

The complaint

Mrs T is unhappy that Lloyds Bank PLC haven't removed her from a joint account she held with her ex-husband as they should have done in 2016.

What happened

In late 2016, Mrs T went into a Lloyds branch and instructed the removal of herself from a joint account she held with her ex-husband. At that time, Mrs T handed in her cheque book and her debit card, and she was told by Lloyds' branch staff that the removal of her from the account would be processed and that if there were any problems she would be contacted.

Mrs T then received no contact or correspondence from Lloyds until early 2020, when she received a letter from Lloyds to her address which said that the account was overdrawn. Mrs T spoke to Lloyds about the account towards the end of 2021, when she explained to Lloyds that she had been removed from the account in 2016. Lloyds asked Mrs T to pass their security protocols for the account, but Mrs T couldn't do this as she had no knowledge of how the account had been maintained by her ex-husband at that time. Lloyds explained that they would send her a telephone banking access number so that she could speak with them about the account, but Lloyds never subsequently sent that access number to Mrs T.

In March 2022, Mrs T started to receive text messages from Lloyds which said that the account was overdrawn. Mrs T called Lloyds about this and was told by Lloyds' telephony staff that she was no longer linked to the account, and she wouldn't receive any further texts. That same month, Mrs T started to receive letters to her address about the account and the overdrawn balance, and she started receiving text messages again to her mobile phone a few months later. Mrs T visited a Lloyds's branch to ask why she continued to receive correspondence about this account and was told that she was showing as being a joint account holder on one of their systems but not on another.

Mrs T then called Lloyds' customer services, who again said that she was listed as a joint account holder on one of their systems but not on another system, and who confirmed that Mrs T hadn't held an active debit card on the account for roughly six years. Mrs T wasn't happy about that Lloyds now appeared to have re-added her back onto the joint account, following years of considering her to be removed from it, and so she raised a complaint.

Lloyds responded to Mrs T and said that she never been removed from the account and had always been a joint account holder on it. Mrs T wasn't satisfied with Lloyds' response, so she referred her complaint to this service. One of our adjudicators looked at this complaint. But they didn't feel that Lloyds had acted unfairly by considering Mrs T to still be a joint account holder and so they didn't uphold the complaint. Mrs T remained dissatisfied, so the matter was escalated to an ombudsman for a 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.

I issued a provisional decision on this complaint on 21 November 2023 as follows:

The current account in question is considered by Lloyds to be a joint account, and the other named party on that account – Mrs T's ex-husband – isn't a party to this complaint and so hasn't provided his consent for Lloyds to disclose his personal information to this service.

Because of this, Lloyds feel they're restricted in regard to the information and evidence they can submit in defence of this complaint. I can appreciate Lloyds' position here, and I acknowledge and accept their concerns about a potential breach in personal data.

A further complication is that this complaint centres on whether Mrs T was or wasn't removed from the account in late 2016 – an event that took place approximately seven years ago. And because of the length of time that's elapsed since late 2016, Lloyds have explained that they no longer hold full records of everything that took place at that time. And, given the obligations on businesses such as Lloyds to not hold personal information longer than is reasonably necessary, neither would they be expected to.

In circumstances such as this, where potentially important information might be unavailable to me, I must decide what I think is most likely to have happened, on balance, and in consideration of the evidence that is available to me, including personal testimony.

Mrs T maintains that she was removed from this account and didn't receive any correspondence or contact regarding it for several years – with the potential implication being that Lloyds have mistakenly re-added her to the account when seeking to recover the debt incurred on the account by Mrs T's ex-husband.

Lloyds disagree. They say that Mrs T was never removed from the account, and they've provided several arguments to this service as to why they feel this was the case.

The first of these is that Lloyds' policies don't allow for a named person to be removed from a joint current account at a time when that account is in an overdrawn position. Mrs T has confirmed to this service that she was removed from the account in the last quarter of 2016.

But Lloyds have confirmed that the account was in an overdrawn position for the whole of the last quarter of 2016 and wasn't in a position of credit at any time during that period. And this means that it wouldn't have been possible to have removed Mrs T from the account at any stage during the last three months of 2016.

Lloyds have also explained that there was a standing order being received into the account in 2017 that was referred as being for Mrs T – with the payment reference being Mrs T's name. And Lloyds feel that this strongly suggests that Mrs T was still using the account at that time and so hadn't been removed from the account in late 2016 as she claims.

Lloyds have also provided details of Mrs T's customer online mailbox going back to 2020, and note that some of the messages sent to Mrs T were opened and viewed, which they feel could only have been by Mrs T. But the earliest message that Lloyds have been able to evidence is from April 2020, and the earliest message that has been opened and read is from October 2020. And this corresponds with Mrs T's own claim that she heard nothing from Lloyds about the account from late 2016, when she was removed from the account, until 2020, when she was first contacted again by Lloyds about the account.

Taking all this information into consideration, I feel that what's most likely to have happened here is that Mrs T did visit a branch in late 2016 to be removed from the account, and that she left that branch believing that she had done everything that she needed to do to be removed from the account. But I also feel that when the Lloyds' staff who assisted her in

branch tried to process the account removal, this wasn't possible, because of the overdrawn balance of the account.

In short, I feel that Lloyds' have most likely made some form of error here including by not sufficiently informing Mrs T that she couldn't be removed from the account while it was overdrawn. One reason I say this is because I find Mrs T's testimony surrounding her interactions with Lloyds to be persuasive, including that she was told on several occasions that there was conflicting information about whether she was or wasn't named on the account on Lloyds' systems.

I asked Lloyds to provide historical statements for the account which I hoped would allow me to assess whether Mrs T had most likely used or not used the account over the years since 2016. But Lloyds felt that they were unable to provide this information to this service, as I've previously described. I also asked Lloyds to specifically provide details of any transactions where Mrs T could be seen to have used or benefited from the account since 2016, but again, Lloyds didn't provide a response to this specific request. And while I note the standing order that was being received into the account in 2017, I'm not convinced that this is firm proof that Mrs T was still using the account at that time.

Of course, given the absence of confirmatory information here, I don't know what actually happened. But I feel that it's notable that Lloyds haven't been able to provide any evidence that they attempted to contact Mrs T after 2016 until 2020. And because of this I don't feel that I can rule out the possibility that an attempt to remove Mrs T from the account following her 2016 branch visit somehow remained incomplete, and that when this later discovered (potentially in 2020) Mrs T was re-added fully to the account once again which caused her to begin receiving account correspondence.

All of which means that the question I feel that I have to ask here is as follows: Is it fair that Mrs T, who reasonably believed she was removed from the account and who doesn't appear to have used or benefited from the account since late 2016, should be considered jointly and severally liable for the debt accrued on the account by her ex-husband?

The answer I arrive at to that question is 'no'. And this is because while I accept that Mrs T might not have actually been removed from the account, I feel it's highly likely that she was allowed to believe that she had been removed from the account following a mistake or mistakes made by Lloyds. And I feel that because of this Mrs T didn't use the account or have any reason to monitor it after 2016, and so shouldn't be fairly held liable for the debt that was incurred on the account after that time.

As such, my provisional decision is that I uphold this complaint in Mrs T's favour and provisionally instruct Lloyds to retrospectively remove her as a named party from the account from whatever time in or around the last quarter of 2016 is permissible for them and which wouldn't result in Mrs T being considered liable for any account debt following her being removed from the account.

Lloyds responded to my provisional decision and provided several new pieces of information which caused me to reassess my position on this complaint. These include historical statements for the account which show Mrs T's debit card being used on the account during 2017. These include a payment of £400 made at a department store on 23 January 2017 and a payment of £2.71 at a supermarket on 31 May 2017.

As such, I issued an updated provisional decision on 11 January 2024 as follows:

While the transactions undertaken on Mrs T's debit card are infrequent, I do feel that the fact that they occurred confirms that Mrs T still had her account debit card available to her at those times. And I note that Mrs T wouldn't have been able to complete these purchases on her debit card if she had handed in her card to Lloyds when she requested that she be removed from the account in branch at the end of 2016, as she's stated was the case.

I also feel that these transactions invalidate the hypothesis which caused me to arrive at my provisional decision above. In short, this was that Mrs T reasonably believed that she had been taken off the account in 2016, when she spoke with Lloyds about it in branch. But given that Lloyds have been able to demonstrate to my satisfaction that Mrs T used her account debit card in January and May 2017, I find that I'm no longer able to maintain that Mrs T believed she was no longer a party to the account from late 2016 onwards – because she used her debit card for the account after that time.

Lloyds have also reiterated that they have no record on their system to confirm that Mrs T visited a branch and requested she be removed from the account, and they've confirmed that the nature of their systems and record keeping is such that any joint party removal forms – which Mrs T would have needed to complete – would still be retained by them, but that they have no record of such a form in Mrs T's instance. And Lloyds also provided a screenshot of earlier online messages, from 2016 and 2017, sent to Mrs T regarding the joint account which show as being opened and read by Mrs T.

The result of the new information provided by Lloyds is that I no longer feel that what's most likely to have happened is that Mrs T requested that she be removed from the account in 2016, completed the necessary forms to do so, and left Lloyds' branch at that time with the reasonable belief that she had been removed as a party to the joint account.

Rather, I now feel that while Mrs T may have requested that she be removed from the account in 2016, it's seems to me to be more likely than not she was told that this wouldn't be possible – potentially because the account was overdrawn at that time, as discussed in my provisional decision letter. And while Mrs T may have largely reduced her usage of the account after 2016, I feel that she was aware that she remained a jointly named party to the account – as the occasional account usage by her in 2017 appears to confirm.

With my revised understanding of this complaint, I no longer feel that this complaint should fairly be upheld against Lloyds as I've previously described. Instead, given that I feel that Mrs T was most likely aware that she remained a jointly named party to the account after 2016, I also feel that it's fair that Lloyds should pursue her for the money owed on the account, which as a joint account holder she remains jointly and severally liable for.

Mrs T responded to my updated provisional decision and explained that she had never said that she was certain of the date that she went into branch and handed in her card and cheque book – only that she believed it was in the last quarter of 2016. Mrs T also explained that, given that there are no further transactions using her debit card after 31 May 2017, it must have been the case that she handed her card and cheque book in after that date. I'm afraid I must disagree with Mrs T's claim that she never said that she had definitely been removed from the account in late 2016. This is because, in her long and detailed referral of this complaint to this service, Mrs T specifically and repeatedly refers to her going into branch in either 'late 2016' or 'in the last quarter of 2016'. And at no point in Mrs T's complaint referral does she explain that she might be misremembering the timeframe that she's stated.

Also, in her complaint referral, Mrs T explains that in May 2017 she received post to her home from Lloyds that had a 'diverted mail' sticker that was addressed to her ex-husband at his new address. As per Mrs T's timeline, this happened after she handed in her debit card in branch. But this was before Mrs T last used her Lloyds debit card, which as explained above, she did on the last day of May 2017.

If I accept Mrs T may have misremembered the time that these events took place, given that they took place several years ago, then I feel that this also casts some doubt on her overall testimony. Put simply, if Mrs T has misremembered the dates these events took place, it seems reasonable that she might have misremembered aspects of those events as well.

Additionally, as explained in my updated provisional decision letter, Lloyds have provided a more detailed explanation of why they feel Mrs T hadn't asked to be removed from the account in question around the time that she claims. This includes that they retain joint party removal forms – which Mrs T would have had to complete to request her removal from the account – indefinitely, but have no record of any such form being completed by Mrs T.

It also must be remembered that Lloyds won't permit the removal of a joint party from an account while that account is overdrawn. This is because the overdrawn balance is the joint and several liability of all joint account holders, meaning that to remove a joint account holder while the account is overdrawn would unfairly transfer full liability for the overdrawn balance (for which all joint parties are liable) to the holders remaining on the account.

Lloyds have provided statements for the account in question for 2016 through to May 2018. And notably, the account remains in an overdrawn position throughout this entire period – other than a short time on 28 February 2018, when the account is briefly in credit but when transactions that occur that day take the account back overdrawn.

In my initial provisional decision, I explained that, in circumstances where I felt that potentially important information might be unavailable to me, I must decide what I think is most likely to have happened, on balance, and in consideration of the evidence that is available to me, including personal testimony.

I also explained that I felt that what's most likely to have happened is that Mrs T did visit a branch in late 2016 to be removed from the account, and that she left that branch believing she'd done everything she needed to do to be removed from the account. And I also felt it was likely that when the staff who assisted her in branch tried to process her removal, this wasn't possible because of the overdrawn balance of the account. I therefore felt that Lloyds had most likely not sufficiently informed Mrs T that she couldn't be removed from the account while it was overdrawn. And I specifically explained that one reason I said this was because I found Mrs T's testimony surrounding her interactions with Lloyds to be persuasive.

In short, when I initially provisionally upheld this complaint in Mrs T's favour, I didn't do so based on any evidence or proof that what Mrs T was claiming was correct. Rather, I did so because in the absence of any proof, I felt that her testimony was the most persuasive and supported a reasonable hypothesis as to what I felt was most likely to have happened.

But given what I've explained above, I no longer feel that Mrs T's testimony is as persuasive as I previously did. And I also feel that the further explanation and information that Lloyds have provided adds weight to their own position. And this was why I issued my amended provisional decision wherein I changed my outcome such that I no longer felt that this complaint should be upheld in Mrs T's favour – because I no longer felt that the hypothesis that I'd previously postulated was reasonable or most likely to have happened. And this remains the case now.

In her response to my amended provisional decision, Mrs T has described the difficult personal circumstances she experienced surrounding the time in question. I can personally sympathise with Mrs T regarding those difficult circumstances. But in my professional capacity as an ombudsman, there isn't anything within Mrs T's response which gives me cause to change my position again on this matter. And I continue to feel – for the reasons explained above – that it is fair for Lloyds to consider her to be a joint party to this account.

Finally, Mrs T has explained that she paid her ex-husband £10,000 as a full and final divorce settlement in 2018. Again, I can appreciate Mrs T's dissatisfaction at being considered jointly liable for the outstanding balance on this bank account, given that divorce settlement. But this would be a civil matter which Mrs T would need to resolve with her ex-husband directly and isn't something which factors into this complaint against Lloyds.

All of which means that my final decision is that I do not uphold this complaint and that I won't be instructing Lloyds to take any further or alternative action here. I realise this won't be the outcome Mrs T was wanting, but I hope that she'll understand, given what I've explained, why I've made the final decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 15 March 2024.

Paul Cooper
Ombudsman