

The complaint

Mr R complains that Lloyds Bank PLC (“Lloyds”) failed to refund him after transactions were made using his stolen phone and account card.

What happened

What Mr R said

Mr R realised his phone was missing around 3 July 2023 and later, on 12 July, he also noticed his debit card had been lost/stolen. He called Lloyds on 12 July 2023 to report it and said he couldn’t remember when he lost them exactly, but somewhere around the end of June 2023. Mr R said he didn’t often use his phone or card.

Mr R went on to explain that due to his age, he had to write down the personal identification number (PIN) for his debit card which he kept in his wallet. He also confirmed that he recorded his banking security information in an unprotected file on his mobile phone which didn’t have any password protection enabled on it. Mr R said he had difficulties remembering things, which is why all his details were recorded in this way.

He reported unrecognised (disputed) transactions from around the end of June 2023 up till about 10 July 2023. Lloyds looked into what had happened but didn’t refund the disputed transactions to Mr R.

Mr R made a complaint about the situation and Lloyds once again looked at what had happened but didn’t change their position. Mr R then brought his complaint to the Financial Ombudsman Service for an independent review.

What Lloyds said

Lloyds received notification from Mr R about the unrecognised transactions but didn’t think that Mr R had kept his personal banking details secure. Later, when Lloyds looked into Mr R’s complaint, they concluded that there was no explanation for how a third party could have made these payments.

The investigation so far

Mr R’s complaint was looked into by one of our investigators who asked both parties for information about the situation.

Mr R was able to say that:

- Due to his age he needed to write things down – such as his PIN.
- He was unfamiliar with banking requirements regarding the security of his card and account.
- He hadn’t noticed the loss of his phone or card for some time.

- He believed that Lloyds had failed to protect his funds and wanted a refund.
- The loss of the funds has caused significant financial strain.

Lloyds provided details of account activity, in summary this showed:

- A number of payments were taken from Mr R's account after he said he'd lost his card and phone.
- IP address data showed the phone was used in different countries.
- The card was cancelled after Mr R's genuine device registered to his account logged on and requested this. This was the same country the phone had been used prior to the reported loss.
- Shortly after the card was cancelled, Mr R called the bank to report the card lost.
- Lloyds considered Mr R was grossly negligent with his account details but later thought he was likely to have been responsible for the payments made from his account.
- Even though the PIN was lost, there were no cash withdrawals after the card was stolen.
- Funds were left in the account.
- One of the payments was confirmed after a text message was sent to Mr R's phone.
- The account had only been open for a very short time.
- It wasn't until Mr R reported the loss that he advised Lloyds of his difficulties with the English language.

After reviewing the evidence, the investigator concluded that Lloyds shouldn't have to make a refund. They concluded that:

- Mr R had failed to protect his account because he left his phone unlocked and the account logon details available, also that he wrote the PIN down and kept it with his card.
- Lloyds aren't at fault for the losses incurred by Mr R.

Mr R disagreed and wanted a further review of his complaint which has now been passed to me for a decision.

I had some questions concerning Mr R's travel arrangements both before and after the disputed transactions and have asked him to provide further details. Unfortunately, despite sending a reminder, Mr R hasn't responded.

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.

Mr R's situation has been assessed at different stages by Lloyds, first when the issue was

raised by Mr R and again when they looked at his complaint. Lloyds initially believed that Mr R was grossly negligent by the way he kept the PIN with his card (in his wallet) and by leaving an unlocked phone containing his login details for his account.

Lloyds later said they couldn't determine how a third could have made these transactions and thought that Mr R himself was liable for them.

The investigator concluded that Mr R hadn't protected his account and he was responsible for the losses himself.

Mr R has denied being responsible for the disputed transactions. In effect he's saying that after the loss of his phone, wallet, card, and PIN – unknown third parties used these items to make unauthorised transactions from his account.

The evidence available to me supports the case that Mr R was grossly negligent with his security details and there's also evidence to show it's unlikely that a third party was responsible for the payments. I understand Mr R will be disappointed with this news. I'll now go on to explain my thoughts about Mr R's complaint.

Gross negligence

The relevant rules concerning this are contained in the Payment Service regulations 2017 (PSRs) and say that:

72.—(1) A payment service user to whom a payment instrument has been issued must—

(a) use the payment instrument in accordance with the terms and conditions governing its issue and use; and

(b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

(2) Paragraph (1)(a) applies only in relation to terms and conditions that are objective, non-discriminatory and proportionate.

(3) The payment service user must take all reasonable steps to keep safe personalised security credentials relating to a payment instrument or an account information service.

Section 77 goes on to say

(3) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—

(a) has acted fraudulently; or

(b) has with intent or gross negligence failed to comply with regulation 72 (obligations of the payment service user in relation to payment instruments and personalised security credentials).

Mr R agreed to the account's terms and conditions when he opened it. These contain similar provisions (which are reasonable) to keep the account details safe and to notify Lloyds of any loss of the payment devices (card/phones).

Mr R confirmed he wrote all of his banking information down including his logon details and password for his online account (on his unlocked phone) and wrote his PIN down and kept it with his card.

Whilst I acknowledge Mr R said he wasn't familiar with local banking practices, he had been able to open and use his account, including logging on to it using his mobile app and making payments using his card prior to the reported loss. I don't think the way that Mr R was able to use his account supports his case that he had difficulties operating it.

The test for gross negligence relates to what a reasonable person would have done in the same situation. So, the question is – did Mr R's actions fall far below what a reasonable person would do?

Mr R has said he kept his PIN together with his card in his wallet. It's a similar story when Mr R chose to record all his online banking details on an unlocked mobile phone. This allowed anyone to access his account and the messaging system used to confirm payment messages (which were sent as part of one of the disputed transactions).

Mr R told the bank that he first noticed the loss of his phone in early July, a few days after he thinks he lost it. But it doesn't appear that he checked the loss of his card and wallet or contacted the bank before 12 July. I thought it unusual that he didn't either contact the bank, check his account, or look for his wallet much earlier than he said he did. There was opportunity for Lloyds to stop at least some of the disputed transactions if Mr R had called them when he first noticed his phone was lost.

Even if I consider Mr R's lack of familiarity with UK banking requirements, I just don't think it was reasonable for him to leave his security details available for anyone (who came across his phone/card) to use without some form of protection (for both his PIN and phone).

I think it's fair to conclude that Mr R's actions here meets the test of gross negligence which is generally regarded as "... *a very significant degree of carelessness*". So, I don't think it's either fair or reasonable for Lloyds to be held liable for the losses claimed by Mr R based on this test.

Authorisation

Lloyds have also made an argument that Mr R himself was responsible for these payments (in that he either made them himself or allowed others to use his account). The evidence provided shows that:

- Mr R's registered mobile phone recorded similar IP addresses linked to the same overseas location both before it was lost/stolen and later when the card was cancelled.
- The registered phone (that Mr R reported stolen) was used to cancel the card a few hours before Mr R reported it to Lloyds (on the same phone).
- The pattern of payments were untypical of a stolen phone, card/PIN – funds were left in the account, long gaps between spend and no cash withdrawals despite having both card and PIN.

Note: IP addresses are a means to identify physical locations that online transactions/devices are connected to and can be the actual physical location or other locations connected to the provider of the data services.

Mr R's case is that after he lost his phone and wallet with his card and PIN in it, unknown third parties were able to use it to make payments from his account. Mr R's banking details and access to his phone were made available to anyone who obtained it. So, it's plausible that someone could make these disputed transactions and use the phone to confirm the payment when additional steps were required – but I don't think that's the explanation of what happened here.

I understand Mr R has said he had memory issues and didn't realise he'd lost these items for some time after the event. But Mr R was aware that his phone was missing a few days after he last used his card – so he knew at least some of his banking security information had been lost – but for some reason chose not to contact Lloyds about it until much later.

There's no plausible explanation how Mr R was using his phone abroad, to then travel to the UK and for that phone to return to the same overseas country. It was then used to report the card as lost (via online banking app) and for Mr R to then call Lloyds (from that phone) to discuss his disputed transactions.

I also thought the pattern of use of the card after it was reported lost was unusual. There were several gaps in its use, sometimes of several days and funds were left in the account. This isn't how a stolen card is generally used because the point of stealing it is to maximise the cash available before its cancelled. I also thought it unusual that there were no cash withdrawals which is usually one of the first things a thief would attempt. In this case they had access to the wallet (with the PIN written down) and access to the banking app with a PIN reminder function.

Overall, I think Mr R's actions meet the test of gross negligence when he said he left all his security information freely available in his wallet and phone and I think it was both fair and reasonable for Lloyds to hold him liable for the payments he's disputed.

But, even if I thought Mr R's actions weren't grossly negligent, it would be difficult to accept he wasn't responsible for the disputed transactions based on the above evidence. I haven't made a specific finding regarding authorisation, but I've mentioned it here as it's relevant to the overall use of the phone and Mr R's version of events.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 31 May 2024.

David Perry
Ombudsman