

## The complaint

A company, which I'll refer to as W, complain about poor service it says it received from Lloyds Bank PLC (Lloyds) in connection with a direct debit payment.

In bringing this complaint, W is represented by its director who I'll refer to as Mr S.

## What happened

The background to the complaint is set out in my provisional decision dated 13 June 2024 which forms part of this decision.

I provisionally concluded that, W's complaint should be upheld on a limited basis.

Under the following sub-headings, I said in summary:

*"Lloyds' decision to pay the £748.92 direct debit."*

*Mr S has said Lloyds weren't asked to pay the direct debit and made an error therefore when they did so. Especially, when at the time there was no overdraft arrangement in place for W, supported by a personal guarantee from him. But I don't agree that Lloyds did make an error.*

*I note the bank relies on Clause 11 of the terms and conditions of W's account as supporting its action. It says:*

11. *Borrowing from us:*

11.1 *"If we agree to give you an Authorised Overdraft, we will give you a separate facility letter setting out the overdraft terms and conditions including interest rate;*

11.2 *If we allow you an Unauthorised Overdraft, we will charge interest and fees as set out in our Charges Brochure or at Lloydsbank.com/business. We calculate interest on the cleared daily balance of the new or excess overdraft. It is payable for the duration of the new or excess overdraft;*

11.3 *At any time we may withdraw or restrict any right to an overdraft or ask you to repay your overdraft. We do not have to give you advance notice before we do but we will tell you in writing if we require repayment of your overdraft."*

*I am minded to conclude, that clause 11.2 particularly, allows Lloyds the commercial discretion to allow an unauthorised overdraft on an account. In W's case the bank did so by paying the December 2022 direct debit demand from C. I'm not persuaded that is equivalent to an error on its part as Mr S has tried to argue.*

*It is not my role to interfere with the legitimate exercise of a bank's commercial discretion. What I can assess is whether in the circumstances of this case, Lloyds exercised that discretion fairly.*

*I can see from their evidence that in the past Lloyds made a similar direct debit payment without objection from W. And its account was returned to credit shortly afterwards.*

*Bearing in mind that the direct debit in favour of W wasn't set up in error, later cancelled, claimed on the wrong date, isn't disputed, and a payment had been made in a similar situation previously, I find it difficult to conclude the bank's discretion wasn't exercised legitimately or fairly. And it follows therefore that, I do not find the legitimate exercise of the bank's commercial discretion as happened here is equivalent to an error on its part.*

*This leads me to Mr S' argument that the direct debit payment should have been recalled by the bank. But in light of the circumstances described in the preceding paragraph, it's difficult to see the basis on which a recall could legitimately have been done.*

*More to the point, I also don't think the circumstances in which the payment took place meant remedies available under the direct debit guarantee were available. In particular, I'm aware the guarantee is aimed at certain situations - including for example where a bank or payee has made an error.*

*But as I've explained, it is not my finding that Lloyds made an error. I'm satisfied that it took a commercial decision as it was entitled to do and paid the direct debit which was a payment C was legitimately entitled to receive.*

#### Closure of W's account.

*Mr S has told us that W's account was closed by Lloyds illegally, and not least because they gave W no notice before doing so.*

*But Mr S appears to have mis-understood the true position. I note the bank's explanation that the account has been sent to the bank's recoveries department. And in the circumstances, it cannot function normally beyond the ability to accept credits. I do not therefore find that W's account has been closed as Mr S suggests. It follows I do not find the bank has acted illegally as described by Mr S.*

#### Poor service and Mr S' invoice

*Lloyds accepted there were incidence of poor service. I've noted their acknowledgement of the following:*

- *That certain phone calls between the bank and Mr S could have been much better handled. Including, that it should have cautioned in one of those calls that in light of the overdraft position on the account, future direct debit payments couldn't be guaranteed.*
- *The bank failed also to respond to certain emails it received from Mr S.*
- *It didn't explain fully that it couldn't undertake to communicate with him by e-mail in light of his frequent travels abroad. The bank failed to properly explain this was not a service the bank provided to customers.*

*I agree with Lloyds that these incidences point to poor service. And I further agree that W was inconvenienced by them and should be compensated.*

*So, next I've thought about whether the amount Lloyds paid W of £71.47 is fair in the circumstances of this case.*

*Mr S has explained that he spent many hours communicating with Lloyds in connection with this matter, whereas the bank's responses were limited. In large part the claim against Lloyds is for the time that Mr S spent doing so.*

#### *correspondence with the bank and Mr S' charges*

*Mr S has told us that in 2023 he sent 46 emails to Lloyds. Many were addressed to the bank's chief executive. But Mr S did broaden the correspondence to include others such as board members of Lloyds. No doubt this explains the volume of correspondence.*

*It would appear in all likelihood that the number of emails Mr S wrote to the bank's chief executive was the result of his frustrations. In particular, because contrary to his expectation, a senior member of the bank's executive team did not engage with his complaint. But I can see the bank's complaints managers wrote extensively to Mr S throughout 2023. And there were phone calls too, albeit, according to the bank's internal records, on occasions there was no response from Mr S.*

*It is not for me to tell the bank the personnel who should conduct correspondence with its customers. And whilst I can see there were circumstances where correspondence from Mr S could have been more promptly handled, I found no evidence Mr S' correspondence was ignored. And I do not consider the bank did anything wrong when engagements with Mr S came from the complaints team rather than members of the executive team.*

*I turn next to Mr S's invoice for £2075 for the time he spent - at a charge out rate of £50 - dealing with the bank. I note this was sent to Lloyds' chief executive on 28 July 2023.*

*But we wouldn't generally award compensation based on the director's hourly rate as Mr S would like to happen in this case. Instead, we consider the overall impact the error had on the complainant. I'll come to that in a moment but first I'd like briefly to address a couple of further matters.*

#### *The decline of the overdraft.*

*My understanding is that the formal application Mr S made for an overdraft on behalf of W was done online. In all likelihood he'd have been asked for information about W which in turn generated the decision. Unfortunately, the application was declined.*

*Although I appreciate Mr S' frustration that the decision was automated, meaning there was no physical person assessing the application, I don't think I can reasonably blame the bank for that. It is entitled to determine its own processes for such applications. And it's not obvious to me, and nor is it Mr S' case that the process employed by the bank, albeit automated weren't correctly followed.*

#### *Correspondence to the wrong address.*

*Lloyds' position is that Mr S had concerns that correspondence that was sent to W's address was not always received. So, as an extra precaution, it relied on his personal address in respect of which it received no notification this had changed.*

*Mr S hasn't denied either assertion. And in the circumstances I don't think the bank's action was unreasonable.*

*I appreciate Mr S has said the 8 August correspondence was opened by the occupant of his old address. But I don't think this is something the bank could reasonably have known or foreseen.*

### Compensation

*I come finally to whether the £71.47 compensation Lloyds paid to W was fair in the circumstances of this case.*

*To begin with I should say that I don't feel that Lloyds have acted unfairly towards W regarding most of the points I've discussed above. However, I do feel that the difficulties Mr S encountered when trying to contact Lloyds, coupled with the examples of the bank's acknowledged poor service were of greater inconvenience to W than the currently paid compensation of £40 for inconvenience and £31.41 for charges recognises. And therefore, I think the bank should do more.*

*I intend recommending that Lloyds Bank PLC pay a further £160 compensation for inconvenience to W"*

Lloyds accepted my provisional decision. But W did not.

On its behalf, Mr S has written in with further detailed submissions which expanded the arguments he had originally made in support of W's position. I'll summarise what I think are the most relevant in a moment. But first I'll make a couple of general points.

When giving my final decision, Mr S has invited me to comment on a specific set of issues to which he's drawn my attention. But as I've already respectfully reminded Mr S, ultimately it is for me to determine the issues I regard as critical to a fair outcome to W's complaint. So, because they don't satisfy that test, I won't, for example be commenting on what may have been said on social media platforms about the honesty of Lloyds' CEO. And neither will I be commenting on any observations in national newspapers regarding the bank's risk assessment model. Besides, my independent and impartial remit means I do not take instructions from either side in the dispute as to what my central focus should be when determining the particular case at hand.

I now come to Mr S's further representations in further support of W's case. In summary he says:

- Lloyds' blocked W's debit card in a senseless and futile attempt at control and this was done far earlier than the bank indicated. The card was blocked in March 2023 and not August 2023, the effect of which was that online access to monitor the account was not possible.
- W's account was closed by the bank without notice which is illegal. The bank sent W a letter to that effect dated 13 July 2023. So, the ombudsman's findings to the effect Mr S misunderstood the position is wrong.
- It is wrong that the bank honoured payment on behalf of W in the past. W has never had any borrowing with the bank – neither loans nor overdrafts. The bank should support its position with evidence.

- He made no representation to the bank about difficulty receiving correspondence at W's address. So, there was no reason for Lloyds to resort to using personal addresses for correspondence.
- Application for the overdraft was not done online as demonstrated by the bank's letter dated 7 August 2023. In it the bank acknowledges it had listened to a call between it and Mr S in which Mr S asked for an overdraft. The bank had acted illegally in any event because the recording of the call took place without prior warning.

The ombudsman suggestion that £160 for inconvenience will make everything right is risible.

### **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.

As noted above, Mr S has provided additional extensive submissions setting out further, W's position in connection with this complaint.

I confirm I have read those submissions in full, but I have not set out my findings in the same level of detail. I mean no discourtesy by that; it simply reflects the informal nature of the Financial Ombudsman Service.

Similarly, as an ombudsman my role is to identify and respond to the substance of a complaint against a respondent firm – in this case Lloyds. I am not required to respond to every single allegation raised, and I have not done so here.

I have already concluded that Lloyds delivered poor service to W in the limited extent I described in my provisional decision. And for the reasons I explained, I was satisfied they should pay increased compensation.

Having noted Mr S's comment that the compensation I recommended is risible, what I have now to determine based on the further submissions from Mr S and Lloyds is whether that poor service was more extensive than I initially concluded. And if so, that the compensation I initially recommended should correspondingly be increased. But having weighed the arguments put to me as well as all the evidence submitted, I do not think so. I'll now explain why in more detail.

#### **alleged Illegal closure of W's account**

It is Mr S's position that Lloyds closed W's account illegally because no notice was given before the action took place. And he supports his position by relying on the letter the bank sent to W dated 13 July 2023. I've read the letter. In specific reference to W it says:

“[W's account] has been closed and the debt balance transferred to our Recoveries Team”

I therefore understand why Mr S has interpreted the position in the way he has. And furthermore, feels that reference in my provisional decision that he appears to have misunderstood the true position is therefore wrong.

I did set out my reasons for coming to the conclusion that I did which was that W's account had been sent to the bank's recoveries department – meaning it could not therefore function normally beyond the ability to accept credits.

However, to avoid any doubt, I put this point regarding the account closure to Lloyds. Their response was as follows:

*“The account is closed to transactions as it has been transferred to our Recoveries Team who manage this. It remains ‘open’ .... so that any payment plans can be set up and credits paid to any outstanding debt.”*

Lloyds further pointed out that W was warned of this likely action in the bank's formal demand letter dated 23 May 2023. I agree. I have seen a copy of the letter which demanded W repay the overdraft which had become an unarranged one. The letter said:

***“If we don't receive full payment***

*We need to let you know that if we don't hear from you, our next steps could include:*

- *Stopping your banking services and closing your account(s), which would mean your standing orders and Direct Debits, cheque(s), card(s) and any other payment facilities are cancelled. This means important payments could be missed, for example bills or payments to your suppliers.*
- *Passing your account to our Recoveries team or another company, for example a Debt Collection Agency, to recover the amount owed.*
- *Sharing information with Credit Reference Agencies which could affect your credit score and make it more difficult for you to borrow in future.*
- *Taking legal action to recover any money owed.”*

I appreciate the bank's 13 July letter could have been more clearly worded. But I remain satisfied that W's account hasn't been closed. Rather it has been restricted in the manner explained above. Furthermore, in their letter to W dated 24 July 2023, the bank reiterated that point – including that the restriction of W's account facilities extended to the use of W's debit card. This brings me directly to that point.

***the suspension of W's debit card***

I appreciate Mr S' strength of feeling that in the process of trying to recover the unauthorised overdraft amounts from W, Lloyds also suspended the operation of the card.

But these are matters for the bank's commercial discretion which Lloyds were entitled to exercise. I have no power to interfere with the exercise of that discretion unless I am satisfied it wasn't done legitimately. But given the position on W's account and the bank's demand letter setting out its proposed action in light of it, I don't think I could fairly come to that conclusion.

***historic unarranged overdraft on the account***

Mr S doesn't believe this was ever the case. Whereas it is Lloyds' position W's account historically entered an unauthorised position after the bank honoured a demand for payment.

I am satisfied by the bank's evidence to that effect. And I can now share a bank statement belonging to W which showed on 10 October 2022 a direct debit demand of £50.40 was paid which in turn resulted in an overdrawn balance of £30.83.

On the same day a payment of £40 was made to the account which brought it back into credit balance of £9.17

But more to the point, however, regardless of whether historically the bank had extended an unauthorised overdraft to W, at the heart of this case is whether the bank did anything wrong when it took the decision to pay the £748.92 demand from C on 16 December 2022. I'm satisfied that under clause 11.2 noted above it could. I am also satisfied that when Mr S first learned of this, he was not displeased by Lloyds' action. And in early telephone conversations with the bank, Mr S applauded Lloyds' action.

#### Sending letters to Mr S personal address

According to Mr S, letters dated 8 August 2023, asking to get in touch with the bank within 14 days were sent to an old personal address and not to W's address. And he's explained that one of the letters was opened by the person living at the address.

I understand Mr S' concern about what happened. Especially, as he has explained, the person living at the address and who opened the letter is someone with whom he's connected on LinkedIn.

I've thought about whether the bank acted wrongly when it did so. And I put again to the bank my initial understanding as to its reasons which was to the effect Mr S had experienced problems receiving letters at W's address.

Lloyds' response (anonymised where appropriate) is as follows:

*"I can see that [ Mr and Mrs S] are both directors to the business and have separate personal addresses held. [Mrs S] still holds the address [ the address in question] When our recoveries team are trying to make contact with customers responsible for debt, they will use all addresses held by the bank, which would explain why we have written to both directors, [Mr and Mrs S] Directors at this address".*

This leads me to conclude Mr S was right the 8 August letters weren't sent to the old personal address on the strength of representations made to the bank. In particular, about difficulties receiving letters at W's address. In other words, I accept his evidence that he did no such thing.

I note the bank's reasons for doing so. But in the circumstances of this case, I've seen no evidence Lloyds were having problems contacting their customer W. And in any case it was W, the limited company who was responsible for the debt in question rather than Mr and Mrs S personally.

I note Mr S' account of the consequence of sending the letters to a former address. In other words, that one of the letters was opened by the person living at the address. That is unfortunate. But I remain of the view Lloyds couldn't reasonably have foreseen that occurrence. In particular because its records continue to show this had remained the address of Mrs S – a director of W.

I turn finally to Mr S' overdraft application on behalf of W.

#### W's overdraft application

The bank's internal records refer to conversations between an employee and Mr S on 2 February 2023 and an earlier conversation on 30 January 2023.

I have listened to both conversations. In the first of those – 30 January 2023, Mr S did speak to an employee of the bank and explained he'd like to apply for a £2500 overdraft to assist with cash flow. But having taken relevant details which were then passed through the bank's processes, the employee reported back to Mr S the overdraft wasn't approved, reasons for which he also explained - including W's account being in excess. I therefore accept Mr S' evidence that an attempt was indeed made for an overdraft by means of a direct phone call with the bank on 30 January 2023.

But I am also persuaded based on his own account, that Mr S did apply online earlier for an overdraft as well. In his 2 February 2023 conversation he told the bank he'd applied online about three weeks ago. He explained the application had been made in light of an imminent invoice payment and prevailing cash flow problems.

It is unfortunate Mr S was unsuccessful on both occasions and I sympathise with his frustration that the process was automated in the sense that he felt it was the bank's computer system that had been making the decision.

But these are commercial decisions for the bank to make and I cannot interfere with Lloyds' decision whether or not to lend or indeed the process they employ for making that decision.

### **Putting things right**

For the reasons explained above I'm satisfied Lloyds should pay further compensation to W.

### **My final decision**

My final decision is the same as my provisional decision in the sense that I require Lloyds Bank PLC to pay W £160 compensation for inconvenience caused to W

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

Asher Gordon  
**Ombudsman**