

complaint

Mr K and Miss M complain that Scottish Widows Bank Plc acted on faxed instructions from Mr K which Miss M had not authorised.

background

Mr K received a payment of compensation in respect of personal injury. The money was put into a trust deposit account with Scottish Widows, in the joint names of Mr K and Miss M, which required them both to sign for withdrawals.

Mr K and Miss M jointly sent a fax instruction to Scottish Widows to transfer some of the money into a second trust account, also requiring their joint signatures, which was held with another bank. From there, a cheque for the money was drawn in favour of Mr K's sole named account with a third bank.

Without Miss M's knowledge, Mr K re-used the instruction to Scottish Widows by altering the date, initialling the alteration and faxing it through again. He did this five times, on each occasion repeating the flow of funds through the second trust account and then into his sole account.

Miss M says that she signed blank cheques for Mr K to use to take money out of the second trust account, because she did not know he had made the duplicate withdrawals and thought that he was simply making small payments from the initial, agreed transfer. She says that Scottish Widows should not have acted on the repeated instructions, which had only Mr K's initials to the date alteration and not her own.

Mr K accepts that he deliberately altered and re-used the original instruction, moved the money through the second trust account and then ultimately drew it out from his sole account. But he says that – because of his medical condition – he does not remember what he did with the money. Mr K and Miss M have asked Scottish Widows to refund their account with the five withdrawals that were made by Mr K without Miss M's knowledge.

Scottish Widows accepts it could have taken more care when checking the instruction, but says that each instruction contained both signatures and, in addition, all the withdrawals were made to a joint account.

An adjudicator investigated the complaint. She accepted that Scottish Widows had kept to its procedures when accepting the faxed instructions. Overall, she did not recommend that Mr K and Miss M's claim for a refund of the money withdrawn by Mr K should succeed. However, she considered that Scottish Widows should pay Miss M £200 for the upset she had been caused.

Miss M did not agree with the adjudicator's conclusions and wrote with further representations saying, in summary:

- She only signed the first fax instruction. She did not sign any of the five fax instructions that Mr K made by re-using the genuine instruction and so did not give her authorisation for any other withdrawals.

- Scottish Widows accepts that it could have taken more care when checking the instructions – but does not seem willing to take responsibility for the fact that it did not.
- Statements were sent out in Mr K's name – so she did not see them. She would have noticed what was happening, if the statements had been addressed to them both.
- The money was intended to be used for Mr K's benefit and has now been lost. Mr K was not even able to make provision for the children.
- Scottish Widows had a moral duty to protect Mr K, and has failed to do that. Constant arguments about where the money went are causing stress for the whole family.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have sympathy for Miss M's argument that only the first fax contained her true authority, and I am not necessarily persuaded by Scottish Widows' argument that "*each letter was signed by the relevant parties*".

However, the position in this case is complicated by the fact that – on their own – the withdrawals would not have enabled Mr K to spend the money, because they were sent directly into the second trust account which also required both signatures for withdrawals.

Mr K was able to access the money because Miss M had signed blank cheques for Mr K on the second trust account, which Mr K then used in order to get the money sent to his sole named account from which he withdrew it. I accept that Miss M signed blank cheques because she did not anticipate that Mr K would re-use the original fax instruction to Scottish Widows.

Equally, though, I do not think that Scottish Widows should reasonably have foreseen that the release of the money to the second trust account, which also required both signatures, would result in Mr K being able to get and spend the money without Miss M's knowledge and without remembering what he had done with it.

Mr K is affected by a medical condition as a result of his accident, but there is no suggestion that he has been judged to lack mental capacity to deal with his own affairs. The trust appears to have been set up as a device to help regulate the rate of use of the money, but it is not the type of trust where money is administered by others for the benefit of an individual who does not have capacity to make decisions for themselves. Mr K was a joint trustee and signatory to both the Scottish Widows trust account and the second trust account. He also maintains his own, independent bank account.

Mr K has said that he cannot remember what he did with the money, and – given the informal nature of this dispute resolution service – I do not consider that it would be possible for me to establish, with any degree of certainty, how Mr K used the money.

In all the circumstances, I do not consider that I can safely find that Mr K suffered a loss and that this was primarily caused (and should have been foreseeable) by Scottish Widows.

Miss M has recently explained that she and Mr K are no longer together, Mr K has required medical treatment and she has been left struggling financially. But, even if I had found differently in this case, I do not see that I could have directed Scottish Widows to pay any refund of the withdrawals to Miss M. That is because even though she and Mr K were joint trustees – and whatever the arrangements for the trust account signatories – the money in the trust was only for Mr K.

my final decision

I realise that this is a difficult and distressing situation. However, for the reasons I have given, my final decision is that I uphold this complaint only in part and direct Scottish Widows Bank Plc to pay Miss M £200.

Jane Hingston
ombudsman