

The complaint

Mr I complains that Lloyds Bank PLC failed to refund a transaction that he didn't recognise.

What happened

Mr I had a dormant account with Lloyds that he'd recently asked to be re-opened. Once this was done, Mr I received a new debit card. Mr I's salary was paid into the account and a few days later he's said that he was shopping for a present for a close relative and entered his debit card details into a website. Shortly after he noticed a payment from his account to a betting company that he didn't recognise. I'll refer to the betting company as K.

Mr I notified Lloyds and Action Fraud about the unrecognised transaction. He thought his card details might have been compromised when he entered them into the shopping website and he told Lloyds he didn't have an account with K. Lloyds looked into the transaction and found that Mr I was using his online banking account at the time of the disputed transaction and would likely have seen this payment leaving his account because it reduced the balance considerably. They thought that Mr I was responsible for the transaction and declined to make a refund. Lloyds also noted that a payment from K had been received into Mr I's account the day after the outgoing disputed transaction. The account showed that Mr I's salary funded the payment to K and there was no other use of Mr I's debit card.

Mr I was unhappy with how Lloyds had dealt with his issue and made a complaint. It was again looked at by Lloyds who didn't change their position and Mr I then brought his complaint to our service for an independent review. It was looked into by one of our investigators who thought it was reasonable for Lloyds to hold Mr I liable for the payment.

Our investigator thought that there was no evidence of the card details being compromised and it was unusual for stolen card details to be used on a gambling site. She also noted that Mr I was logged in to his online banking throughout the period that the disputed transaction took place.

Mr I disagreed with the outcome and explained that he thought he hadn't been given enough time to respond to the investigators review. Mr I also said that he disputed the fact that he had an account with K and hadn't had any history of gambling. He also disputed that he noticed the transaction when he was logged on to his online banking.

The complaint has now been passed to me for a final decision.

What I've decided – and why

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

And where there is a dispute about what happened, and the evidence is incomplete or contradictory, I must reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

Mr I complained that he hadn't been given opportunity to put his side of the story or provide evidence. I asked Mr I for further information about his complaint, but he didn't provide this after we gave him a number of opportunities to do so over the previous two months. So, I've made this decision based on the information I do have.

Mr I denied authorising the transaction to K and the relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Lloyds can hold Mr I liable for the disputed payment if the evidence suggests that it's more likely than not that he made it or authorised it.

Authorisation is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Lloyds have supplied evidence that shows the correct card details and the three-digit security number were entered to complete the transaction and I'm satisfied the evidence shows the disputed transaction was authenticated.

Consent refers to the way in which Lloyds and Mr I agreed to operate the account to allow Lloyds to make payments on Mr I's behalf. For example, Lloyds terms and conditions set out that if a payment is arranged through the use of the card details, then Lloyds accept that the instruction to make the payment is authorised by the account holder. So, because the correct card details were used to confirm the transaction - I'm satisfied that consent was given and the disputed transaction was authorised. But, there are exceptions where it wouldn't be appropriate for Lloyds to hold Mr I responsible, for example if his card details were used without his permission.

Mr I said he didn't make the transaction and thinks his card details were used fraudulently when he entered them into a shopping website. I've examined the transaction log for Mr I's debit card and there's no record of any entry from the shopping website referred to by Mr I. But, this doesn't necessarily mean he didn't enter his details onto a website, just that nothing was recorded by Lloyds. So, it's possible that his card details were taken at this point, but I don't think it's likely when viewed against the other information I've examined.

K operate a "closed loop system" for receiving/sending payments. This means that if there are pay outs to be made, they'll pay it to the same account it was made from. So, in this case, any winnings from K would go back to Mr I's card and there's a payment of £110 received by Mr I the day after the disputed transaction. Mr I has suggested this was a payment from a fraudster to cover up the disputed transaction, but I don't think that's likely.

Any payments from K – such as the £110, would only go back to Mr I, which would seem to miss the point of stealing the card details in the first place. If the fraudster had also been able to take over the account to give them access to the online banking details, then using someone else's funds for gambling would be more understandable because they'd be able to control the account, but there's no evidence that Mr I's account was taken over by a fraudster. And if a fraudster had Mr I's card details as he's suggested, then there are easier methods of using the card to steal Mr I's funds. There are no records of other attempts to use the card details which I would also expect if it was a fraudster using the debit card details to take as much from the account as quickly as possible, before the theft was discovered. So, I don't think an unauthorised third party was responsible for making this transaction.

Mr I was using his online banking during the time the transaction was being made. The records show he logged on to it about ten minutes before it was made and logged off about five minutes after. The transaction took place after midnight and I think it likely that the online activity was linked to the disputed transaction. Mr I said payments don't necessarily appear straight away on the online banking system, which is why he didn't notice it. But, I think the

timing of the payment and the online banking is suggestive of a link that Mr I more than likely was responsible for making the transaction.

The payment made to K was made after Mr I received his salary, and this left a few hundred pounds in the account. This suggests that whoever was making the transaction knew that there were funds in the account and had an idea what the balance was. As I've already made a finding that I don't think an unauthorised third party had access to the account, I think it's more likely than not that Mr I was responsible for making the payment to K.

Mr K said that he didn't have a history of gambling, but when I've examined the account notes from when the account was first opened – they contained a reference to “high levels of gambling”. I appreciate this is some time ago, but it does indicate that Mr I was associated with gambling in the past.

Taking everything into account, I think it's more likely than not that Mr I was responsible for the transaction he's disputed and it's reasonable for Lloyds to hold him liable for the payment.

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 I to accept or reject my decision before 27 December 2021.

David Perry
Ombudsman