

complaint

Miss B complains that Lloyds Bank plc failed to act on instructions which caused her loss and distress. She is assisted in bringing her complaint by her father, Mr B.

background

Mr B says that Miss B has disabilities which mean that she cannot conduct her own financial affairs. She has an account with the bank, to which Mr B has third party access. Mr B says that he manages that account for Miss B.

It was Mr B's intention to arrange for Miss B to have more financial independence in a controlled way. Miss B and Mr B visited the branch and gave instructions to withdraw £10,000 from the account which was to be used to deposit £5,000 in two new accounts in Miss B's name. That would have left a small amount in the original account which Mr B was happy for Miss B to spend. Mr B also set up a standing order from his own account to pay a weekly allowance of £30 to Miss B's original account.

Mr B says that the intention was that Miss B would be able to spend the budgeted amount and no more. He says that Miss B's disability is obvious and that his intentions were made clear to the branch staff. Mr B says that he was told that everything had been set up correctly and he subsequently gave Miss B the debit card for the original account.

Unfortunately, the bank did not withdraw the £10,000 from the original account and, over the course of a few weeks, Miss B spent over £1,000 from the account. Mr B says that Miss B would have thought that she was spending within her budget.

Mr B says that the bank's error caused Miss B financial loss and considerable distress. He also complains that he was not given appropriate information about the complaints process at an early stage. Mr B says that he wants the bank to refund the full amount that Miss B withdrew.

the adjudicator's view

The adjudicator initially did not recommend that the complaint should succeed. She said that she could not reasonably ask the bank to refund the money Miss B spent as she was entitled to access the account. She said that the bank's offer of £250 was fair and reasonable.

Mr B did not accept the adjudicator's initial view and responded to say that Miss B had been greatly distressed by this matter.

After further consideration, the adjudicator recommended that the complaint should be upheld. She said that the bank was fully aware of the risks of Miss B having access to her account and that it should compensate Miss B for its error in failing to make the transfer, as instructed. The adjudicator said that in the exceptional circumstances here, the bank should reimburse Miss B with the amount spent since the transfer request was made, less the £30 weekly allowance and pay the £250 it had already offered in relation to Miss B's distress.

The bank did not agree with the adjudicator's view and responded to say that the funds were Miss B's to spend and even if the error had not been made and it had acted on Mr B's instructions, Miss B would still have been able to access the money. It said that the statements show how Miss B spent the money and that it was difficult to believe that there was no evidence of any purchased items. The bank said that Miss B had not attempted to mitigate her loss by returning items she purchased.

The bank acknowledged that this is an exceptional situation and said that it is sympathetic in relation to the situation but it did not agree that it is liable to refund money which Miss B spent. The bank said that Mr B has no authority to limit Miss B's access to her account.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss B and Lloyds Bank in July 2014, which is reproduced below:

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The bank accepts that it made an error in failing to act on the instructions to withdraw £10,000 from Miss B's original account. It remains for me to determine what loss – financial or non-financial – arises from that.

In relation to financial loss, the starting point is that account holders are permitted to access their own money. In general terms, there is an assumption that an account holder, including one with disabilities, is capable of conducting her own affairs unless there are specific arrangements in place to the contrary. The bank is right to say that there is nothing in place to prevent Miss B from withdrawing her own money, either from the original account or the new accounts which were eventually set up.

My provisional view is that there is no financial loss here as Miss B withdrew her own money and had the use and benefit of it. Mr B has said that he is unsure how Miss B spent the money and that she may have been taken advantage of by a third party. The bank statements show how some of the money was spent and I have seen no evidence to support Mr B's concern that Miss B may have been taken advantage of by a third party. I accept Mr B's points that Miss B's disabilities are obvious and that the bank was aware of his intentions, but that does not alter the outcome in relation to financial loss.

Mr B says that this matter has distressed Miss B greatly. He says that she was initially delighted to have her own debit card which allowed the prospect of her managing her own budget. Mr B says that Miss B has been inconsolable and this matter has negatively impacted her development in the adult world. He says that she is now wary of how she moves forward and she now thinks she will never be able to manage her own money.

I accept what Mr B says about the impact this matter had and continues to have on Miss B. In the particular circumstances of this case, my provisional view is that Miss B suffered substantial distress, including loss of confidence in an important area of personal development in which she was endeavouring to engage in a responsible manner.

In addition, the bank accepts that the branch did not provide sufficient information about the complaints process when this matter was initially raised. That no doubt added to Miss B's distress at a time when she and Mr B were attempting to understand what had gone wrong. My provisional view is that a fair resolution of this matter is for the bank to pay Miss B £750 in relation to her distress in addition to the £250 it has already offered. It is not clear to me whether the £250 has in fact already been paid. Both parties are invited to clarify that point in response to this provisional decision.

My provisional decision is that I intend to uphold this complaint and direct Lloyds Bank plc to pay Miss B £750 in addition to the £250 it has already offered or paid.

the responses to my provisional decision

Mr B responded to say that Miss B accepted the provisional decision and that the cheque for £250 had not been cashed and is now out of date. The bank did not accept the provisional decision and responded to say, in summary, that:

- It is pleased to note that I agreed that there was no financial loss in this case.
- Whilst it made an error in that it failed to transfer money as instructed, that did not cause sufficient distress to justify compensation of £1,000.
- Even if the error had not occurred, Miss B could have accessed the money.
- The compensation should be moderate, not substantial.
- Its earlier offer is fair and reasonable.
- If Miss B suffered substantial distress and loss of confidence then it seems clear that she was not and is not capable of managing her own affairs.
- If Mr B considered that there was a risk of Miss B being adversely affected by any problems with her bank account then it seems reasonable that he would have had measures in place to maintain closer control.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. The remaining issue for me to consider is the level of compensation for distress and inconvenience. In essence, the bank does not agree with my provisional conclusions in relation to the severity of the distress suffered by Miss B and the level of the proposed award.

In assessing the appropriate compensation in this case I have considered the impact the error had on Miss B, which may well be different than the impact on another consumer. The error – a failure to act on instructions about a withdrawal – may have been relatively minor in itself but, in Miss B's particular circumstances, the impact on her was substantial, for the reasons I set out in the provisional decision.

Miss B was attempting, with Mr B's assistance, to set up an arrangement which allowed a modest amount of independence in relation to her budget. Whilst what they set up did not prevent Miss B from accessing her money, it may well have worked satisfactorily if the bank's error had not occurred. Following the bank's error, Miss B was distressed that she had overspent, lost confidence in relation to an important developmental skill and her tentative move towards greater independence was delayed. I remain of the view that her distress was substantial, not moderate. I therefore find no basis to depart from my earlier conclusions.

my final decision

For the reasons set out in my provisional decision and above, my final decision is that I uphold this complaint. On return of the uncashed cheque or on confirmation that it has been destroyed, I direct Lloyds Bank plc to pay Miss B £1,000.

Louise Povey
ombudsman