mailing was sent, and this is blank.

So I'm not persuaded that Lloyds did inform Mrs and Mr L of variations of the terms and conditions. And as the example they sent me dated in 2019 was in the form of a letter, and not a notice which was displayed in a branch, then I find it likely that Lloyds never posted any changes to the terms and conditions to Mrs and Mr L. I say this because Lloyds have said that there was no account number registered on their database and mailing dates are blank.

I asked Lloyds about the re-bagging exercise. Lloyds have told me that upon the packet being identified as intrinsic it will have been placed in a secure third party security bag and an item barcode attached which is unique to the item. I have been able to find out further information than has previously been offered about why the contents of the package were classed as intrinsic as opposed to non-intrinsic, and what happened with the package and why.

Lloyds have said that their safe custody project team accessed the package in 2019 because the contents were stated to include wills. Lloyds said that access was undertaken to try to identify the owner customer (in the absence of an account number being recorded, the project team needed to check the actual will for the full name and any other information contained e.g. address). They would then seek to match the details with a bank account, check the customer was still alive, and ensure an indicator was on the account so that the safe custody holding would be flagged at account closure or death of a customer.

Lloyds said that when the package was opened for the data capture, the contents were noted as a will, Power of Attorney, Premium Bonds and share certificates. They have said that there is no mention of an object of the type they would usually associate as being of intrinsic value e.g. jewellery, watch, coins. So they said it is therefore assumed the colleague in question thought the Premium Bonds and/or share certificates should be regarded as intrinsic items.

Lloyds said that because of the perceived intrinsic content, the package was placed in a grey tamper-proof bag, allocated a barcode as its reference, and in December 2019 was transferred to a third party security company specialist. They said Lloyds project team opened the security company grey bag on 30 May 2022 and the customers' external packaging was reviewed in connection with the wills project. The item was resealed and given a new barcode at the external security firm (as barcodes were single use).

Lloyds said their project team opened the external company security bag again on 21 October 2022 and they reviewed the external packaging, as part of a review of items transferred from their previous location to the third party security firm which had been marked as containing a will, and the package was resealed under a new barcode at the security firm. Lloyds say that the item remained under that reference until it was delivered to the branch around 17 November 2022.

Lloyds say that it seems likely that the original sticker affixed in 2019 was torn in 2022 by their project team when checking the contents. They said while they couldn't say for certain, it is possible that a further sticker was not then added as there was already one there (albeit torn), and the package would be held in a tamper proof bag, with an audit trail for any access.

Ultimately, it's very difficult for me to prove exactly what has happened here. There are several things I've considered. The latest explanation from Lloyds is the most detailed explanation and the most likely to have happened in my opinion. I have considered that Mrs and Mr L's name is on page 22 of the 29 page document they sent our service originally. But it is not dated when this was written on this package, and it doesn't show their full name or address, or the full contents of the package and I can't locate a date on the barcode. But it

does show a sort code and account number – but I do note that the sort code is not linked to a Lloyds account. It is associated with the bank they had ties with at the time Mrs and Mr L deposited the safe custody package.

This may also explain why the package was opened more than once, and why it was opened in 2022, twice. I know previously Lloyds have indicated it could be in 2020 when it was opened, but this is because they said tranches were started in 2020. They have now given an explanation that it was Lloyds staff as part of their project team who had opened the packaging (and not the third party security staff) and have given a month and year as opposed to the 2020 date when this project first started. The contents were likely to be in a different order to the original deposit as Lloyds project team had to check all of the items to determine if there was anything of intrinsic value deposited.

I've considered what would be a fair outcome for this complaint. In order to do so, I've considered the impact that the events had on Mrs and Mr L. I'm not persuaded that there has been a data breach here. I say this on the basis that Lloyds have confirmed the reasons why they themselves (through their safe custody project team) accessed the safe custody contents, and I've no evidence that any unauthorised parties have accessed this. And there is no allegation that any documents which were originally deposited are missing.

But I'm satisfied that Lloyds have let Mrs and Mr L down on a number of occasions here. I say this as it's likely that the safe custody contents should not have been classed as being intrinsic in the first place. As Lloyds have said, there were no coins, jewellery, watches etc deposited, so it could be considered that the items were non-intrinsic. So based on what Lloyds have said now, I think it's likely that the contents were non-intrinsic. So if they were classed as non-intrinsic after the items were first opened, then I'm not persuaded that the contents would have been transferred to another site, and therefore the actions which happened after this would be unlikely to have followed (although I can't rule out their project team doing something similar with non-intrinsic items).

As Lloyds have been unable to evidence letters going to Mrs and Mr L due to the account number not being entered on their database, then I'm also persuaded that Mrs and Mr L have been deprived of the opportunity to see any changes to the terms and conditions which have been sent via letter to them (this wouldn't apply if these were advertised in branch). I'm able to evidence at least one occasion of when this happened in late 2019. Mrs and Mr L may not have agreed to the terms before they came into force, so by them not being sent these, then they didn't have the opportunity to see what was in them and either agree to still use the service or discontinue this service.

There appear to be slight delays in ordering the safe custody package to the branch. And while Lloyds have explained why they believe the 2019 seal was ripped and not replaced, I'm not persuaded that this would lessen any distress Mrs and Mr L had that an unauthorised party had accessed their safe custody package. After all, there was no explanation given at the time, and it would have been reasonable for a new sticker to be placed on the package by their project team, or at the very least a customer note to be entered onto their records available to all staff to explain this had been placed in another bag which was sealed, so they didn't see the need to use another sticker in 2022.

The different barcodes would also add to the suspicion that something untoward had happened with the safe custody package. There was no clear answers given to Mrs and Mr L's questions regarding what happened here.

The safe custody information not being available to all staff, or at least the majority of staff they spoke to/dealt with their complaint added to the inconvenience and distress Mrs and Mr L suffered. I say this as they have over the course of what happened, been given incorrect

information on a number of occasions, from details about how long their items had been stored after they left the branch to the tear on the bag and had Lloyds record keeping been more accessible to all of their staff and the current explanation of what happened being given to them originally, then they wouldn't have had to keep communicating with Lloyds over the issue.

It is only now that Mrs and Mr L will be aware of what is likely to have happened, and more importantly why their contents were accessed and when. It's still not necessarily clear why the wills project team needed to access the package in 2022 if they did this in 2019, unless they didn't correctly record this in 2019 (which I suspect they didn't do this due to no account number being added to the database at the time).

Lloyds offered Mrs and Mr L £400 for the distress and inconvenience of what happened. I must make Mrs and Mr L aware that our awards are not designed to punish a business. But given the multiple errors Lloyds have made which I've outlined above, I'm satisfied that £500 (less anything Lloyds have already paid them) would be more proportionate for the impact of their errors had on Mrs and Mr L. I'm persuaded that this is fair as the impact of Lloyds' errors has caused them considerable distress, upset and worry. So it follows I intend to ask Lloyds to put things right for Mrs and Mr L."

I invited both parties to let me have any further submissions before I reached a final decision. Lloyds confirmed there was nothing left to add. Mrs and Mr L responded with a number of points. In summary, they said, as no revised terms and conditions had been issued to them, Lloyds were in breach of their original conditions. Mrs and Mr L mentioned a branch visit they had in 2018 regarding the safe custody package, they mentioned there were 44 items in the safe custody package which showed their name and address, so they questioned how this was missed. They said there were some old £1 and 10 shilling notes which were stored in a wallet in their package.

Mrs and Mr L said after Lloyds opened their package in July 2019, and address records had been accurately checked, then they should have been traced on the Lloyds database, and their records should have been updated accordingly. They said it was difficult for them to understand why Lloyds accessed their safe custody package a second and third time. They urged me to review the intention to award them £500 to factor in the additional misdemeanors.

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'm aware that I've only summarised Mrs and Mr L's response to the provisional decision. And I'm not going to respond to every single point made by them. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I'm unable to comment on what Mrs and Mr L have said about the 2018 branch visit as the detailed explanation they've given here was not part of their original complaint. So I don't have the power to address this as part of the complaint they have brought to our service. Mrs and Mr L may be able to complain to Lloyds on this point if they wish to do so though.

As Mrs and Mr L have said there were £1 and 10 shilling notes, then I'm persuaded that this would be the main reason why the safe custody package was classed as intrinsic. While

Lloyds have said it could have been the share certificates/premium bonds that could have been intrinsic, I find it more likely that the money in the safe custody package was likely to be the main reason this was classed as intrinsic. But I agree with Mrs and Mr L that Lloyds hadn't recorded the details accurately, and I had factored this into my provisional decision in terms of compensation.

I've considered what Mrs and Mr L have said about the terms and conditions. In my provisional decision I said *"As Lloyds have been unable to evidence letters going to Mrs and Mr L due to the account number not being entered on their database, then I'm also persuaded that Mrs and Mr L have been deprived of the opportunity to see any changes to the terms and conditions which have been sent via letter to them (this wouldn't apply if these were advertised in branch). I'm able to evidence at least one occasion of when this happened in late 2019. Mrs and Mr L may not have agreed to the terms before they came into force, so by them not being sent these, then they didn't have the opportunity to see what was in them and either agree to still use the service or discontinue this service."* So I want to assure Mrs and Mr L that I did take this into account when considering their complaint.

I've considered what Mrs and Mr L has said about Lloyds opening the package for a second and third time. Both of these occasions weren't to check the contents of the safe custody package. As I said in the provisional decision *"They said Lloyds project team opened the security company grey bag on 30 May 2022 and the customers' external packaging was reviewed in connection with the wills project. The item was resealed and given a new barcode at the external security firm (as barcodes were single use).*

Lloyds said their project team opened the external company security bag again on 21 October 2022 and they reviewed the external packaging, as part of a review of items transferred from their previous location to the third party security firm which had been marked as containing a will". But I agree with Mrs and Mr L that the recording of the items wasn't as thorough as it should be taking into account that Mrs and Mr L said there were 44 items which showed their name and address, and I have no reason to doubt what they've said here.

I acknowledged this in the provisional decision when I said *"It's still not necessarily clear why the wills project team needed to access the package in 2022 if they did this in 2019, unless they didn't correctly record this in 2019 (which I suspect they didn't do this due to no account number being added to the database at the time)"*.

Taking into consideration all of the points I'm able to which Mrs and Mr L have made in response to the provisional decision, I'm satisfied that £500 is proportionate for the distress and inconvenience Lloyds have caused them, and it is in line with the compensation I am able to award them.

In summary, Mrs and Mr L's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. If Mrs and Mr L are disappointed, I hope they understand my reasons.

Putting things right

In my provisional decision I said I intend to uphold this complaint. I said I intend to ask Lloyds Bank PLC to pay Mrs and Mr L £500 (less anything they have already paid them) for distress and inconvenience. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold this complaint. Lloyds Bank PLC should pay Mrs and Mr L £500 (less anything they have already paid them) for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 22 February 2024.

Gregory Sloanes
Ombudsman