

## complaint

Mr M complains that Lloyds Bank PLC ("Lloyds") refuse to pay the settlement, from a previous complaint about his credit card account, directly to him.

## background

Mr M had, amongst other accounts, a credit card with Lloyds. He encountered financial difficulties and stopped using the card in 2007. In 2013 Lloyds sold the deb to a third party who I'll refer to as "A". On 18 July 2017 Lloyds upheld Mr M's complaint about the charges and interest applied to this credit card account when they knew he was in financial difficulties. Lloyds agreed there'd been a degree of mismanagement by themselves. They agreed to refund a total sum of £1906.64. Lloyds proposed to use the settlement to reduce the outstanding liability on the credit card debt - now owned by A - as there remained an outstanding balance. Lloyds did this by a partial buyback of the debt from A.

Although Mr M agreed with the settlement he was unhappy about the payment proposal. He told us his financial position remained difficult and he wanted the money to be paid directly to him so he could pay towards all his debts proportionally.

Our adjudicator thought the refund should be paid to reduce the outstanding debt. He said, in order to put Mr M back in the position he would've been in had the bank not mismanaged the account, the bank must refund the charges to the account it originated from. So he didn't uphold the complaint.

Mr M remained of the view the settlement should be paid to him to apply proportionally to all his debts. He told us he continued to suffer acute financial hardship. He felt it was unfair to refund his compensation to a third party. He thought he should not suffer from a commercial decision to sell the debt and that he had no contract of agreement with A. He said there was no knowledge, agreement or consent by him to the sale of the debt to A. And he contested the right of Lloyds to set off the debt when he was no longer their customer. He also had concerns about the possibility of a tax liability for the repaid interest.

## my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Mr M has raised several points in his submissions to this service. I've understood and looked into all of those but I've only commented on what I think's vital in my conclusions.

I'm aware Mr M says he's undertaken additional research into similar cases referred for ombudsman decisions. He's not specified which cases but I'm sure he'll appreciate I have to deal with each case on its own merits.

As part of this complaint Mr M originally also complained of charges levied prior to May 2007. But I understand in a 'phone conversation with the adjudicator on 26 September 2017 he confirmed he wasn't pursuing that element of his original complaint. So, the only issue for me to decide is to whom the settlement, which Lloyds have offered, is paid.

I'm aware that on a separate account Mr M held with Lloyds, a refund of incorrect charges were paid direct to Mr M, by Lloyds, following a complaint. But in that case the *account had been closed with a nil balance* so, I think, it was correct for Mr M to receive the money direct. As should be the case with any personal compensation paid to Mr M for distress and

inconvenience. The settlement offer made on 18 July comprised not only the £1906.64 refund but also £100 compensation for the distress and inconvenience Mr M had suffered. That's been paid to him directly by cheque.

What's different here is that Mr M *still owes money on this credit card account*. As a service it's our role to put consumers back into the position that they should've been in if the mistakes hadn't been made. And here if the error hadn't occurred the outstanding balance would be lower. So all the current settlement payment is doing is reducing the level of the existing debt to that which it would've been had the mistake not happened. And I think that's the correct approach.

The terms and conditions of the credit card account say *"B14.2 Rights and obligations under this agreement You may not transfer any of your rights or obligations under this agreement. We may transfer our rights and obligations under this agreement (including our obligation to lend) to someone else"*. So Lloyds are allowed to transfer the rights to the debt owed to a third party. Mr M's consent and agreement aren't required. And because of this I can't say Lloyds has acted unfairly in dealing with Mr M's account either when they sold the account to A or when they implemented a partial buyback of the debt.

It's not for me to comment on Mr M's potential tax liability. That's something he should take independent advice upon if he remains concerned. I do have sympathy for the position Mr M finds himself in. I can see he's proactively trying to manage a difficult financial situation. And I'm mindful of the fact that the bank have accepted they've made mistakes here. But I'm afraid, overall, in respect of the issue I've got to decide, I'm not persuaded that the approach of Lloyds is wrong. So, I'm not upholding this complaint.

### **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 Mr M to accept or reject my decision before 17 November 2017.

Annabel O'Sullivan  
**ombudsman**