

The complaint

Mr H complains that Lloyds Bank PLC has allowed large scale and long-term fraud to take place by his ex-partner, due to it not following correct procedures. This has ruined him financially and has left him with large debts to repay.

Mr H is being assisted in his complaint by his wife, Mrs H.

What happened

Mr H asked us to look into a complaint concerning the allowance by Lloyds for three mortgage advances, a credit card, a loan and a number of transactions to be carried out by his ex-partner, which he says he didn't know about or otherwise authorise. This matter has also been the subject of a police investigation but as of yet no charges have been brought, and the matter has been in abeyance waiting on further information from Mr H for some time.

On 3 November 2021, I issued a jurisdiction decision setting out that all of Mr H's complaint, aside from that about a £20,000 over-the-counter transaction carried out in 2007, had been made out of time and so not something we could consider.

Our investigator went on to consider that complaint but didn't uphold it. He found the withdrawal slip completed was noted to show the branch staff had spoken with Mr H over the phone about the transaction. He was therefore satisfied there was insufficient evidence to conclude this transaction wasn't authorised by Mr H.

Mr H has asked for the matter to be referred to an ombudsman. In summary, Mr and Mrs H have said:

- Mr H never called the branch about the transaction. And he never agreed for his ex-partner to deal with his finances; she did this behind his back.
- They have provided lots of evidence that branch staff by-passed security procedures. They consider the branch staff wrote they had spoken with Mr H to cover up not having a third-party mandate for his ex-partner to make transactions on the account. Mr H knows he didn't give permission for this withdrawal and therefore knows that proper processes weren't followed.
- Even if the bank is arguing that branch staff were given permission to carry out the transaction at the time, this wasn't enough bank security to remove £20,000 out of his Mr H's account. He says he should have signed the slip as the only person entitled to remove money from his account.
- The slip is an over the counter slip, and it's ludicrous to suggest that £20,000 was withdrawn in cash and subsequently handed back over to deposit into a different account. That Lloyds latterly describe the slip as being used for an internal transfer is a false statement as they were told by branch staff when raising this matter that it was for over-the-counter withdrawals. And it was the same branch staff who provided a copy of the withdrawal slip, it wasn't obtained as a result of a SAR.
- The reverse of the withdrawal slip hasn't been provided. This was supposed to be an ID checklist and an encashment checklist. The branch staff didn't complete this correctly showing it didn't follow correct processes.

- The mortgage advances and credit balances were arranged by the same member of branch, and there were a number of discrepancies during those processes which need to be taken into account and are evidence of branch staff not following the proper processes.
- They don't accept the bank only has a retention period for bank procedures of 10 years given they have been provided with documentation, including for the further advances, from longer ago than that.
- They have researched procedures for withdrawing such an amount, which wouldn't; be allowed over the phone; Lloyds' website shows the maximum possible is £10,000.

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.

I would like to reassure the parties that although I have only summarised the complaint, and the evidence and arguments provided, I have read and considered everything provided. That I haven't listed all that has happened, or every point made, is reflective of my only being able to consider the complaint about the £20,000 withdrawal from Mr H's account in 2007; having already decided that the remainder of this complaint falls outside of our jurisdiction as it was made outside of the time limits that apply.

I understand Mr H feels very strongly about his complaint. But I need to bear in mind his allegations against his ex-partner have yet to be proven; so there is no independent corroboration that he has suffered domestic and economic abuse, or that his ex-partner has actually stolen from him. As I made clear in my jurisdiction decision, it is not my role to make findings about that.

My consideration here is solely in relation to the £20,000 withdrawal and whether anything went wrong during that process that means Lloyds is liable for reimbursing Mr H. In order to make such an award, I would need to be persuaded that there was a wrong act or omission by Lloyds *and* that act or omission led to Mr H suffering a loss.

This transaction happened many years ago – over 11 years prior to Mr H complaining about it. That means there is very little evidence available from that time for me to consider. The only documentation that remains is a withdrawal slip and statements showing the money went from Mr H's account into his ex-partner's account.

There doesn't appear to be any dispute this transaction took place in branch. So this was an over-the-counter transaction even if cash wasn't handed over and handed back; the money was likely transferred from one account to the other electronically. There also doesn't appear to have been a third-party mandate for Mr H's ex-partner to operate the account; if there was, there wouldn't have been a need for branch staff to annotate the withdrawal slip at all. The withdrawal slip says:

Spoke to Mr H by phone – well known customer [I have changed the name on the slip so Mr H can't be identified]

This appears in the signature section of the slip – the slip also has an instruction for it to be signed in front of the cashier. Mr H has argued that he should have been required to sign the slip, as the only party entitled to remove money from the account.

I understand the point Mr H is making but I don't agree. Providing it can be shown that authorisation has been given for a transaction to take place, other parties would be able to withdraw money from an account. Mr H clearly wasn't present for this transaction and so it's

not possible for him to have signed the slip. Such a signature is usually required to show it's their actual customer that is making the request, but if a bank can verify the withdrawal request another way, then I wouldn't find it had done anything wrong. I'm not persuaded the absence of a signature from Mr H is evidence the transaction was unauthorised.

Mr H says he didn't authorise this request as he *knows* a call didn't take place and, therefore he *knows* that the bank didn't follow its correct processes [his emphasis]. I'm afraid even the best memories fade over time, that Mr H doesn't recall the call – which isn't surprising given how long ago it took place – doesn't mean it didn't happen. Indeed, during this complaint Mr H alleged a further advance had taken place without his knowledge – but contemporaneous evidence showed he signed the title deeds in front of witnesses. So Mr H's memory of the events complained about is fallible.

Where the evidence is incomplete or inconclusive, like here, I make my decision on the balance of probabilities – that is, what is most likely to have happened given the evidence available and the wider surrounding circumstances. Having done so, I'm satisfied its most likely this call did take place. I say this because:

- Mr H's ex-partner dealt with all of the household finances. Although he has latterly said his ex-partner dealt with his accounts behind his back, that wasn't Mr H's original complaint submission. In that, Mr H explained that his ex-partner took control of the finances whilst he concentrated on the business and he understandably trusted her. I prefer Mr H's original testimony about how finances were managed, to his testimony after receiving a non-uphold view from our investigator. As Mr H's ex-partner was handling the household finances then it stands to reason that would, on occasion, involve his sole account. Therefore his ex-partner moving money to, or from, his account wouldn't be unusual, providing the bank had his authorisation to do so. Making a call to Mr H is one way of obtaining that authorisation.
- As set out above, the slip was annotated by branch staff to say they had spoken with Mr H. I would question why they would add that, if that isn't what happened. It couldn't have been known to staff that it would be many years before the transaction was questioned, when records would be limited. If they hadn't spoken with Mr H, that matter could have come to light very quickly, phone records checked and if a call hadn't taken place the branch staff would be at risk of losing their job, or at the very least disciplinary action. I'm not persuaded its likely staff would take such a risk over their livelihood.
- The transaction took place in 2007. This was at a time when Mr H had been signed off as being unfit to work. It was shortly before this that Mr H lost a very close family member and there might have been negligence involved. I think it fair to say that Mr H's mind would have been on other matters and so it's understandable he doesn't recall such a call taking place. And given Mr H has said this money was part of an inheritance, I consider it unlikely he wouldn't have known what had happened to it.
- When questioned by police, the staff member who completed the withdrawal slip couldn't remember the transaction, which isn't surprising given the sheer number of transactions that must have occurred in the intervening years. But they were satisfied that if they wrote on the slip that they had spoken with Mr H, then that was what had happened. I find it highly unlikely the branch staff wouldn't have given an honest statement to the police, given the implications of not doing so.

Mr H has argued that even if branch staff were given permission to carry out the transaction that wasn't enough bank security to remove £20,000 out of his account. I'm not sure of the basis on which Mr H makes this argument. He hasn't provided any evidence to show that obtaining permission in this way was contrary to any bank processes or procedures at the time. I'm satisfied that if the bank was able to verify they were speaking with their actual customer and they were given authorisation for the transaction to take place, then the

transaction could proceed.

We did ask Lloyds if it had documentation setting out its procedures from 2007. It has told us that these have a retention period of 10 years and as that time has passed it no longer has any information. Mr H doesn't believe what Lloyds is telling us is correct. He has cited it telling him it didn't have any mortgage information, yet he was able to obtain this. And as the mortgage documentation is over 10 years old, he believes it should also have process information.

I do understand why Mr H is making the point he is, but customer data – i.e. the mortgage applications and offers etc – is entirely different to a bank's internal processes and procedures. It doesn't follow that customer data being available means a bank's internal governance documents setting out processes and procedures would be. And we need to remember this was an entirely different legal entity – Lloyds TSB – which no longer exists.

Mr H has also argued that part of the withdrawal slip has been completed in a different pen which he considers clearly suggests that branch staff added part of the annotation in at a later date. He appears to be implying that branch staff have fabricated evidence; this is a very serious allegation which shouldn't be made lightly and without supporting evidence. And Mr H hasn't provided any persuasive evidence in support of what he says, only his belief. That something appears to be in a different pen doesn't automatically mean it was, or that it was added at a different time – this could easily be explained away by a pen running out at the time the slip was completed, the copy of the slip being a poor photocopy or the photocopier ink being uneven.

Mr H has also been researching banks' processes and procedures now, looking at withdrawal slips and what amounts can be transferred using telephone banking. But I don't find any of this information persuasive. Mr H is now looking at different legal entities, and some 15 years later. Procedures now are unlikely to be the same as 15 years ago. And this wasn't a telephone banking transaction, but a branch transaction where branch staff spoke with Mr H over the telephone to obtain authorisation for the transaction to go ahead.

Mr H has also asked us to look at the mortgage documentation as evidence of discrepancies and the bank not following proper processes. However, Mr H is aware that the complaints about the further advances do not fall within our jurisdiction. If I were to consider that information and draw a conclusion that there were discrepancies or process wasn't followed, in support of a later transaction not being completed correctly, I would in effect be making a finding about those further advances. To do so would be acting outside of my powers.

Overall, having considered the matter carefully, and fully understanding he is unlikely to accept my decision, I'm satisfied it was more likely than not that Mr H gave authorisation for the transaction to take place. It follows that I don't uphold his complaint.

My final decision

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 March 2022.

Claire Hopkins
Ombudsman