

complaint

Mr K complains that Lloyds Bank Plc won't refund some debit card payments that were made by a fraudster.

background

Mr K has a current account with Lloyds. He told Lloyds that a number of transactions he didn't recognise had been made using his debit card, which added up to about £5,500. He asked for these to be refunded, but Lloyds refused. Lloyds didn't believe that Mr K had been a victim of fraud. It thought that Mr K had carried out the transactions himself. One of the transactions had been blocked and a text message had been sent to Mr K's phone to ask him if he had made it, and he had replied to say that he had. The pattern of transactions was not typical of how a fraudster would behave. Some of the disputed payments had been made to a gambling website, even though a fraudster would not have been able to collect any winnings from Mr K's online gambling account. And he hadn't reported the transactions at the time, even though he ought to have seen them when he'd been using online banking every day.

Mr K complained to our Service. He said that the other residents or staff in the care home where he lived had intercepted his new card and his personal identification number (PIN) when they were posted to him. He also complained that Lloyds shouldn't have sent him a new card in the first place, because Lloyds had told him that his account would be blocked until one of his relatives obtained third party access to his account, since his autism and low IQ made him vulnerable.

Our investigator did not uphold this complaint. She wrote two decisions. In the first one, she said that she thought it was likely that Mr K had made the transactions himself – but alternatively, if a fraudster had indeed made them, then Mr K had been grossly negligent with his security details. The transactions Mr K denied making had been made two months after his card had been sent, and after some transactions which he accepted he'd made, so she didn't think the card and PIN had been intercepted in the post. She thought it was unlikely that a fraudster would have used Mr K's card for online gambling. And Mr K had noticed the relevant transactions at the time – and had been in contact with Lloyds about something else at the time – but he still hadn't reported the alleged fraud to Lloyds. She also said that Lloyds had not been wrong to send Mr K a new card.

In response, Mr K said that his care workers had forced him to let them use his debit card, and had threatened him with violence if he didn't comply. He said that they had been with him when he'd made his phone call to Lloyds to report the fraud, and they had been keeping his card and PIN in a safe. He hadn't mentioned this before because he didn't want to "cry wolf" and he'd thought he wouldn't be believed. He also provided a medical report as evidence to show that he had lacked the mental capacity to use his debit card.

In her second decision, the investigator said that she still believed that Mr K had made the transactions himself. This time, she didn't mention the alternative scenario that he'd been grossly negligent. She didn't believe that the carers had confiscated his card and kept it in a safe, because after the disputed transactions there had been some more transactions which Mr K accepted were made by him, so he must have had the card. She didn't think that thieves would have returned the card to him, and then taken it back later when some more disputed transactions had been made. She pointed out that Mr K had authorised one of the disputed transactions by sending a text message from his own phone. She didn't think it was

likely that thieves would gamble money instead of buying things with it, or withdrawing the cash. And she thought that evidence about the internet protocol (IP) addresses used to make the online gambling transactions and to use Mr K's online banking facility supported the bank's case that Mr K had made all the transactions himself.

Mr K did not accept this, and said that he had only sent the text message because he didn't really understand what he was doing. So this case has been referred to me for an ombudsman's decision.

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 do not uphold it, because I believe that Mr K did make these transactions himself. I will explain why.

Before I do that, I will say that I don't think the evidence about IP addresses really helps to decide who made the transactions. It doesn't prove that the online bets were placed using the same device that Mr K used to do his online banking. It only proves that they were done using the same wi-fi connection, on the same premises, but that is equally consistent with his carers using the gambling website as it is with Mr K using it. So I think this evidence is neutral, and I have discounted it.

I agree with what Lloyds and our investigator have said in their analysis of the transactions which Mr K says he didn't make himself. It doesn't seem likely that someone who stole a debit card and PIN would use it to gamble and thereby risk losing all the money in the bank account when they could steal it instead. I assume that any winnings would be paid to the same account, so I don't think a thief wouldn't have access to them, but I still don't think this scenario is likely.

I also agree that the alleged fraudster's spending habits seem to be similar to Mr K's. And it seems unlikely that a fraudster wouldn't just spend or withdraw all the money in the account as quickly as possible, instead of doing so over a period of several days. Nor does it seem likely that a thief who stole the card in the scenario most recently described by Mr K would return the card to their victim for a while, and allow him to spend more of his money, thereby reducing the amount available to steal.

But to me the most convincing evidence against Mr K's case is the fact that he significantly changed his story about what happened – as well as the fact that he noticed the transactions he's complaining about while they were happening and didn't tell Lloyds about them at the time, even while he was in contact with Lloyds about something else. I also note that when he brought a similar fraud claim to Lloyds not long before this one, he admitted to Lloyds that he had lied to them and apologised (this was in two phone calls on 16 and 19 June 2017).

I have considered the medical report dated September 2017. Mr K was diagnosed with autistic spectrum condition, and an IQ of 61 which means that he has "a mild learning disability." There is no evidence that he lacks mental capacity, and the fact that he has autism and a low IQ doesn't change my mind about who made these transactions. I also don't think that it adequately explains the text message he sent in which he agreed that he had made a transaction which he now disputes making.

For all of these reasons, I don't think it would be reasonable to require Lloyds to refund the disputed payments.

Mr K says that Lloyds knew that he was vulnerable but it failed to protect his account when it sent him a new debit card. He told the investigator that Lloyds had blocked his account and was going to add a third party to his account to prevent further fraud from happening. Since that hadn't happened, he says Lloyds shouldn't have issued a new card.

The new card was sent to Mr K on 13 June 2017. But the earliest reference I can find in Lloyds's records about allowing a third party access to his account is on 29 June. So I don't accept that Lloyds should not have sent Mr K a new card. And on 6 July, when Mr K's sister agreed to act as a third party on the account, Lloyds arranged to remove the block. The transactions this complaint is about were all made in August or later.

In September Mr K opened another account and was sent a card for that account. I see no reason why Lloyds shouldn't have sent that card either.

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 9 March 2018.

Richard Wood
ombudsman