

The complaint

Mr L complains that Lloyds Bank PLC added a marker about him at CIFAS, the national fraud database, when it closed his account.

What happened

Mr L says he received money into his account in July 2018 that he wasn't expecting and reported this to Lloyds after he'd checked his balance at a cash point. He says he had lost access to online banking and didn't make any withdrawals and wanted his account to be closed. The marker is having a serious effect on his ability to access financial products.

Lloyds said it hadn't made a mistake and wouldn't be removing the marker. It said that there was no explanation for the fraudulent funds paid into the account or for a compromise of Mr L's information.

Our adjudicator didn't recommend that the complaint be upheld. She said that she'd seen that the money paid into Mr L's account in July 2018 had been reported as fraudulently obtained. In total over £22,000 had been received. A first credit of £300 was shortly followed by a balance enquiry and a withdrawal of £290 using Mr L's card and PIN the same day. And attempts were made to withdraw part of a second payment of £19,000 received on 3 July 2018. Again, a cashpoint withdrawal was made – this time for £500. Lloyds had a record that Mr L called that day but was unable to pass security and was told to come into a branch. A further attempt to make a card payment was made after that call.

Our adjudicator said that Mr L had said he still had the card and PIN and hadn't given those details to anyone. So, she thought it more likely that not that he made the withdrawals and was complicit in what happened.

Mr L didn't agree and wanted his complaint to be reviewed. He said that the adjudicator must have misheard or misinterpreted what he said. He claimed that bank cards and processing can be cloned without the knowledge of the account holder. And that for it to be said that he had been complicit was a very serious allegation and an insult. He said that we don't understand the gravity of the issue and how this is affecting his day to day life.

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 need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Mr L wouldn't generally be responsible for them.

I also need to consider whether the report to CIFAS was made fairly. On this point, Lloyds needs to have more than a suspicion or concern. It has to show it had reasonable grounds to

believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I've seen the information Lloyds has provided about these credits. Mr L doesn't say he was entitled to this money. And I'm satisfied that this money had been fraudulently obtained.

I appreciate Mr L says he reported this to Lloyds and that he didn't have access to online banking. The information I have is that it logged his call at 17:46 on 3 July 2018 and told him to visit a branch with ID as he didn't fully pass security. There is no record he reported his card lost or stolen or his PIN compromised. As our adjudicator set out the audit records for the account show that a payment of £19,000 had been received that afternoon. And an unsuccessful attempt had been made to access £2,900 at a money transfer business at 17:12 using the card. A successful cash machine withdrawal for £500 had been made with the card at 17:35. An attempt to use the card at a retailer at 18:24 wasn't successful.

I also note that the money of £300 received earlier and also reported as fraudulent had largely been withdrawn using the card at a cashpoint.

Mr L indicates that he thinks his card was cloned. The successful withdrawals required the chip on the genuine card to be read and the correct PIN entered. We've not seen evidence of the chip on a card being cloned for everyday use. And I don't consider that this is the most likely explanation here, so I'm satisfied that these were authenticated. Mr L says he had his card so he could see the balance at a cashpoint. And that he didn't provide his card to anyone. So, I consider that the most likely explanation is that he authorised these withdrawals.

That being the case I am also satisfied that he was complicit in what happened. I've not seen evidence of any attempts to transfer the money using online banking. The only access made was using his card and he didn't report what happened until withdrawals had been made.

Lloyds says that it applied the CIFAS marker because Mr L received fraudulent funds into his account. So, I've looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Lloyds needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr L's account of events and the evidence he has provided, I'm satisfied that Lloyds had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr L received fraudulent funds into his account.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Lloyds had grounds to believe that Mr L had used fraudulently obtained funds based on the evidence it had.

I appreciate Mr L wanted his account to be closed in any event. But I'm satisfied given my findings that Lloyds had grounds to do so under its terms and conditions. I also understand what Mr L says about the impact of the marker for him. But I'm afraid I don't have a basis to require Lloyds to take any further action.

My final decision

My decision is that I do not uphold this complaint.

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

Michael Crewe
Ombudsman