

complaint

Mr M complains that Lloyds TSB Bank plc will not refund a series of withdrawals he says were made from his current account without his authority.

background

Lloyds TSB provides Mr M with a current account and overdraft facility. He has a debit card that he uses for cash machine withdrawals and relatively low value purchases. Mr M took a lump sum from his pension, which was deposited into his account. A couple of weeks later, the card activity increased markedly. The amounts withdrawn using cash machines were much higher than Mr M's previous use. On occasion, cash machine withdrawals were made two or three times a day. Within a month, Mr M's account balance went from around £9,500 in credit to being almost £500 overdrawn.

Mr M says he only realised that the money was gone when he attempted to use his card and was unable to get any cash. He asked Lloyds TSB to look into withdrawals totalling almost £6,000, which he said had been stolen from his account. Mr M also asked Lloyds TSB why it hadn't highlighted the transactions as suspicious. And he reported the matter to the police.

Lloyds TSB said it was holding Mr M liable for the withdrawals. It noted Mr M had continued to use his card during the material period. He also said he had the card at all times. The bank told Mr M the payments were made with the genuine card, rather than a copy, or 'clone'. It added the correct personal identification number (PIN) was used to authorise payment. The bank said its fraud prevention system hadn't identified the card activity as fraudulent. It acknowledged a delay in responding to Mr M, and paid him £100 for his inconvenience. But whilst Lloyds TSB provided transaction details to the police for investigation, it declined Mr M's refund request.

Our adjudicator concluded that Lloyds TSB was entitled to hold Mr M liable. He was satisfied with the bank's evidence that the genuine card and correct PIN were used. The adjudicator noted most of the withdrawals were made very close to Mr M's home, and on days when Mr M had used the card himself. The adjudicator thought it unlikely that someone would have been in a position to take Mr M's card, use it and replace it, on up to 40 different occasions, all without Mr M noticing. Mr M had said he lived alone, and that he couldn't think of anyone who would have been able to access his card.

my findings

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

From the evidence I have seen, I'm not persuaded that Mr M's card was copied (or 'cloned'). I'm conscious that card cloning is a known type of fraud. But Lloyds TSB's records indicate that the chip on the card was read when the withdrawals were made¹. And the manner in which the money was withdrawn isn't suggestive of misuse by an unknown third party. Most of the cash machine withdrawals were made less than 250 metres from Mr M's home.

¹ There is a widespread belief – partly because of media reports – that chip cards can be 'cloned'. In fact, there is no consensus among banking experts, or scientists who have looked into this area, that this type of cloning is even possible, let alone widespread. I therefore think it unlikely that it happened in Mr M's case.

I've considered the possibility that Mr M's card could have been taken and replaced by someone who had access to it. But Mr M says he had the card with him at all times – even keeping it under his pillow at night. And as the adjudicator noted, Mr M has said he lives alone. So there was little opportunity for anyone to be able to take and replace the card.

There is a further point here. A couple of months before the disputed withdrawals started, Mr M met with Lloyds TSB to discuss his account. The bank's notes indicate that it was concerned about the overdrawn position on Mr M's account. Mr M seems to have been experiencing some significant personal issues that were having an effect on his ability to manage his finances. I have great sympathy for Mr M in this respect. But those issues – and Mr M's ability to manage his finances – wouldn't simply be addressed by the fact he received a large deposit into his account. It merely meant he had more money available to spend.

On balance, I consider the most likely explanation is that Mr M made the withdrawals himself, albeit that he may not have realised quite how much he was spending. Might Lloyds TSB's fraud identification system have noticed the change in the pattern of use? Possibly. But it isn't for a bank to curb a customer's genuine activity simply because they have changed the way they are using their account. In the circumstances, I can only suggest Lloyds TSB does what it can to help Mr M with any financial difficulties he is experiencing. Mr M may also wish to seek independent debt advice and support from a free organisation such as Citizens Advice or StepChange Debt Charity.

my final decision

My final decision is that I am unable to uphold Mr M's complaint.

Niall Taylor
ombudsman