

complaint

Mr C complains that Lloyds Bank Plc offset a refund against a debt that he says he's already paid off rather than paying the refund to him directly. Mr C is also unhappy that Lloyds Bank Plc haven't explained to him why they believe they are legally entitled to keep his refund.

background

Mr C had a credit card with Lloyds Bank. He got into financial difficulties and entered into an IVA with his creditors, one of whom was Lloyds Bank. Mr C is autistic and in his own words, he likes to understand things in detail. Mr C also lives with a number of mental health conditions.

After Mr C's IVA was settled, Lloyds Bank discovered that they hadn't been sending some of their customers a notice of arrears every month an account was in arrears. So, they reviewed those customers' accounts as part of a rectification project. As a result of the review Lloyds Bank refunded some of their customers interest and charges that had been added over the period when the notices hadn't been sent out. Lloyds Bank decided that Mr C's credit card account was eligible for a refund of around £500. Lloyds Bank paid this money into Mr C's credit card account to offset against the debt it said was still outstanding saying that the amount that was still outstanding was more than the amount refunded.

Mr C contacted Lloyds Bank saying he wanted them to pay the money directly to him. Lloyds Bank said that under the terms and conditions (B14.4) they were entitled to offset the refund against the debt that they say was still outstanding. Mr C disagreed. He complained and asked Lloyds Bank to explain how they were legally entitled to keep the refund. Lloyds Bank didn't uphold Mr C's complaint and again referred to the account terms and conditions.

Mr C didn't accept Lloyds Bank's findings, so he brought a complaint to our service. Mr C was unhappy that Lloyds Bank had kept the refund. And felt that Lloyds Bank hadn't explained why they were legally entitled to keep it. Our investigator didn't uphold his complaint. She agreed with Lloyds Bank that there was still an outstanding debt and the refund applied to Mr C's account had been used to reduce this. She acknowledged Mr C's comments. He said that the debt had been written off and his IVA satisfied, so, he should be paid the money directly. However, the investigator said that it was reasonable that the money had been offset against the debt.

Mr C said that as his IVA was settled, there is no debt, and believes he should be paid the refund in full or at least in part. As Mr C didn't accept the investigator's findings the case was passed to me to decide.

my provisional decision

In my provisional decision, I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've decided that I'm going to partially uphold this complaint. I'll explain why.

In my decision I've considered the following points, as I consider these are the key issues raised by Mr C:

- Did Mr C's debt still exist after the IVA was completed?
- Was Lloyds Bank entitled to offset the refund against the debt, and was this fair?
- Did Lloyds Bank do enough to explain the position to Mr C?

I know that Mr C is really anxious to get his point across and is keen that I listen to the calls. I've done that and taken what he's said on board.

I'm mindful that Mr C would like me to decide if Lloyds Bank are legally entitled to offset the refund against the debt. It's worth noting at this point that I will of course take the law into account, but ultimately, I must decide what's fair and reasonable in all the circumstances.

did Mr C's debt still exist after the IVA was completed?

An IVA allows a person to come to a legally binding agreement with those they owe money to. It's set up by an insolvency practitioner. A repayment plan needs to be agreed between the parties. Mr C has completed his obligations under the IVA. The situation in England and Wales is as follows; once Mr C's IVA was settled, his liability for the debt ceased. Therefore, Mr C's creditors could no longer pursue him for the debt. However, the debt remained, that's because the law doesn't require Lloyds Bank to write off the debt. So, I agree with Lloyds Bank that the debt still existed. The question is whether or not it was fair of Lloyds Bank to set the refund off against that debt.

was Lloyds Bank entitled to offset the refund against the debt, and was this fair?

When the IVA was being set up all the creditors had to submit their claims to the IVA supervisor. Lloyds Bank submitted what they believed their claim to be. This was the amount Mr C owed them at that time. At this point Lloyds Bank were not and could not have been aware that they had overstated their claim by around £500. If Lloyds Bank had been aware that the account was due a refund of interest and charges, then their claim would have been around £500 less, as would the total amount owed to Mr C's creditors.

Given what I've just said, namely that Lloyds Bank unknowingly overstated its claim, I've considered if that has resulted in a loss to Mr C. I don't think it has. That's because the amount Mr C had to pay in settlement is based on the money he had available, and not the amount he owed to his creditors. So, Mr C would have been no worse off had Lloyds Bank's claim been for around £500 less.

The same isn't, however, true of the remaining creditors. They would have been deprived of a proportion of the settlement. Lloyds Bank, as a result of overstating their claim, received a greater proportion of the settlement paid by Mr C than they should have done. But Mr C didn't suffer a loss as a result – as I've already mentioned he would still be paying the same settlement. The loss has been incurred by the other creditors. However, I don't think it would be right to tell Lloyds Bank to pay this refund to the other creditors and the IVA supervisor doesn't wish to re-open the IVA to distribute the refund amongst the creditors either. Neither are good reasons for telling Lloyds Bank to pay the refund to Mr C.

Mr C said that if Lloyds Bank had refunded the interest and charges before the IVA was in place, he'd have received and spent the money. I've considered this, and don't agree with Mr C. If Lloyds Bank had refunded Mr C before the IVA, Lloyds Bank would still have offset the refund against his outstanding balance as per the terms and conditions of the account.

Therefore, I'm satisfied that it is fair and reasonable for Lloyds Bank to offset the refund against the debt.

did Lloyds Bank do enough to explain the position to Mr C?

Mr C said that he should receive compensation for distress and inconvenience. I must consider if Lloyds Bank have done or failed to do anything that caused Mr C distress and inconvenience. On several occasions Mr C contacted Lloyds Bank and asked them to explain to him, how they are legally entitled to offset the refund against the debt. I think Lloyds Bank could have done better here, as I explained Mr C is autistic and needs to understand things in detail. I think that if Lloyds Bank had explained to Mr C why they were legally entitled to offset the money against the debt then this would have spared Mr C distress and inconvenience. And I can totally understand how stressful it must have been for Mr C. I'm satisfied – based on the impact it had on Mr C – that an amount of £50 is fair and reasonable.

the response to my provisional decision

Lloyds Bank said that they still believed that they reached the correct outcome on the case. And that they have spoken to Mr C over 30 times and tried to explain to him why the funds were correctly offset against his outstanding debt. They said that Mr C choose not to accept the explanation. And that they didn't feel they had failed in their service to Mr C when explaining their position.

Mr C didn't accept my provisional decision. He said:

- If Lloyds Bank had noticed the error before the IVA, and whilst his account was active, then Lloyds Bank would have paid the money to him. This would then have delayed the IVA and also reduced the IVA settlement by £500.
- We are allowing Lloyds Bank to benefit from their own mistake.
- That all his debt should have been written off after the completion of the IVA.
- Lloyds Bank took possession of the £500 and this hasn't been managed by the IVA supervisor, therefore this could still count as pursuance of the debt.
- That he didn't agree the IVA settlement was based on what he was able to pay back, rather a specialist told Mr C that the IVA settlement amount was based on money paid in so far, and money to be paid. And If he had known about the £500 before the IVA was set up, then the final settlement offer would have been closer to £2,500.
- £50 wasn't enough for his material distress and inconvenience.

my findings

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

In my provisional decision I have provided what I believe to be a fair and reasonable outcome for both parties. I have also considered Mr C's desire for a legal explanation of the matter, and I believe I have addressed this.

Mr C remains of the opinion that if Lloyds Bank had noticed the error whilst the account was active then they would have refunded the money to him. I don't agree, as the account conditions permit Lloyds Bank to offset any refunds against the outstanding debt. Therefore, if Lloyds Bank had noticed the error whilst the account was active, I'm satisfied that they would have rightfully offset the refund against the outstanding debt. Mr C said that if Lloyds Bank had given him the £500 then it would have delayed the IVA and the IVA settlement would have been £500 less. However, Mr C also said that if Lloyds Bank paid him the £500 he would have spent it. Therefore, I can't agree that this would have delayed the IVA or reduced the settlement amount.

Mr C said that we are allowing Lloyds Bank to benefit from their mistake. Mr C has raised a good point here. However, it is for the IVA supervisor to decide if they want to redistribute the refund amongst the other creditors or not. The IVA supervisor has stated that they don't wish to reopen the IVA to do this. Therefore, Lloyds Bank are entitled to offset the funds against the outstanding debt.

Mr C said that the IVA was sold to him on the basis of all residual debt being written off after IVA completion. I can't comment on the advice that was given to Mr C. However, as I said in my provisional decision, in England and Wales the situation is that although Mr C's creditors cannot pursue him for the debt, the debt still exists.

Mr C has suggested that when the IVA supervisor decided not to revisit the IVA and distribute the £500 amongst Mr C's creditors, Lloyds Bank have effectively pursued him for the money when they made the decision to offset the £500 against the outstanding debt. I can see why Mr C may think this, but I don't agree. The IVA supervisor is not compelled to revisit the IVA and Lloyds Bank are entitled under the terms and conditions of the account to offset the £500 against the remaining debt. So, I'm satisfied that Lloyds Bank were acting within the terms and conditions of the account – which Mr C had agreed to – and that this doesn't amount to pursuance. I'm also satisfied that in offsetting the £500 against the outstanding debt Lloyds Bank's actions were fair and reasonable.

Mr C said that he was told by a specialist that the IVA settlement wasn't based on what he could pay back. And that the settlement amount was based on money paid in so far and money still to be paid. Mr C said that had he known about the £500 before the IVA was set up, then the settlement amount would have been £500 less.

As I mentioned in my Provisional Decision, Lloyds Bank did unknowingly overstate their claim in the IVA by £500. But that wouldn't have caused Mr C to pay any less than the amount he paid to settle the IVA, because that would be based on the money he had available, not the amount owed. So, Mr C is no worse off than he would have been if Lloyds Bank hadn't overstated their claim. He said that his friend loaned him some money to settle the IVA early, and that this allowed Mr C to pay back his friend over a period agreeable to both himself and his friend. Mr C said that his friend could have lent him more or less than the settlement amount. I don't think this is relevant to this matter, as this was a private agreement that Mr C entered into with his friend after the IVA had been set up and had no bearing on the initial IVA settlement figure.

Mr C doesn't feel that £50 is sufficient to compensate him for his material distress and inconvenience and Lloyds Bank have said that they still feel that they reached the correct outcome on this case. Lloyds Bank said that they spoke to Mr C over 30 times regarding this matter. However, Lloyds Bank acknowledge that many of these calls were after Mr C had already referred the matter to our service. Lloyds Bank said that a considerable number of colleagues have explained to Mr C, why the funds were correctly offset against his outstanding debt, but he chose not to accept the explanations provided. Lloyds Bank said that Mr C was adamant that he wanted the funds returned and would not accept any other outcome.

I have considered the comments made by both parties. I fully accept that Mr C didn't get the clarification he would have liked from Lloyds Bank early on, and that Lloyds bank could have done better to provide Mr C with a legal explanation. I have also considered Mr C's autism and his need to understand what is happening in great detail, which Lloyds bank were aware of. I think that Lloyds Bank missed the opportunity to explain the legal position to Mr C early on. I think that if Lloyds Bank had done so then Mr C may have accepted this. However, once Mr C had approached our service, he had become entrenched in this argument. From that point onwards, no matter what Lloyds Bank said to Mr C, I don't think that he was willing to accept anything other than payment of the £500 directly to him.

I remain of the opinion that Lloyds Bank could have done more to explain the legal position to Mr C before he brought the case to our service. I'm very much aware of how stressful Mr C has found the process and that if Lloyds Bank had done more early on, it could have prevented much of this. Therefore, I remain of the opinion that Lloyds Bank should pay Mr C £50 for his material distress and inconvenience.

my final decision

For the reasons I've explained above, I partially uphold Mr C complaint. I require Lloyds Bank Plc to pay Mr C £50 for his material distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 March 2020

Anthony Coyne
ombudsman