

complaint

Mr D's complained Lloyds Bank PLC ('Lloyds') won't refund disputed transactions on his account.

background

Mr D has a bank account with Lloyds. He complained about cash withdrawals between 4 January and 12 April, which he said he didn't make or authorise. He asked Lloyds to refund him the money.

Lloyds didn't think it should refund the money. It said the withdrawals were made with a debit card and PIN, which it'd sent him. It wasn't persuaded by his explanation that someone must've intercepted his mail.

Mr D wasn't happy with this response and so he brought his complaint to this service.

Our adjudicator didn't think it was plausible that an unknown third party could've intercepted his mail and stolen the new card and PIN. He didn't recommend the complaint be upheld.

Mr D disagreed. He's asked for an ombudsman's final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's not for me to prove or disprove Mr D acted fraudulently. My role is to reach a view on what's most likely to have happened, based on the evidence. I'm afraid I don't think the evidence supports Mr D's version of events – that is, that an unknown third party intercepted his mail twice and stole his debit card. And I think, on balance, he knew about the cash withdrawals when they were made. I'll explain why I've reached this decision.

The disputed transactions were cash withdrawals from the ATM at the local post office. The withdrawals occurred when Mr D started making large deposits into his account. Whoever made them had the debit card for the account and PIN.

Lloyds ordered Mr D a debit card because he'd tried to withdraw a large amount of money in branch without one. Lloyds said it sent the card and PIN to his home address. He said he wasn't expecting a card because he'd told it he didn't want one.

He said he didn't receive the card or PIN. He said either Lloyds sent it to the wrong address or his mail was intercepted.

Mr D's complained in the past about Lloyds having different addresses for him. I've seen Lloyds file. It shows it had his correct address. What's more, it wrote to him at that address in April 2016, when it sent him a letter about his overdraft. So, the evidence supports what Lloyds said, that it had his correct address and it points to him receiving mail at that address.

Mr D's also said someone might've intercepted his mail. He's said he lives alone so there's no one at home who could've taken his post. There's a letterbox on his front door. It's not a communal letterbox. He's not mentioned having problems with his other mail. And he did receive the letter about the overdraft in April 2016.

He's suggested it might've been a postman, but I haven't seen a complaint to Royal Mail. I understand a local postman might've been arrested for mail theft but this was before the disputed transactions.

He's referred to another case, which he says is similar. In that case, the ombudsman upheld the complaint because he thought, on balance, the customer's mail had been intercepted.

Each case must be determined by its own facts and it's very rare to find two cases which are identical on the facts. I've looked at that decision and observed that the complainant's living arrangements meant there were other people who had access to her post.

This is not the same situation with Mr D. I don't think the two cases are similar.

Given these circumstances, I find it difficult to see how an unknown third party could've anticipated Lloyds would send Mr D a debit card and new PIN and then intercepted his post twice – once for the card and again for the PIN.

The records show the person making the withdrawals didn't check the account balance until 14 January – ten days after the withdrawals began. Lloyds didn't think this was consistent with the usual behaviour of a fraudster. It thought the person making the withdrawals already knew how much money was in the account.

Mr D said this is only speculation and not evidence. I understand why he thinks this. But Lloyds's experience of fraud complaints is still relevant evidence and it's entitled to rely on it. I noticed the person also made balance enquiries at the ATM a day or two before the cash deposits. I don't think the timings of the balance enquiries can be ignored as a mere coincidence.

Lloyds also said he would've seen the transactions on his bank statements and, if they weren't genuine, he would've challenged them earlier but he didn't. He said he didn't get paper statements and he said he hadn't been checking his account online.

I don't need to consider whether he received paper statements or not. The files show someone made a balance enquiry by telephone banking on 8 and 24 January and online on 24 January and 2 March. Telephone banking was used again on 16 April after the last disputed transactions.

Mr D said this doesn't prove he made the withdrawals or authorised them. But whoever checked the balance by telephone banking would've needed his unique login details. He hasn't mentioned sharing his telephone banking details with anyone else, although I understand his mum knew his account number and sort code.

If no one else knew his telephone banking details then it's very difficult to see how a complete stranger accessed his account using information which only he knew. And, if he was checking his balance, then he ought to have seen the transactions and reported them earlier.

Lastly, Mr D's provided invoices for hotels which he says proves he was elsewhere when the transactions were made. The invoices show he reserved rooms at the hotels but not necessarily that he stayed there on the dates shown. One of the invoices postdates the last

disputed transaction. But anyway, as our adjudicator's explained, it's possible to be somewhere else and still authorise the transactions.

I can see from the file Mr D feels very strongly about the way he's been treated but, based on the evidence, I think Mr D probably knew about the transactions, if he didn't make them himself. I think Lloyds were entitled to treat the cash withdrawals as authorised. For these reasons, I won't be asking it to refund the money.

I'm sorry this isn't the outcome Mr D wanted.

my final decision

My final decision is I won't be asking Lloyds Bank PLC to refund the money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 December 2016.

Razia Karim
ombudsman