

The complaint

Ms P complains that Lloyds Bank PLC have declined to refund money she said she lost on scam gambling websites.

What happened

The background to this complaint is well known to both parties, so I won't go into every detail of what happened here. But in summary, in March 2021 Ms P spent approximately £6,700 over nine payments on her credit card account on what she thought at the time were legitimate gambling websites but now thinks were scam websites.

Ms P explained she is an experienced gambler in a personal capacity and likes to gamble online to unwind after a busy day. She had not used either of the sites in question before. She explained she encountered numerous issues with the gambling website including:

- She had tried to make deposits onto the websites from her current account, but when this didn't work she moved onto her credit card account.
- The websites told her that her deposits had not been successful, but she saw they had come out of her credit card account.
- She was not sent any kind of email verification or copy of the terms and conditions.
- She noticed the deposit amounts were not in line with what she had requested and sent, they were not in pounds sterling and she was being charged a high exchange rate and fees she had not been made aware of.
- When she did win on bets, the winnings would disappear from her account and she was not able to withdraw them.

Ms P contacted the website and after trying to get through to them for five days, she received a response which informed her they would be deleting her account and not returning any funds from her gambling account. Ms P was not happy with this, so contacted the Gambling Commission in April 2021. Ms P said they confirmed the websites she used were illegal and unlicensed, and so not allowed to advertise their services or products in Great Britain – and that they would be investigating these websites with the aim to getting them taken down.

Ms P remained dissatisfied and so complained to Lloyds in April 2021 as she felt she had been a victim of fraud. Lloyds declined to refund her losses. In summary, they said:

- Ms P accepted she had authorised the payments herself. She also was asked to verify the payments were genuine at the time as they flagged on the bank's systems, which she did. She received the service she paid for – she deposited funds and placed bets. Gambling comes with no guarantee of returns and a high risk of losses.
- The terms and conditions on both websites state their transactions were in foreign currencies, so they had no basis for challenging the exchange rate and fees. The websites were clear that the transactions would come at an additional cost, and that it would not always be possible to confirm the cost in sterling immediately due to exchange rates.
- Customers are expected to do necessary checks before using a company to ensure

they are genuine. The terms and conditions were available on the websites, so she could have read them prior to making any deposits. There is nothing on the website to say it is a licensed UK website, and she could have deduced the websites weren't UK based as they ended in '.com'.

- The terms and conditions on the website states that customers can request their statements showing all transactions made to show deposits, bonus credits and winnings. They asked Ms P to get these statements during the dispute process and in their final response letter in order to help them to try to assist further but Ms P had not provided them. Ms P had received large payments into the account around the same time, and without the statements they could not rule out that these may have been her winnings.
- Mastercard rules banned gambling on credit cards in April 2020, so their systems are designed to stop gambling transactions being processed on credit card accounts. But, in this case, the merchants used different merchant codes for various goods and services instead which prevented them from being stopped by their systems.

Ms P brought her complaint to our service, and one of our investigators reviewed what had happened. They didn't recommend that Ms P's complaint be upheld, as they agreed that on balance it was not clear that Ms P had been the victim of fraud. They also said they did not think Lloyds had acted incorrectly in allowing the transactions to go through, and that they were not persuaded that Lloyds ought reasonably to have done more to assist Ms P.

Ms P did not agree. She said that our investigator's view was not based on facts – she felt the view was saying she was a professional gambler who gains from these sorts of websites (illegal/unlicensed casinos). The sites used fake codes and took thousands of pounds from her and would never send her the statements she asked for. She had never received money from them, the funds coming in to her account around this time were from another credit card provider as she had to move to an interest free card. She felt that our investigator made her appear of bad character. As no agreement could be reached, the case has been passed to me to decide.

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.

In deciding what's fair and reasonable in all the circumstances of the complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and where appropriate, what I consider to be good industry practice at the time. And where there is a dispute about what happened, and the evidence is incomplete or contradictory, I will 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. My appraisal of the available evidence has led me to reach broadly the same conclusions as our investigator – and for largely the same reasons.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Service Regulations and the terms and conditions of their customer's account. However, where the customer made the payment as the consequence of the acts of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse them, even where they authorised the payment.

It is common ground that Ms P did initiate payments to gambling websites. So the first thing I have considered is whether these payments can be considered authorised - and whilst Ms P says that she did not authorise the amounts that were debited, the fact she consented to payments being sent from her account to these websites means that Lloyds are entitled to

consider these payments authorised – even if the actual amounts deposited were not exactly what she thought was going to be deposited.

What remains in dispute is whether these websites defrauded her, such that Lloyds ought reasonably to refund some or all of her losses. And I cannot say I have seen enough evidence to say that she was the victim of a scam. I know this will come as a disappointment to Ms P – but I will explain how I reached this conclusion.

- Ms P explained that the website told her that her deposits had not been successful, but she saw they had come out of her credit card account. Unfortunately, there is nothing to corroborate Ms P's statement here – and it would seem unusual to have made further deposits if this was occurring. On balance, I think it would be unlikely to send more funds if she had thought that the site was not working.
- Ms P complained that she was not sent any kind of email verification or copy of the terms and conditions. But, as Lloyds pointed out, the websites do have the terms and conditions available on their website so they were available for Ms P to read prior to sending any money to these websites which were new and unknown to her.
- And on the matter of the charges and exchange rate - the terms and conditions did state that the funds would be subject to fees and exchange rates. So I can't say that the company didn't give her the opportunity to find this out prior to making the transactions.
- Ms P has said when she did win on bets, the winnings would disappear from her account and she was not able to withdraw them. Again, without the benefit of the statements it is unclear whether this was the case. I think it is likely from her testimony and the available evidence that she was able to complete bets or games on the websites – and this is really the service that she was paying for, albeit with the *chance* of winning. But with all gambling sites, the chances of losses are far greater than the chances of winning, so it would not be unusual for her to not receive any payouts from the site. And ultimately, I've not seen any evidence to corroborate her statement that she had winnings she was unable to withdraw.
- Having reviewed some online reviews for these companies, it does appear there are some negative reviews – but there are also reviewers who say they did get their winnings paid to them.
- There was nothing on the websites that I could see that said they were UK based, or licensed in the UK. This is different from being fraudulent sites. And it seems she did have the services the site purported to offer – gaming and betting.

When considering all of this, I find that it is more likely than not that Ms P had the opportunity to understand the fees and charges in the terms and conditions, and she had the use of the website services and there is not enough evidence of any winnings to confirm that the businesses in question had failed to pay any winnings to her. Without evidence of what she deposited, what she lost and what she won, it is not possible to calculate any losses. I think it was fair and reasonable for Lloyds to say there was not sufficient evidence of a fraud or scam that they were bound to refund her.

Was there anything further Lloyds should have done to support Ms P?

Ms P asserts that Lloyds should have blocked the transactions. There are two reasons they might have done this. The first is that gambling transactions should not take place on a credit card. But, in this case I am persuaded that Lloyds were unable to recognise the transactions as gambling through no fault of their own. The merchants used codes that implied the goods or services that Ms P was paying for had nothing to do with gambling, and there was nothing else that I think should have alerted them to this – and so I don't think they did anything wrong in failing to stop these payments for this reason.

In addition to this, the relevant regulations say that Lloyds should be on the lookout for unusual and out of character transactions which show that their customer may be at risk of fraud or financial harm. But even if I were to find that any of the transactions were so unusual or out of character that Lloyds ought to have contacted Ms P, I am not persuaded they could have prevented her losses. I say this because it appears that she was ultimately in receipt of a service as intended, even though she says the websites were glitchy – and presumably this is what she would have told Lloyds if they had called her. I think the fact she went back over multiple days to these websites attests to the fact she did not see issues with them at the time of the payments. Also, in the process they did contact her to check the payments were genuine, and she confirmed they were. So I do not think they could have prevented any losses – if indeed I could even calculate any here.

I've also considered whether Lloyds could have done more through a chargeback, or through section 75 of the Consumer Credit Act 1974 to help Ms P. A chargeback is something a bank can raise where there is a dispute between two parties. It is not a consumer right but can be good industry practice for banks to help their customers. However, chargeback rules set by Mastercard say that chargeback cannot be used for gambling transactions – so I think Lloyds decision not to raise a chargeback was fair in the circumstances.

Section 75 claims can also be used if there are disputes between two parties – such as where goods or services have not been received. But, in this case, I think it is most likely that Ms P did receive the services she paid for – gambling and gaming. And without further evidence to show that she was promised winnings that were not paid out, it is more likely than not that any claim under this section would have failed.

My final decision

I do not uphold this complaint and require Lloyds Bank PLC to do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 6 April 2023.

Katherine Jones
Ombudsman