

complaint

Mr and Mrs A complain that Lloyds Bank PLC didn't close their account as they'd asked, and that this led to later unauthorised withdrawals.

background

Mr and Mrs A say that in 2013, they arranged to move their personal and business banking from Lloyds to another provider, H. They say they spoke to Lloyds several times, asking it to close their accounts. However, their personal joint account remained open – as did the account overdraft facility. In late 2013, someone made several online transfers from the account, taking the balance overdrawn by around £15,000.

Mr A contacted Lloyds and told them the payments weren't authorised. He thought a family member might've accessed the account, and – in light of particular family circumstances – he didn't want to involve the police. As a result, Lloyds didn't investigate further at that time. The following March, with interest and charges increasing the overdrawn balance, Mr and Mrs A entered into a repayment plan.

Mr A cleared the outstanding debt in August 2015. But about six months before, he'd asked Lloyds to look into the disputed payments. In response, the bank said it had investigated them thoroughly, and found no evidence they were made by a third party. Mr and Mrs A were unhappy with the bank's position, and referred matters to us.

our initial conclusions

Our adjudicator didn't think Lloyds had properly investigated Mr and Mrs A's concerns. She felt it likely Mr and Mrs A had expected their account to be closed. On several occasions during 2013, they'd paid in money to bring the account balance back to zero. In relation to the disputed payments, the adjudicator felt it was entirely possible they'd been carried out by the family member Mr or Mrs A suggested. Money from Mr and Mrs A's account ended up in that person's account. The adjudicator also acknowledged that family member would've had access to Mr and Mrs A's personal information that might've enabled them to set up the payments without negligence on Mr and Mrs A's part.

The adjudicator proposed that Lloyds reimburse Mr and Mrs A, and pay them compensation. But Lloyds didn't agree. It said it hadn't been asked to close the account and the transfer form H sent it didn't request this either. The bank accepted that around the time it received the transfer form, Mr and Mrs A had deposited a large amount to bring the account back into credit. But it said they continued to use the account, with money going in and out on a monthly basis. It had also written to Mr and Mrs A later in 2013 to say their free banking period was ending. And it had continued to send them account statements.

Lloyds did acknowledge it hadn't investigated the disputed payments. It had mistakenly told Mr and Mrs A that it had done so. But the bank noted Mr A hadn't wanted to involve the police when he first told it about the unauthorised payments. Lloyds also said it was entitled to refuse to refund unauthorised payments where it wasn't advised within 13 months of the money leaving the account. The bank said its view was supported by advice issued by the Financial Conduct Authority (FCA).

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I've based my findings on what I think's most likely to have happened in light of the available evidence.

This is a particularly unfortunate set of circumstances, and I've a good deal of sympathy for Mr and Mrs A, given their family situation. My role here, though, is to set out what I think about the issues at hand, and in particular, whether I think Lloyds needs to take any action over the missing money.

account closure

I don't doubt Mr and Mrs A thought they'd done what they needed to close their Lloyds account. They'd set up replacement facilities elsewhere, and transferred their direct debits and standing orders. And they say they'd discussed those arrangements with their manager. It seems unlikely they'd have done so without mentioning the intention to close the account.

While Lloyds refers to Mr and Mrs A's continued use of the account after March 2013, I think that's a little misleading. The payments after this point are few, and appear simply to be automated transactions that weren't transferred to H. The deposits are simply to cover the amounts that have gone out. I think Mr and Mrs A's only real use of the account after March 2013 was to try to bring the balance to zero. And their reason for doing this seems clear enough to me. It was so that the account could be closed.

That said, at no time did Lloyds tell Mr and Mrs A the account was closed. And given the back and forth over the continuing automated payments, and the bank's correspondence during 2013, I think they'd have known – or at least, should've known – that it wasn't. So I'm not persuaded that it'd be right for me to say the bank failed to act on a closure instruction, or that this means Mr and Mrs A can't be liable for the disputed payments.

can Lloyds refuse to refund the payments?

Lloyds has submitted an extract from the FCA website that refers to unauthorised withdrawals. Part of the document says that a bank can refuse a refund if a customer tells it about an unauthorised payment 13 months or more after the date the money left their account. That guidance appears to be based on Regulation 59 of the Payment Services Regulations 2009 (PSR), which says:

“59.—(1) A payment service user is entitled to redress under regulation 61, 75, 76 or 77 only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.”

I don't consider Lloyds can rely on the FCA guidance to refuse a refund to Mr and Mrs A here. I say this primarily because Mr A told Lloyds in December 2013 about the unauthorised payments – in other words, within a month of the money leaving the account. The bank's own records confirm this. I accept Mr A at that time told the bank he didn't want to involve the police, and the decision was taken not to investigate. But he clearly notified the bank of the transactions within the given timescale.

There are other reasons Lloyds might not need to refund Mr and Mrs A. Banks can sometimes hold a customer liable if they've not taken sufficient care with their security information, or if they've allowed someone else to access the account. And of course, it'd be difficult to say the bank was acting unreasonably in refusing a refund if Mr or Mrs A withdrew the money themselves.

use of a credit facility

It's of note that all the withdrawals were made using the overdraft facility Lloyds provided to Mr and Mrs A. That's important, because the overdraft is a credit facility governed by the Consumer Credit Act 1974 (CCA). Section 83 of the CCA¹ says:

“83 Liability for misuse of credit facilities.

(1)The debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent.”

Effectively, that means Lloyds needs to reimburse the payments unless it can show Mr or Mrs A made the withdrawals themselves, or that whoever else made them had authority.

Lloyds hasn't directly said who it thinks made the withdrawals. It did say it found no evidence they were made by a third party, which might suggest a belief that Mr and/or Mrs A made them. But Lloyds said this in the context of its letter indicating it had undertaken a thorough investigation. The bank's since acknowledged it didn't investigate. So I don't think I can rightly place any weight on this statement.

I've no real reason to doubt Mr and Mrs A's version of events. They've been quite candid in describing what's clearly been a painful and distressing family situation. It seems to me quite plausible that the family member could have set up the payment facility and carried out the withdrawals without their knowledge or agreement. Lloyds hasn't offered any basis for me to reach a different conclusion, though it's had several opportunities to investigate matters. Because of this, I find Lloyds isn't entitled to hold Mr and Mrs A liable for the withdrawals.

other considerations

I've considered the extent to which the bank's handling of matters has caused unnecessary distress to Mr and Mrs A. I've decided not to make an award in this respect. In reaching that conclusion, I've taken into account Mr A's initial (though understandable) reluctance to pursue matters. I've also borne in mind that most of Mr and Mrs A's upset would've been caused by the actions of their family member, rather than by the bank.

my final decision

My final decision is that I uphold this complaint. To settle it, Lloyds Bank PLC should take the following steps:

1. re-work the account as if the withdrawals between 21 November and 13 December 2013 were never made. The bank should ensure this includes cancelling all overdraft

¹ It's worth noting that Regulation 52(c) of the PSR says that Section 83 of the CCA supplants, among other things, Regulation 61 of the PSR. Mr and Mrs A therefore can't rightly be said to be seeking redress under Regulation 61. With this in mind, the 13-month issue may not be relevant at all.

interest and charges levied since 21 November 2013, bearing in mind the refund made on 26 March 2014.

2. cancel the monthly account fees applied on or after 1 November 2013.
3. remove any information it has recorded in relation to the account on Mr and Mrs A's respective credit files since 1 November 2013
4. return any resultant credit balance to Mr and Mrs A, and close the account.
5. pay Mr and Mrs A 8% per year simple interest on the amounts they paid in reduction of the debt, from the date each payment was made until the date of settlement. This is intended to recognise the difficulty they've been caused from being deprived of access to the money. If Lloyds deducts tax from the interest element of this award, it should provide Mr and Mrs A with the appropriate tax deduction certificates.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 29 March 2016.

Niall Taylor
ombudsman