complaint

Mr K complains that Lloyds Bank plc has incorrectly used a "right of set-off" clause to take money from his personal account to repay a debt on a credit card. Mr K wants the bank to return the money – just under £3,000 – to his current account.

background

Mr K has a credit card and a current account with the bank. He opened the credit card account in 1996. Mr K asked the bank to provide a copy of his original signed agreement for the card. When it did not, he says he stopped making payments on the card as he believed the debt was unenforceable.

Between early 2010 and late 2012 the bank used its right of set-off clause in the credit card terms and agreements to transfer nearly £3,000 from Mr K's current account towards his debt. It did this over many months – each time clearing the arrears on the account or transferring the minimum monthly payment. The bank has now defaulted the account and passed Mr K's credit card account to an external collections agency.

The adjudicator did not recommend that this complaint should be upheld. She concluded that the bank had acted in line with the terms and conditions of the account when it transferred money from one account to meet a debt due on another. She also noted that this service could not decide whether an agreement is legally enforceable, and that Mr K does not seem to have been caused financial hardship as a result of the transfers.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr K has held his credit card account for many years. When he asked for a copy of his signed agreement the bank provided him with a reconstructed agreement, rather than the original. A bank normally keep records on customers for six years, so it not unreasonable for Lloyds to not have the original of Mr K's agreement, as he had signed it about 17 years ago.

The adjudicator has explained, and I agree, that this service cannot determine whether a debt is legally enforceable. That is for a court to decide. But it is true that without the agreement or an acceptable reconstituted version, a bank may not be able to enforce the debt in a court of law. That does not mean that Mr K no longer owes the bank money, and the bank is still entitled to ask him to repay this and use normal collections methods to recover the debt.

I can see that Mr K has operated the account for many years and initially made regular payments towards the debt. The bank's records show that Mr K told the bank he was having financial problems in 2007 and it agreed to freeze interest for a period and accept reduced payments. That was a reasonable response. Mr K made the reduced payments for some time, and this sequence of events satisfies me that Mr K had accepted responsibility for his debt.

In 2010 the bank began to charge interest again. From the statements provided this seems to be because Mr K stopped making the reduced payments. That would coincide with Mr K

saying he first asked the bank to send him his original agreement, although the bank says it has no record of Mr K requesting this until 2012.

The bank also started, in 2010, to transfer the minimum amount due each month from Mr K's current account to the credit card account. It did this using a right of set off – and its records show that it wrote to Mr K on each occasion. This continued until late 2012 when a default notice was issued, and the account was passed to a collections agent in mid 2013.

Mr K seems to have not complained about the bank's actions until 2013 as the first bank record about this is for June that year. He says that the bank's actions are unlawful. But there exists, in general law, a right of set off that banks can rely upon even if these are not specifically covered in terms and conditions. So, although I accept that Mr K may not have had the terms and conditions, the bank was still entitled to use the general right of set off. That right – which allows the bank to use a credit in one account to pay a debt in another requires that:

- both accounts are being held by the same customer; *and*
- the debt being due and payable.

Mr K's accounts were both held by him in his sole name. He does not dispute that he used the credit card and owed the money, so I am satisfied that the debt – that is the minimum repayments or arrears – were due and payable. So I do not find that the bank was in error when it transferred the amounts it did.

I have considered whether the transfers caused Mr K financial difficulties, in which case it might have been unreasonable for the bank to use the right of set-off. I cannot see any evidence that this is the case and so conclude that they most probably did not.

my final decision

My decision is that I do not uphold this complaint.

Susan Peters
ombudsman