

## **complaint**

Mrs O has complained Lloyds Bank plc won't refund transactions made with her debit card which she didn't authorise. She's also complained about an increase in her overdraft limit and a personal loan which she didn't take out.

## **background**

Mrs O contacted Lloyds in August 2018. She'd lost her debit card and said all transactions after 15 August weren't made by her. She was also concerned about an increase in her overdraft by £1,750 to £2,500 made on 4 August and then a loan application on 18 August. £4,500 was paid into her current account on 20 August from this application.

Even though Lloyds knew there'd been some malware detected on Mrs O's device, they didn't think this explained the debit card use. £1,500 was withdrawn at cash machines over three days but this was only permitted because Mrs O's account had an increased overdraft. They also noted they'd spoken to Mrs O during this period (when she'd been unable to complete security to make a payment for £750). She was obviously checking her account using Lloyds' mobile banking service and hadn't queried the increased overdraft facility. The applications for both the overdraft and the loan used IP addresses which were consistent with Mrs O's normal use. They believed Mrs O had made the transactions and applied for the increased borrowing.

Mrs O brought her complaint to the ombudsman service. Our investigator felt the evidence showed what Lloyds had said was most likely. He also knew Mrs O had admitted she occasionally used gambling websites so thought the transactions she disputed were hers.

Mrs O was concerned about having to repay the loan which she couldn't afford. She's asked an ombudsman to consider her complaint.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached a similar conclusion as our investigator. I'll explain why.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing else that's had a marked impact on the decision I'm making here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

So to help me decide what happened, I've looked at the evidence of the transactions, including the borrowing applications, as well as what both Lloyds and Mrs O have told us.

I think the following facts are relevant to how I've considered this complaint:

- The applications for an increase to Mrs O's overdraft and loan were made on 4 and 18 August 2018. These applications were made from IP addresses consistent with addresses Mrs O had used.

- The first disputed transaction didn't take place until 18 August when £500 was withdrawn at a cash machine.
- It's unusual for additional borrowing to be taken out by an unknown third party unless they can access the money in the account. And then delay taking this out as soon as possible.
- Mrs O says her debit card went missing but there was limited chance for someone to have known her PIN. Nor did her card seem to go missing immediately after the previous cash withdrawal (on 15 August). I say this as the disputed use came later and you'd expect someone to use her card immediately if they had stolen it and knew her PIN.
- In fact the increase in overdraft was applied for when Mrs O still had her debit card.
- Although Mrs O told Lloyds she used one specific phone type, it's clear she added an iPhone to her online use. Mrs O accepts she received a code from Lloyds to register this device.
- Mrs O spoke to Lloyds during this period as she queried why she was unable to make an online payment. She says this was to her cousin's husband but seemed unwilling to share much detail with Lloyds when they queried this with her.
- There was plenty of opportunity for Mrs O to have noticed the increase in the money available to her before she complained to Lloyds about her missing debit card and disputed transactions.
- Some of the disputed transactions were online gambling transactions. I can see from Mrs O's account statements that she did go through bouts of gambling. Just slightly more than two weeks after these disputed transactions, Mrs O used the same gambling website again. She also received £1,350 into her account from the same company – presumably from winnings. And this is one of the reasons why it's unlikely an unknown fraudster would gamble with someone else's debit card. Winnings are always paid back to the same card.
- Even if Mrs O hadn't applied for the loan – which I don't actually believe is the case – I would expect her to be asked to repay it if there's evidence she had benefit of the funds. I think the evidence shows this to be the case here.

Having considered all the evidence, I believe Mrs O both applied for the additional borrowing and used the money in her account.

I don't doubt Mrs O is concerned about repaying the loan. To date she's not made any repayments and Lloyds have granted her breathing space whilst her complaint has been with our service. However she will need to start making repayments and covering her arrears to limit the damage to her credit record.

Similarly Lloyds are obliged to consider Mrs O's current income and expenditure and make sure she is able to repay what's being asked.

### **my final decision**

For the reasons I've given, my final decision is not to uphold Mrs O's complaint against Lloyds Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 6 April 2020.

Sandra Quinn  
**ombudsman**