

## **complaint**

Mr M says Lloyds Bank PLC ("Lloyds") mis-sold him a fee-paying Silver account in June 2009. Lloyds agreed it was mis-sold and initially refunded Mr M the account fees he was charged to have the account and paid him 8% simple interest on those fees.

Mr M says that Lloyds' offer didn't fully reflect all of the charges he incurred, as well as the distress and inconvenience caused by Lloyds incorrectly selling him the account. Mr M says he would like £10,000 compensation.

## **background**

Mr M was sold a fee-paying Silver packaged account in June 2009 and held it until November 2009 when it was downgraded to a fee-free account. The account was later closed in June 2011.

In response to Mr M's complaint Lloyds paid Mr M a total of £54.32, comprising of £33.84 in account fees and £20.48 in interest (8% simple interest, less tax) on those fees.

Following this offer, Lloyds made a revised offer to pay Mr M a total of £733.42 in additional charges Mr M incurred as a direct result of holding the PBA (i.e. overdraft charges) and £458.95 in compensatory interest on those charges (again calculated at 8% simple, less tax).

Our adjudicator considered the revised offer made by Lloyds and they felt that the offer was fair. This was because they were satisfied that the resultant overdrawn balance on the account, even after it had been downgraded, wasn't made up entirely of overdraft charges, as Mr M had made withdrawals from the account. They said that as Mr M was crediting money into the account to bring it back into a credit balance, they concluded that he was monitoring the account and so could've taken steps to avoid receiving the county court judgement.

Mr M disagreed and said that he should get compensation because the overdrawn balance on the account was eventually sold to a third-party debt collector and he eventually received a County Court Judgement registered against him for the outstanding balance. So he asked for an ombudsman to review whether the offer made by Lloyds was reasonable.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've explained our approach to complaints about mis-sold packaged bank accounts on our website and I've used this to help me decide this complaint.

As Lloyds has already accepted it mis-sold the Silver account, the remaining matter for me to decide in this case is whether Lloyds's offer is reasonable in the circumstances.

I think it will help to explain from the outset that where a business has done something wrong or acted unfairly, any redress our service recommends is designed to put the consumer back into the position they would've been in had the wrongdoing not happened.

So in this case, the aim of any redress is to put Mr M back in the position he likely would've been in had the Silver account not been sold to him.

It goes without saying that had Mr M not been sold the Silver account, he would not have been charged the monthly Silver account fees – which Lloyds has already refunded back. And as Mr M didn't have the benefit of this money Lloyds has also paid Mr M 8% simple interest on those fees, less deductible tax.

However, since our involvement Lloyds has now made a further offer. In summary it has agreed to refund all the overdraft charges that Mr M incurred as a result of the packaged account fees. And it has paid him compensatory interest on those charges, as he's not had the benefit of that money. I will outline the figures that Lloyds has provided below.

Having considered Lloyds' offer, I think it is reasonable. I will explain why.

Had Mr M not been sold the Silver account, his account would not have been as overdrawn as it ended up being. So I think that refunding all of the overdraft charges that Mr M incurred as a result of having the packaged account is reasonable, because his overdraft would have been smaller, without those account fees. And again, as he has not had the benefit of that money, I think it's reasonable that Lloyds pay compensatory interest on that amount (at 8% simple, less tax). So on the whole, I think the amounts it offered Mr M were reasonable.

However, in addition to this offer, Mr M has also asked that he receive £10,000 compensation. Mr M says he wants this because he says he was forced into taking out a loan to pay the overdraft off and eventually received a county court judgment (CCJ) against him for the debt.

In relation to Mr M's comments about a loan being provided to pay the debt off, I can't see that a loan was granted to Mr M by Lloyds for this purpose. I can see that £686.73 was credited into the account on 28 June 2011. But this payment was not a loan, it was essentially an accounting process to bring the account to a zero balance - as bank accounts can only be closed once brought to a zero or credit balance. The outstanding debt i.e. the £686.73 that had been credited to his account, was then passed to Lloyds' collections department.

Turning to the CCJ that Mr M has mentioned, Lloyds says that it did not apply for a CCJ against Mr M. It does say however, that it sold the debt on to a third party in 2014 – but it unfortunately has no information about what happened to the debt after 2014. Selling a debt on – because it is not being repaid – is a commercial decision that lenders can make. And given that the debt had initially been passed to the collections department in 2011, I don't think Lloyds' decision to sell the debt on in 2014 was unreasonable in the circumstances, particularly as I can't see that the debt was being repaid.

Nevertheless, as I have said above, had the packaged account not been sold to Mr M, I don't think the overdrawn balance would've been as big as it was – as reflected by the amount of overdraft charges that Lloyds is offering to pay Mr M. So I think it's possible that Mr M may not have ended up in the position of having a debt sold on to a third party by Lloyds, had the packaged account not been sold to him.

But, in the investigation of this complaint the adjudicator asked Mr M if he could provide evidence of the CCJ, so that we could see what happened to the debt after it was sold on. But unfortunately Mr M has not provided anything to support his claim that a CCJ had been

recorded against him for this debt. In fact, when the adjudicator asked Mr M if he had had any evidence, he said we should take his word for it – even though, if a CCJ was recorded against him, it must've happened at some point since 2014 and so there should still be evidence of this.

Therefore, as neither party has provided evidence to show what happened to the debt after it had been sold on by Lloyds, I think that what Lloyds has already agreed to do to put matters right is reasonable in the circumstances.

### **Putting things right**

As outlined above, Lloyds has agreed to pay Mr M the following to put matters right.

Mr M should note that, if he accepts my decision, the amount calculated for compensatory interest i.e. 8% simple interest, should be slightly more than what is stated below, as this should be calculated up to the date of settlement.

Refund of Silver account fees: £32.84  
Plus other overdraft charges incurred as a result of holding the Silver account: £734.42  
Less fees and charges already refunded: £33.84

Compensatory interest (at 8% simple per annum) £599.29  
Less compensatory interest already refunded £25.60  
Less basic rate of tax £114.74

Total refund £1,192.37

### **my final decision**

Because of the reasons given above, I uphold this complaint and require Lloyds Bank PLC to put matters right in line with its offer, as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 October 2020.

Thomas White  
**ombudsman**