

The complaint

Mr Z has complained that Lloyds Bank PLC registered a marker against him at CIFAS, the national fraud database.

What happened

Mr Z had a credit card with Lloyds. In October 2018, he called them to arrange a direct debit to pay off his card's full balance. The outstanding balance was over £2,000. The staff member confirmed with Mr Z the amount that would be taken.

When the direct debit payment came in, Mr Z quickly spent the full limit of the credit card. His direct debit was then returned unpaid, leaving his credit card with a balance of over twice his credit limit.

Mr Z did not repay this balance, and the account defaulted in April 2019. Lloyds thought Mr Z had deliberately forced his credit card beyond its agreed limit by misusing the direct debit system. They registered a marker against him at CIFAS for uncleared effects fraud.

In October 2020, Mr Z lost his job, and said this was due to the marker. He complained. Mr Z explained that, at the time of the incident, he had good income and assets, and so had no reason to artificially extend his credit limit. He said he'd had to go abroad, so he'd set up the direct debit, and he'd probably just made a mistake and assumed the debit had gone through. He said he didn't regularly check his accounts and had just been careless. He said he later fell into financial difficulties and couldn't repay the debt.

Our investigator looked into things independently and didn't uphold the complaint. They found that Mr Z had set up the direct debit for a specific date and a specific amount, and would need to have timed things carefully in order to be able to use the credit card before the direct debit bounced. They found it was unlikely this would've happened by accident. They noted that he hadn't brought the balance down afterwards, even though Mr Z had said he had good income and assets at the time.

Mr Z didn't agree, so the complaint was passed to me to decide.

I sent Mr Z and Lloyds a provisional decision on 8 November 2021, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this marker, Lloyds were not required to prove beyond all reasonable doubt that Mr Z had done something wrong. They did need to have reasonable grounds to believe that he'd misused his account, which went beyond a suspicion or concern, and which had appropriate supporting evidence. Having carefully considered everything that both sides have said and provided, I currently think Lloyds did have sufficient grounds to register this marker. I'll explain why.

I understand Mr Z's argument that this was all a mistake. But I can see that he specifically arranged for this direct debit to pay off his account in full. And according to the record of the call, the staff member confirmed the exact amount that would be paid – over £2,000.

I've looked at Mr Z's current account at the time, and I can see that it was well over its overdraft limit. So there wasn't any money available there to pay this direct debit – let alone anywhere near over £2,000. And this was not just a recent issue – Mr Z's current account had been consistently at or over its overdraft limit for months beforehand. So even if Mr Z didn't check his account often, as he's said, he would have reasonably known that this direct debit payment would not possibly have gone through. But he specifically arranged it anyway. This strongly suggests that what happened next was deliberate.

Once the direct debit payment credited his account, Mr Z had only a relatively short period before it returned unpaid. It is unlikely that he would happen to have spent on his card during this short period – not least given how rarely he'd been spending on this card in the run-up to this incident. And because Mr Z had asked for this direct debit to go out at a specific point, he would have known exactly when he'd be able to use the card before the direct debit got returned, which again fits with this being done deliberately.

Further, as unlikely as this would have been to happen once, I note that this situation has happened multiple times for Mr Z – making it seem even more likely to have been deliberate.

I also note that when the direct debit had temporarily been credited, Mr Z spent as much as he possibly could have – using up his entire credit limit exactly. He effectively doubled his limit when the direct debit returned unpaid. This was far more than he would normally spend. Again, it seems most unlikely that he would happen to have done this by accident. But it fits very well with the possibility that he'd known the direct debit was going to bounce, and so was trying to spend as much as possible before it did.

Lastly, while this is a more minor point, it's worth noting that Mr Z does not appear to have made any efforts to pay off the account for a long time afterwards, despite having made regular payments before. I understand that some time later he fell into difficulties, but he did also say he had good income and assets at the time of the incident. And if this was a genuine mistake, and he'd genuinely thought he'd had the money available, then I might have expected Mr Z to have spoken to Lloyds or to at least have tried to rectify the situation somewhat. Whereas by leaving the account unpaid, it does fit better with the possibility that he'd misused it to spend credit he wasn't entitled to.

In summary, I think the evidence strongly suggests that Mr Z deliberately misused his account here. I've not seen any evidence that makes it seem implausible or unlikely that Mr Z did this deliberately, nor any evidence which reasonably shows that this was just an accident. So while I understand this will come as a great disappointment for Mr Z, I currently think that it was fair for Lloyds to register the appropriate marker with CIFAS.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 6 December 2021. But neither Mr Z nor Lloyds sent me any new evidence or arguments to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before.

My final decision

I don't uphold Mr Z's complaint in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 5 January 2022.

Adam Charles
Ombudsman