

complaint

Mrs K says Lloyds Bank PLC set up a joint account for her and her husband incorrectly and as a result her husband was able to remove funds without her consent. She'd now like Lloyds to refund the money withdrawn.

background

Mrs K and her husband opened an account with Lloyds in May 2016. She says their previous account at another bank had required them both to sign to make a withdrawal and this was what they wanted with this account too. Mrs K says, during the account opening meeting at Lloyds, she specifically asked whether it was "2 to sign" three times and was assured it was. She says her husband had previously had a gambling addiction so this restriction was vital.

But in 2017, Mr K left the family home and shortly after, Mrs K found her husband had made two withdrawals totalling more than £80,000 from the account. And he'd done so without her knowing. She said this shouldn't have been possible and she felt Lloyds had made a mistake for which she should be compensated.

But Lloyds said the mandate signed by Mr and Mrs K on opening this account had made it clear it could be operated on instructions from either party, not both. It hadn't been aware of Mr K's gambling problems and there wasn't any record on file to ask for both Mr and Mrs K to sign. But even if it had, it didn't offer an account that provided this option. It didn't agree it had made a mistake.

Our adjudicator however felt Mrs K had been very clear about the type of account that was required, and why. She felt it was more likely than not Mrs K had asked for a joint signatory facility on the account and been assured this was the case. She felt these assurances would have overridden any other information such as the mandate. And she thought Lloyds' mistake had caused Mrs K a lot of stress as well as making it more difficult for her and Mr K to resolve their disagreement amicably. She recommended Lloyds pay Mrs K £500.

But she said the money withdrawn had been paid to one of the account holders so she wouldn't be asking Lloyds to refund it. And she thought it was reasonable for Lloyds to freeze the account once it was told the withdrawals were disputed and while Mr and Mrs K agreed how the funds could be used.

But Lloyds said it hadn't been told about Mr K's gambling addiction until after he'd made the withdrawals. And it questioned whether the withdrawals had been made before or after Mr and Mrs K had separated. Lloyds said there wasn't information to show Mr and Mrs K had been told this account required both to sign. And it pointed out the member of staff who'd opened this account was very experienced. It felt Mr and Mrs K had been properly advised and noted the account was in line with the terms and conditions and the mandate signed by Mr and Mrs K. It acknowledged how distressing this had been for Mrs K but it didn't agree it had done anything wrong or needed to pay compensation. It asked for the matter to be referred to an ombudsman.

Mrs K also asked for an ombudsman decision. She said Lloyds had treated her badly and she wanted a written explanation.

my provisional findings

After considering all the evidence I issued a provisional decision on to Mrs K and Lloyds Bank PLC on 17 October 2017. In summary I said Mrs K had made it clear why she wanted an account that required both her and her husband to sign. I'd seen they had this restriction on their savings account at their previous bank and, on balance, I thought it probable they'd also wanted it on their account at Lloyds.

It was clear however this restriction hadn't been put in place but the question was why and whether it was Lloyds' mistake that had caused this. As I explained Lloyds and Mrs K had a very different view on what had been said when the account was opened so I'd reviewed all the information that was available to decide what was more likely than not to have happened.

Mrs K was adamant that during this meeting she'd specifically asked whether both her and her husband would have to sign. She said she'd asked this three times and had been assured this was the case

But while the note of the account opening meeting showed Mrs and Mrs K had asked for easy access to their funds, it didn't record any discussion about requiring both to sign. Further the terms and conditions for this account stated "*Joint account holders can operate their accounts individually....*" This had been signed by Mr and Mrs K as well as the mandate that noted "*either party to sign*". And Lloyds had said it didn't offer an account that required both to sign so this could never have been an option.

Taking this into account, it seemed improbable the member of staff wouldn't have known this or that they'd have assured Mr and Mrs K this was the case when Lloyds simply didn't offer that type of account. And I'd seen the paperwork signed by Mr and Mrs K at the time and could see it was clear either Mr or Mrs K could give instructions on this account. While I accepted what had happened had caused Mrs K considerable for the reasons given, I couldn't be satisfied Lloyds had made a mistake in setting up this account or that it now needed to do anything more.

Lloyds has accepted my provisional decision.

Mrs K had rejected it and said she'd been told the account was a "Joint signature to withdraw " and she wouldn't have moved her savings to it otherwise. She said the first she'd known about the withdrawal was when Lloyds wrote to her some weeks later telling her about Mr K's change of address. And she said she'd had the opportunity to put a block on the account when her husband left but hadn't done so as she believed it was secure.

She felt it was wrong that Lloyds had allowed such a large withdrawal without contacting her, the joint account holder. And she was unhappy Lloyds hadn't told hr straight away about Mr K's change of address. She felt it had acted very poorly.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including the further comments from both Mrs K and Lloyds.

It's clear from Mrs K's submissions how upset she is by what's happened. I have every sympathy for the situation she now finds herself and I don't underestimate the impact these events have had on her. But in making my decision I have to consider the information that's available. And where there's no information available or where the information available is disputed then I have to make my decision on the balance of probabilities.

I set out my reasons in my provisional decision and I've seen no new evidence to cause me to change my view.

Mrs K has been very open about why she wanted an account that required both her and Mr K to sign. And I accept this was the type of restriction that had been in place on their previous account with another bank.

But I also have to have regard to the terms and conditions for this account that says "all account holders can operate their accounts individually". And in addition Mr and Mrs K had signed a mandate for this account which noted "either party to sign". It may be that this wasn't what Mrs K was expecting but the forms are clear and I can't reasonably say Mr and Mrs K weren't provided with the necessary information.

I've seen Mrs K has said she relied on the verbal assurances given at this meeting. But while the notes of the discussion offer some insight into the type of the account that was wanted - an easy access savings account for up to five years - there's nothing to show that any particular restriction on access was required. That doesn't mean of course that there wasn't a discussion but if it was significant then I'd expect it to have been recorded.

It's also relevant that Lloyds simply don't offer a "two to sign" account so even if this was what was wanted, it wouldn't have been available. And on that basis it seems improbable the member of staff wouldn't have known this or would have assured Mrs K this was the case.

I've given very careful consideration to Mrs K's comments but for the reasons given, I can't be certain Lloyds misrepresented the terms and conditions of this account. And following on from that I can't reasonably ask it to pay compensation.

Mrs K has asked why Lloyds didn't tell her when her husband made the two withdrawals. She feels this can't be right. But the account's terms and conditions allow either party to make withdrawals, without limit on the amount, and there's no obligation on Lloyds to keep the other account holder informed.

And having looked at the notes of the account, I can see Mr K made his first withdrawal on 20 July. At that point he hadn't updated his address details, although he did so immediately after. But even if he had, Lloyds wasn't aware at that point of Mr and Mrs K's personal situation or that there might be a dispute about the funds. If it had then it could have frozen the account but until then I don't consider there was anything it could reasonably have done.

I realise this isn't the decision Mrs K was hoping for. But looking at the information available I can't reasonably say Lloyds has made a mistake or that it now needs to do anything more.

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 K to accept or reject my decision before 14 December 2017.

Cerys Jones
ombudsman