

complaint

Mrs A complains that Lloyds Bank plc did not alert her at an earlier stage to large withdrawals that her husband was making from her business account.

background

Mrs A held a business account with Lloyds, for which her husband was an authorised signatory. She had recently sold her business, resulting in a large payment being made into the account.

Mrs A received a phone call from Lloyds, during which she says she was told that her husband had presented a large cheque for payment at the branch in favour of himself and asking whether that was alright. Mrs A says that, as her husband dealt with their finances, she assumed this must be for money they owed and agreed to it.

That evening, Mrs A says she discovered that her husband had gambling debts and also became aware that he had made other large withdrawals from the business account during the past week.

Mrs A says that the drawings made by her husband were entirely out of keeping with the previous management of the account. She considers that Lloyds should have realised, a lot sooner, that something was wrong and warned her about her husband's activities. She says that, because of these drawings, her cheque payment for tax owed by the business has been returned unpaid and she also faces the loss of her home.

Lloyds acknowledged Mrs A's concern that it had not contacted her sooner, but pointed out that Mr A was an authorised signatory and so had authority to deal with the account on his own. It did not accept that it should be held liable for what had happened and considered that this was primarily a matter between Mrs A and Mr A.

As things were not settled, Mrs A brought her complaint to this service where it was investigated by an adjudicator. From the evidence, the adjudicator noted that there had been similar, undisputed large withdrawals on the account in the year prior to the events complained about. Mr A was an authorised signatory to the account and, in all the circumstances, the adjudicator did not consider that Lloyds was liable to refund the money that had been taken out of the account. Because of that, the adjudicator did not recommend that the complaint should succeed.

Mrs A did not agree with the adjudicator's conclusions. Through her lawyers she said, in summary:

- Lloyds cannot prove that it told Mrs A about more than one withdrawal by Mr A, or of the small remaining balance on the account, when it phoned her.
- Mr A's attempts to draw cash over the preceding weekend triggered an automatic alert on the account, which is why Lloyds phoned Mrs A. But no details have been given about Lloyds' automated warning system, or exactly why it was triggered in this case.

- Even if Mr A had made previous withdrawals from the account for similar amounts, the number of withdrawals made in the space of a week was still out of character and should have caused Lloyds to become suspicious.
- It is understood that an email passed between one of the branches where a withdrawal was made, and Mrs A's business banking manager. The contents of that email should be disclosed.

my findings

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

Mrs A set up the authority for Mr A to operate her business account some ten years before the events complained about. As I understand it, Mrs A had not raised any prior objection to transactions made by Mr A on her account and the signatory arrangements for Mr A had run smoothly. Mrs A has told us that, as well as making Mr A an authorised signatory to her business account, she also allowed Mr A to run their joint finances.

Ordinarily, a bank is required to carry out the instructions of a person who has authority to operate an account and has no general right to question or decline a withdrawal where there are sufficient funds in the account to cover it.

Mrs A's lawyers have argued that Lloyds owed her a fiduciary duty of care to maintain a watch over the management of the account and bring to her attention any unusual transactions. I consider that this overstates the legal position, and I am not persuaded that Lloyds had a duty to monitor Mrs A's account to that degree. That level of supervision of an authorised signatory is normally for the account holder, rather than for the bank, to undertake.

But I accept that, in some exceptional circumstances, a bank may have a duty to take further steps in relation to transactions being carried out on an account by an authorised signatory. So I have considered whether the facts and circumstances of Mr A's withdrawals were such that Lloyds should, exceptionally, have intervened.

The withdrawals that Mrs A complains about took place over a week, beginning when the account received a substantial deposit from the sale of the business. There is no dispute that these withdrawals were made by Mr A, under the longstanding authority that Mrs A had given him to draw on the account using his signature alone.

But Mrs A says that the size and number of the withdrawals were such that Lloyds should realised – at an early stage – that something was wrong and alerted her to the problem. She says she had no idea that her husband had been gambling, and says the cash withdrawals that he made should have appeared entirely out of character to Lloyds.

Looking at account statements, it is apparent that Mr A had previously made large cash withdrawals of similar individual amounts to those made during the events complained about. Mr A withdrew cash from the account most months and there had been thirteen large withdrawals during the year prior to the disputed withdrawals, with some of those only a matter of days apart. Mrs A had raised no challenge to any of those withdrawals, and so I do not accept that the fact there were large cash withdrawals should, on its own, have caused Lloyds to intervene.

I have considered what Mrs A has said about the sudden increase in volume of the withdrawals. However, the account had also recently received a large credit which Lloyds was aware was from the sale of the business – a step which it knew had been taken to alleviate financial pressure. Payments were to be made in relation to the end of Mrs A's ownership of the business so an escalation of payments around that time would not necessarily appear incongruous. In that context, and given that the withdrawals were not out of character with previous transactions, I am not persuaded that Lloyds should have intervened.

It appears that Mr A had used different branches and/or cashiers for each transaction. The checks that Lloyds carried out in the branches were primarily concerned with making sure that Mr A was who he said he was. I do not consider that it was obliged to double-check that Mrs A knew about the withdrawals before allowing them, in the circumstances.

Mr A made an unsuccessful attempt to draw funds over a weekend and this is what caused an automatic warning code to show up on the account when he next made a withdrawal – at which point Mrs A's Lloyds business banking manager phoned. There was no email to the business banking manager. We have explained the nature of the warning to Mrs A's lawyers, but I am not able to provide further details about how the system of triggers operates as I accept that this information is not appropriate for disclosure.

There is a dispute about what was said during that phone call – Mrs A says that Lloyds only mentioned one withdrawal, which she says is why she agreed to the withdrawal and confirmed Mr A's continued authority. Lloyds says that it also told Mrs A of other withdrawals during that call, and that she confirmed she was aware of them.

There is no recording of the call, so I have carefully considered the contemporaneous evidence about what was said. That includes both Lloyds' internal notes of the call made at the time and Mrs A's letter to this service dated the day after the call. I find it more likely than not that Mrs A was also told about other withdrawals and, against that background, confirmed Mr A's authority to operate the account.

I can readily appreciate that it will have been traumatic for Mrs A to later discover that her husband had used money from the sale of her business to pay off gambling debts rather than – as she had assumed – to cover their known obligations. But, given the particular facts and circumstances of the case, I do not consider that I can reasonably find Lloyds responsible for the loss Mrs A suffered from the drawings Mr A made as an authorised signatory on her account.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 1 June 2015.

Jane Hingston
ombudsman