

The complaint

Mr D is unhappy that Lloyds Bank PLC hasn't reimbursed funds he lost to a scam.

What happened

Mr D believed he was gambling online with company 'R'. He paid money into his online account using his debit card and believed he was using these funds. Mr D raised concerns with his bank when he noticed the payments weren't showing on his statements as R. He had carried out the same payment process each time, but different firms were charging him and different currencies had been used. He reported the payments to Lloyds as fraudulent and contacted R, but R never responded to him.

Lloyds investigated but didn't uphold Mr D's complaint. It said the payments on his statements matched the dates and times Mr D had expected to pay R. And the amounts were roughly the same amount as the payments on his statements (factoring in exchange rates). It said Mr D had insufficient evidence to reclaim the payments via a chargeback under VISA's regulations. In its final response to Mr D it said he had been able to gamble the funds and so a chargeback wasn't possible. And it couldn't link the firms Mr D paid with R.

Our investigator didn't uphold Mr D's complaint. On allocation I contacted Mr D informally to discuss the outcome reached. I explained that I did agree with him he'd been the victim of a scam and so didn't agree with the reasoning in the view our investigator reached. But despite this, I didn't think his complaint was one we would uphold. I explained that I agreed with Lloyds there wasn't a clear link between the firms Mr D had paid and R – who he believed he'd contracted and was gambling with. Due to this, I didn't think he could successfully raise a chargeback claim. After some correspondence between us, it was agreed I'd move to 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.

To start, I think it's important to set out the difference between a fraudulent payment and a scam, and how that links to what's happened here. Mr D was expecting for his account to be debited the amounts it was. He was aware he was making payments using his debit card and believed he was gambling online with these funds. So his bank account hasn't been fraudulently accessed and he's not been the victim of 'unauthorised' transactions. However, he has been the victim of a scam. He understood he was making the payments to gamble and that if he won, he'd gain actual money. I accept that wasn't the case and the online information about R suggests it's a scam firm and no one can withdraw winnings. Whether that's because they never truly gamble and it's a fake platform, or the company just never allowed/accepted withdrawals we don't know.

The starting point for Mr D's transactions is that they were authorised. He input his card details for these payments to be taken. The regulations don't set out that a payment must go to who you expect to pay for it to be authorised. They instead set out the steps that someone

must take, and Mr D did complete all these himself and willingly. However that doesn't mean someone can't later report these payments to their bank as fraud, as Mr D has done. But then the business needs to consider two things – whether it should have, at the time the payments were made, been concerned about them and intervened. And secondly, whether there are any recovery options now, considering what its customer is telling it.

I don't think Lloyds missed any opportunity to stop Mr D being a victim of this scam as it was happening. Mr D doesn't send any single payments higher than £237.91. And the most he spends over the course of a full day is under £2,500. So I wouldn't have expected Lloyds to be so concerned about these payments it needed to block them and not release the payments until it had spoken to Mr D. He uses his account and bank card for spending similar amounts to these payments on a regular basis. And I wouldn't say the total daily spend is so high that it ought to have prompted an intervention.

So then we move to the second step – recovery options. As Mr D is aware, the main route for recovering debit card payments is to make a claim under the relevant chargeback scheme, in this case VISA.

I have directly corresponded with Mr D about the VISA chargeback scheme prior to issuing this decision. As I have set out to him, the scheme is made up of rules and so banks are expected to follow them. Mr D has suggested that as long as he can show reasonable grounds to initiate a chargeback claim, he should be able to. But this isn't technically correct. There are different parts to the rules and the bank must put in a claim under the correct section – and with the required evidence that's set out. For example Mr D has explained why he wants to rely on the section relating to him being charged in the incorrect currency. But he can't evidence the currency he expected to be charged in by the merchant he paid, which is a requirement of this section.

As I have discussed with Mr D, I don't agree that Lloyds did action this process in the right way in his case. But that doesn't then mean his case succeeds. This is because I don't agree there is a way Lloyds could have actioned it to make a successful claim. So while it didn't do things in the right way, ultimately the outcome it reached was right. From what we currently know, R has set itself up in a way that prevents successful chargeback claims being made, in line with VISA's rules.

It isn't the case that Lloyds could've understood the difficult position Mr D was in and so just put in a claim anyway. It is expected to act in accordance with the rules, so only start claims where clear reasons have been identified and – very importantly in this case – the right evidence has been supplied to support these.

I'm not disputing that Mr D has been the victim of a scam. And I fully accept why he can't evidence that the firms who received his money have breached a contract with him or misrepresented to him. He didn't intend to pay them or want to contract with them, he was contracting with R. But the background to how Mr D came to pay the firms he did is not a consideration for the purpose of a chargeback claim. There unfortunately isn't a section of the rules that covers an unknown party taking funds. The rules work on the basis the parties – the consumer and the merchant (the firm the consumer pays) – have an agreement for goods or a service to be provided' and something has then gone wrong with this agreement. The sort of situation Mr D is in would usually be dealt with in the unauthorised transaction space, but as above, that can't fairly be done in this case, as Mr D did give his card details to someone to make these payments – so he did authorise them.

Mr D has said that if there aren't grounds for him to recover his money through chargeback, then Lloyds should 'initiate its fraud response instead'. But the steps it has taken are its 'fraud response'. Depending on how a customer pays there are different ways to try and

recover funds lost to fraud. We would only expect the bank itself to cover these funds if it made a mistake in processing the payments at the time, or it's made some other commitment to refund victims of fraud. Lloyds didn't make a mistake at the time and has made no such commitment. So there are no other recovery options for Mr D.

Mr D has explained to me that other firms have successfully made claims for him through chargeback. But this doesn't change my outcome here. I'm satisfied that in line with the VISA rules, Lloyds has acted fairly in not pursuing a chargeback claim, as Mr D didn't have the evidence required. I can't say it's done something wrong by following the scheme rules, because another firm has possibly not followed them as it should, resulting in a positive outcome for Mr D.

Mr D has also raised concerns around what Lloyds did to protect his account after he'd reported the fraud and how it dealt with his concerns around money laundering. But I have already explained to Mr D that Lloyds wouldn't necessarily directly involve him in any investigation it did into money laundering concerns. And it's for Lloyds to decide if it wanted to take this further, not Mr D. While Lloyds could have offered Mr D a new card, for example, as part of its fraud review, I haven't seen anything to suggest he has suffered a loss because he didn't get one. And equally he didn't ask for a new card, despite knowing he'd shared the details with R and reporting it as a scam. So neither of these points change my outcome.

My final decision

For the reasons set out above, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 February 2023.

Amy Osborne
Ombudsman