

## **complaint**

Mr C complains that Lloyds Bank Plc won't refund payments he says he didn't make from his account and that it is holding him responsible for the related borrowing.

## **background**

The disputed payments made were to online betting companies, which I have anonymised as companies 1 to 3 below. Lloyds credited Mr C's account in October 2016 with the amounts he disputed while it investigated what happened. Lloyds then decided to take the money back from November 2016 onwards. This accounted for the majority of an overdrawn balance of over £4,200 on Mr C's account. The account was closed and the outstanding balance sent to recoveries in April 2017.

Our investigator did not recommend that the complaint be upheld. He said that:

- Lloyds had made chargebacks and said it had received responses from the online gambling companies at the time. The companies had confirmed they held Mr C's full details. So the chargebacks had been successfully defended.
- However, due to the passage of time, Lloyds said it no longer had access to all the information it had received in response to the chargebacks.
- Although Mr C had said he never had any online gambling accounts this was inconsistent with what Lloyds had noted he'd told it. Our investigator highlighted that on 10 October 2016, Mr C had said he had an account with one company and payments to this company ('company 1') were genuine. On 11 October 2016, he said that he had an account with 'company 2' until January 2016 - but then thought that this had been closed. On 18 October 2016, he had said that he only ever used company 1 and 'company 3'. And on 31 October 2016 he had said that he hadn't had dealings with any betting company and had never gambled in his life.
- He noted that there was also a file note from Lloyds dated June 2014 stating that Mr C had said he had a gambling problem with a different company and requested that his account be frozen.
- There were both debits and some credits into the account from the gambling companies. Our investigator couldn't see why a fraudster would have allowed these credits to be paid into Mr C's bank account. .
- He thought that the extended period over which these payments had been made wasn't the likely behaviour of a fraudster'.
- He said that due to the passage of time there was now limited information. But on balance, he considered that these payments had been authorised by Mr C.
- He noted Lloyds had paid Mr C £75 for the poor service it had provided when handling his complaint.

Mr C didn't accept these conclusions. He said he wanted his complaint to be reviewed. He denied telling Lloyds he had a gambling problem in 2014. He said he knew nothing about the payments or the winnings and this wasn't his main bank account. He said that the fact was that he has never had an online gambling account. He accepted he should have paid closer attention to the entries on his account. But he hadn't noticed what was happening. He didn't accept he was responsible for the borrowing on the account that had arisen.

As Mr C didn't agree the case was passed to an ombudsman to review.

## **my findings**

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

I need to decide whether Mr C authorised these payments. The relevant regulations here are the Payment Services Regulations 2009. These explain that a payment out of someone's account can only be authorised if the payer consented to it. And it's not enough for the bank simply to rely on the fact that the card and security details were used.

### *payment authentication and chargeback*

There are two parts when considering this. The first is whether the payments were authenticated. And it's not been in dispute that a number of payments were made from Mr C's account with the required security information. This allowed payments to be made to the online gambling companies. And so I think these payments were 'authenticated'.

Lloyds did contact the gambling companies at the time and made chargebacks. Lloyds says Mr C had an opportunity at that time to provide any more evidence to support the chargebacks. The chargebacks were defended.

But that's not the definitive word on whether or not they were authorised. A chargeback is considered under a set of specific rules that determine certain disputes. This particular process has now been exhausted. But the nature of Mr C's dispute here means that it can be considered more widely and in the context of the Payment Services Regulations 2009.

So I need to think about how the payments were made and whether Mr C consented to them or not. Mr C says he hasn't given his card to anyone else or shared his details. And he says he lost one of his cards while he was abroad. He doesn't have an explanation of how his details were discovered by an unknown third party. But that's the only alternative explanation I've got to consider here.

### *the pattern of payments*

I've looked at Mr C's bank statements in 2016. And at Lloyds' case notes about the payments he disputes on his account. I note that Mr C had a number of cards on his account in 2016. I have seen evidence that shows that payments to company 1 were made with bank cards ending in two digits '39, '47 and '18. And payments to company 2 were made with cards ending in two digits '13, '21, and '39.

The payments Mr C disputes here had taken place over the period from January 2016 onwards. They related to times that Mr C says he was in and out of the country. When he was away, I can see there were still credits into his account and that the balance was managed within the agreed overdraft limit. That suggests that some attention was being paid to the balance on the account at that time.

I note that Mr C first disputed payments using card '21 that didn't relate to gambling and which were made abroad. His first claim after he returned to the country was in August 2016. It appears his card ending '21 was then cancelled and card '39 issued. Lloyds' notes show that he was asked in September 2016 whether there were any more payments he didn't recognise. It was noted that Mr C said he'd checked his statement and there weren't. Mr C didn't start to report the gambling payments as ones that he disputed until October 2016.

The things he's said to explain this are that he didn't check his account very closely and that it wasn't his main account.

I set out above in the background section what Mr C is reported to have said about whether he'd gambled before or had any online accounts. And whether he recognised any of the payments. I think it unlikely that the comments reflected in those notes would have *all* been recorded incorrectly by Lloyds and on this number of occasions. Especially given that he was reporting payments he later disputed.

*my assessment*

To find that an unknown third party acting without Mr C's authority made the disputed payments I'd need to think all of the following was most likely:

- An unknown third party was systematically able to access his personal security information and set up online accounts. And to find out and discover the details of his replacement cards quickly.
- This person went to the trouble to do this and risked detection over a period of time out of a desire to gamble, and as our investigator said allowed some winnings to be paid back to Mr C's account.
- The third party over a period of months somehow anticipated the available balance in the account and when periodic credits had been made
- Mr C's account of what happened is a credible one.

I'm afraid I don't consider the above most likely based on the available evidence I've seen. Mr C hasn't given a consistent account. He has appeared to accept some of the payments as genuine. And that he had set up at least one online account. But he has then said he's never had any association with any of the gambling companies. Faced with what are quite significant inconsistencies, it makes it rather difficult for me to place any reliance on Mr C's evidence. So my conclusion in the circumstances has to be that I find he authorised these payments.

Lloyds reversed any refunds it had made during the chargebacks. But by this point, Mr C had already withdrawn the amount that had been credited to his account. This resulted in the overdrawn balance. I know Mr C has said he isn't going to repay this. But I'm satisfied he is responsible for the payments that led to the overdraft and therefore it would be unreasonable for me to conclude that Lloyds can't recover it.

Lloyds has investigated all the claims Mr C has made. Overall, having looked at the available evidence, I don't have a reasonable basis to require it to refund any payments or to do anything more.

**my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to Mr C to accept or reject my decision before 18 October 2019.

Michael Crewe  
**ombudsman**