

complaint

Mr J complains that Lloyds Bank plc negligently allowed a fraudster to obtain a bank card and overdraft facilities on his account, which were then used to make fraudulent cash withdrawals.

background

Mr J's debit card was reported as damaged, and a replacement requested. Overdraft facilities were requested on Mr J's account, and money moved from his savings into his current account. These actions were all carried out using telephone and electronic banking.

The replacement debit card was then used to make a series of cash withdrawals, mainly at branch counters. Mr J says that all these actions, including the cash withdrawals, were carried out by a fraudster without his knowledge and have left him in a very difficult financial position.

Mr J says he does not understand why Lloyds allowed an overdraft facility, given that he had only recently taken a loan with Lloyds for the maximum amount it would lend him. He considers that the various transactions were probably carried out fraudulently by a former colleague and would like Lloyds to replace the money.

Lloyds does not accept that it is liable to replace the money and so is unwilling to make any refund. As matters were not settled, Mr J brought his complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator concluded that Lloyds was entitled to hold Mr J liable for the disputed transactions and so did not recommend that the complaint be upheld.

Mr J did not agree and contacted us again on a number of occasions, asking further questions and repeating his concerns. He also offered some additional arguments and information in support of his case. The main points that he raised were:

- He does not understand why Lloyds allowed these overdraft increases; it should not have done so, particularly given that he had only recently taken out a loan. He is also unhappy about a previous loan application received in his name and would like more information about how that was made.
- Lloyds did not exercise enough security checks, given the amounts that were withdrawn from the account. The transactions were not normal for his account, and should have been checked or stopped. The branch staff should have required signatures or identification for the cash withdrawals.
- Lloyds will not show him CCTV footage which would prove he did not make the branch withdrawals, and the ombudsman service has not demanded it. If Lloyds wants to hold him liable, it must prove he did it himself. He did not make the call ordering the new card, either.
- Lloyds should not have allowed both the original card and the replacement card to be operational at the same time. It should have stopped the replacement card as soon as he reported the disputed transactions, which would have prevented the two small retail transactions which happened after that.

- He is sure the culprit must be his former colleague, who must have hacked his devices to get the necessary information. His postman has told him that he hands people their post outside their doors sometimes, and his former colleague knew his address so could have intercepted the card that way.

my findings

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

The new debit card ordered on Mr J's account was to be sent to his existing registered address, which had not changed since 2012. No attempt was made to change the address, or to get the card sent somewhere else.

Although a new debit card was ordered on Mr J's account, no new PIN was ordered and the one used to make the disputed transactions was the same one that Mr J had self-selected in 2013 and not changed (or received a reminder for) since then.

Mr J has told us that he kept no form of record of that PIN anywhere, and that it would not have been possible for someone to guess it. Later, Mr J said he had also used that PIN for his wife's phone. He also told us that he has allowed his wife to use his card in the past, but says she is not under any suspicion for these transactions. He has argued that the PIN could have been obtained by hacking his phone, though he has also said that he did not keep any form of record of the PIN anywhere.

The electronic banking activity required Mr J's correct registration number, password and memorable information. Mr J says that the registration number would automatically populate from his phone, though not the rest of the security information. Whilst Mr J has said that his former colleague must have hacked his phone and/or his laptop to get this information, I have seen no persuasive evidence that this is what actually happened.

In any event, given the technical evidence we have obtained concerning the way the security information is requested and input, I am not persuaded that a third party who had gained access to Mr J's devices would also have been able automatically to see the necessary additional security information to enable them to access and control his electronic banking.

This also does not explain how the same person could have first intercepted Mr J's home post to get the card that I am satisfied Lloyds sent to him. Mr J's argument that his postman is in the habit of handing post to people outside the door, and that his former colleague knows his home address, was made only very recently.

Any third party who had ordered the card and wanted to intercept it before it was put through Mr J's door would have to know not only what day the card would actually arrive, but also what time the postman would come to deliver it. In addition, he would have to be certain that he could persuade the postman to hand him Mr J's post. All this strikes me as highly improbable.

Two small undisputed retail purchases had also been made on Mr J's account, at a newsagent and high street grocery store. When we first checked with Mr J, he confirmed he had made them himself. But I note that, once it became clear that these had in fact been made with the replacement card, he changed his mind and said he cannot now remember.

Overall, I have not found Mr J's evidence persuasive. Looking at the entirety of the evidence, I find on a balance of probabilities that Mr J either made or authorised the disputed transactions. I would add that it is not necessary for Mr J to have been physically present when the withdrawals were made, in order to be liable for them.

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 J to accept or reject my decision before 21 December 2015.

Jane Hingston
ombudsman