

The complaint

Mr G complains that Lloyds Bank PLC didn't tell him that he should have closed his sole trader business account when he formed a partnership and that he has paid additional fees as a result.

What happened

Mr G operated a sole trader business and had a bank account at Lloyds with an overdraft facility. In 2006 he formed a partnership, and an account was also opened for the partnership. He says he was told by the then branch manager to keep his sole trader account to deal with business cashflow and pay wages. The overdraft was also maintained. In September 2023 he explains he was told by Lloyds that he shouldn't have the sole trader account and that the overdraft limit then of £3,000 would lapse at the upcoming review date of 20 October 2023. He is to make arrangements to pay the amount from the partnership over a period. Mr G is unhappy that he has been paying fees on this account and with the way things have been dealt with.

Lloyds issued a final response letter stating that it upheld the complaint about Mr G not being advised to close the sole trader account when he entered into a partnership. It offered to pay him £168 which was equivalent to two years of account fees of £7 per month noting that a full review hadn't taken place for nearly 20 years to understand the position. It said that as Mr G has wanted a separate account to pay wages in any event then the partnership would have otherwise been charged the same fees so there was no financial loss. Mr G has been told about all charges in advance. As his account was receiving credits there was no reason for this to 'flag up' any earlier.

Our investigator didn't recommend that Lloyds do anything more than it had offered to. She said that Lloyds had confirmed to her that it was possible to operate both a sole trader and a partnership account. And in error this hadn't been made clear in calls Mr G had with Lloyds in September and October 2023. But the sole trader account had shown a cashflow before and Mr G was using the limit. So, there was no basis to refund further fees on the account. These charges had been evident to Mr G in his statements, and he had wanted to have a separate account to support business cashflow. He could have asked Lloyds about closing the account if he had wanted to reduce charges for the business.

Mr G didn't agree and wanted his complaint to be reviewed. He said that he didn't want to go over all the points again as he had provided all the evidence he had. But two named members of staff from Lloyds had given him misleading information about the need to close this account. He was flabbergasted that he hadn't found in his favour and didn't think he would be excused in a similar way for making an error. Mr G said he has lost out as a result and that he had been loyal and trusting and believed Lloyds was working in his interest. He said that it was quick to charge fees and to sell new products. And he asked what the point of the annual review by Lloyds was.

My provisional decision

I issued a provisional decision on 16 August 2024. I set out below what I said:

I said I couldn't know what was discussed with Mr G when he with a business partner opened a partnership account at Lloyds. He retained his sole trader account. While it is possible to have both these are to represent legally separate trading entities and wouldn't be interchangeable. So, for example unless the original business Mr G operated remained distinct I would typically have expected the sole trader account to either be closed or not to operate for the same business. But it seems that the sole trader account has been receiving money from the partnership to pay the wages of staff and more recently it seems that included payments to the other partner. The overdraft facility seemed effectively to be covering cashflow requirements for the partnership.

It was reasonably up to Lloyds to determine which business it was lending to and for what purpose. The information provided and the final response letter indicates that given that there had been regular credits to the sole trader account the overdraft had continued. There are no significant case notes about any review provided after 2010 and until 2023. In 2023 the partnership overdraft facility was reviewed. At that time, the sole trader facility was also reviewed. Members of staff identified that there was no real 'trading' through the account and so no justification for an overdraft. Mr G was told that the overdraft would expire, and he would need to repay this and discuss repayment plans with Lloyds' financial assistance team. During a call in October 2023, he said that this account had always been used for wages and he offered to repay the balance at a rate of £300 a month from the partnership account. He was told that this wouldn't stop him being shown to be personally in arrears. The person he spoke to said that unauthorised overdraft fees of £15 would be suppressed. But that he would receive letters about the account overdraft balance being overdue. Mr G declined to go through his own income and expenditure which the person he spoke to said could be a better option for him and with an official plan. I could see from the statements provided to this service that there have since been reductions in borrowing. It isn't in dispute that prior to that Mr G had made full use of the account and had been drawing on the overdraft facility since 2006.

My assessment

On the information available it doesn't seem that Mr G has had a sole trader business distinct from the partnership. As a result, and as set out in the final response letter from Lloyds it seems it would have been appropriate for this account to be closed or at least redesignated as a partnership account. In effect that's the way it was operated by Mr G, as it received credits from the partnership and paid wages. It also supported the cashflow of the partnership. I didn't see information other than that Mr G has been clear about how he has been using the account when asked.

While any overdraft facility is technically repayable upon demand, there were no actual changes in circumstances in 2023, there didn't seem to be any concerns about the fluctuation in balances or use of Mr G's account brought to his attention before and the facility had been reviewed for a number of years without concern.

It was reasonably open to Lloyds to decide whether to continue the facility once it understood the actual use of the account. And I could understand why even though there were close links to the partnership the concern was that there was no independent source of trading income. Lloyds wanted the overdraft repaid. I considered that this left Mr G in a difficult position as Lloyds considered this to be his personal debt and not supported by partnership income. Had this borrowing been in the name of the partnership then Mr G in my view would have been in a better position to plan and arrange for any required reduction in borrowing.

I had considered Mr G's argument that he shouldn't have paid the fees on the account. But

I found that on the information he wanted a separate account. Lloyds has confirmed that the monthly account charges would have been the same had the account been in his name or the partnership. These charges – which were the result of him operating more than one account for the business - were in my view reasonably apparent to him. And as I'd referred to, he also drew on the overdraft and incurred fees for that. I couldn't see that this wasn't a benefit to him and the business. And I couldn't see that any review of the position before 2023 was onerous for the reasons I'd given and in the main this seemed an automated process. Lloyds had offered to refund fees of £168 for not advising Mr G to close his sole trader account in 2006. In light of what I'd said I didn't have a basis to ask it to do more on fees as I hadn't identified a financial loss for his business. This payment offered reflects the misinformation given to him.

I did though consider Mr G has been caused unnecessary distress and inconvenience. On the information this overdraft shouldn't it seems have remained in his sole name over all of the period. He couldn't evidence cashflow in the sole trader business and so arrange an ordered reduction. Mr G received personal letters about repayment and arrears and while he has been able to draw income from the partnership to make repayments with the evident cooperation of his other partner, in my view he ought not to have been in this position. Taking all these factors into account and our published guidance about compensation I intended to award him further compensation of £300. With the other payment offered by Lloyds this amounts to a total of £468.

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 accepted the recommendation and agreed to pay the compensation to Mr G.

Mr G said that he had no further evidence to provide and could only repeat what had happened. He said that he was misled and had trusted Lloyds to act in his interests. Mr G said he didn't expect the outcome to change and that the 'little guy' had lost again. Mr G said he reluctantly would accept the decision but that he felt very aggrieved.

I appreciate Mr G's strength of feeling about what happened and that he says he has lost trust in Lloyds. I had carefully considered all the evidence in my provisional decision given above. And I assessed whether I thought Mr G had been subject to any financial loss. For the reasons I've already given I didn't find that he had been. My award reflects my assessment of the distress and inconvenience to him of what happened. I'm afraid I don't see a fair basis now to increase that.

My final decision

My decision is that I uphold this complaint in part and require Lloyds Bank PLC to pay Mr G a total of £468.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 October 2024.

Michael Crewe
Ombudsman