

complaint

Mr G complains that Lloyds Bank plc illegally cashed his life assurance policy to settle his outstanding debt.

background

Mr G had a sole trader business account with Lloyds Bank. He and his wife provided security to Lloyds Bank in relation to his borrowing on that account in the form of two life policies – one on his life and the other on her life. Lloyds Bank says that the account was closed in November 2008 with a debit balance of £32,905.69 which was passed to its recoveries team. It wrote to Mr G in June 2009 to give him notice of its intention to surrender his policy to repay the liability. It received a total of £41,564.26 which it used to clear the debt of £35,232.26 (which was £32,905.69 plus interest of £2,326.57) and in December 2009 it sent a cheque for the overpayment of £6,332 to Mr G and his wife. They contacted Lloyds Bank in 2010 about the policies being cashed and they complained to Lloyds Bank in 2016 that the business' assets and liabilities had been transferred to a limited company by company resolution in 1996 and that Lloyds Bank had cashed the policies illegally. They weren't satisfied with its response so complained to this service. Mr G's wife's complaint about her policy is being dealt with separately – and in this decision I'm only dealing with Mr G's complaint about his life policy being cashed illegally.

The investigator didn't recommend that this complaint should be upheld. He thought that Lloyds Bank was within its rights to cash-in the policy and use the proceeds to clear the debt. He said that the sole trader account's liabilities weren't transferred to the limited company and that Lloyds Bank had said that it wasn't bound by the company resolution and couldn't consider the two separate legal entities as the same. So he said that he couldn't recommend that Lloyds Bank do any more.

Mr G's wife, on his behalf, has asked for this complaint to be considered by an ombudsman. She has responded to the investigator's recommendation in detail and has provided a considerable amount of evidence to show their business relationship with Lloyds Bank and the actions taken when the business status changed from a sole trader to a limited liability company.

my findings

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

I sympathise with Mr G for the financial difficulties and health issues that he's suffered. But these events happened many years ago – the resolution was passed in 1996 – more than twenty years ago – and the account was closed in 2008 and his policy was cashed in 2009 – more than nine years ago. And because of that only limited documentation is available from that time to show what happened.

But from the evidence that is available – including the detailed evidence that's recently been provided, I consider it to be clear that Mr G had provided a life assurance policy to Lloyds Bank as security for its lending to his sole trader business. He says that the assets and liabilities of that business were transferred to a limited company in 1996 and he's provided a company resolution and other evidence to show that that's what happened. And I'm satisfied that Mr G's sole trader business was transferred to a company in 1996.

But there's no evidence to show that Mr G's sole trader account with Lloyds Bank was changed – and Lloyds Bank continued to operate Mr G's sole trader account. And it continued to run in deficit. I consider that it would only have continued with that arrangement for so long as the debt was secured by the life assurance policies (or other suitable security). And I've seen no evidence to show that it agreed to Mr G's life assurance policy being transferred to the limited company or that it released Mr G from the security that he'd provided. Nor do I consider it to be likely that it would've done so.

Mr G's sole trader account was closed in November 2008 with a debit balance of £32,905.69. The debt was passed to Lloyds Bank's recoveries team which wrote to Mr G in June 2009 to give him notice of its intention to surrender his policy to repay the liability. It received a total of £41,564.26 which it used to clear the debt of £35,232.26 and in December 2009 it sent a cheque for the overpayment of £6,332 to Mr G and his wife. I'm not persuaded that there's any evidence to show that it acted unfairly or unreasonably in doing so.

So I find that it wouldn't be fair or reasonable for me to require Lloyds Bank to refund the value of the surrendered policy to Mr G – or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 November 2018.

Jarrold Hastings
ombudsman