

## **complaint**

Mr L complains about the service he received from Lloyds Bank PLC (Lloyds). He says Lloyds did not allow him, as his mother's attorney, access to her account, because he is a non-UK resident, and secondly that Lloyds had no procedure to detect unusual activity on her accounts, which led to the loss of a large amount of money.

## **background**

I won't repeat the adjudicator/investigator's entire background summary because it covers the issues and I want to avoid repetition. So, if I've not mentioned something it's not because I've ignored it, but because I don't think it's relevant to the issues.

However, in summary form it is this; Mr L and his niece J were the appointed attorneys under a Financial Power of Attorney, granted by his mother. Between December 2017 and May 2018, J misappropriated over £100,000 of his mother's money. Mr L feels this was probably in pursuit of a gambling habit.

Mr L said that in May 2017 he was incorrectly told by Lloyds that he could not have access to his mother's accounts because he was a non UK resident. He said that had he been given access then, as he ought, that he would have been able to prevent the misappropriation of funds by J.

At a meeting in branch in January 2018, Mr L said Lloyds did agree to him having access to his mother's accounts, and it was left that J would set up the online access for him at a later time when she went back to the branch. But she didn't, prevaricating and providing excuses to Mr L when pressed by him. Mr L feels that if he had been told that only one person could have online access to the accounts he would have insisted that it was him, and not J. But Lloyds said they thought it would be more likely than not that Mr L would have shared the account log in details with J in any event because at that time he still trusted her.

Lloyds accepted that they were wrong in denying Mr L access to his mother's account and have apologised for that and provided feedback to the relevant people. They have also apologised when another advisor told him incorrectly that attorneys could not have online access. In the light of those two service failings Lloyds offered Mr L £100 in compensation. But in relation to the loss of the funds, Lloyds said that J had full authority to access the accounts as an attorney and there was no evidence to show that funds were being misappropriated. They did not accept that if Mr L had been given access in May 2017 that the ultimate misappropriation would have been prevented.

Mr L was unhappy with Lloyds' response and so an investigator from this service looked into the complaint and accepted that there had been failings in the level of service but found that the level of recompense offered to Mr L was fair and reasonable. As Mr L didn't agree, the complaint has been passed to me.

## **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 role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where it is appropriate so to do. What I need to decide is whether Lloyds acted fairly and reasonably in how it dealt with Mr L. My aim is to ensure that a fair and reasonable outcome has been achieved, which

means taking into account both Lloyds' view and that of Mr L. I do not perform the role of the industry regulator, and nor do I have the power to make rules for financial businesses, punish them, or direct that they change their processes. That falls under the remit of the Financial Conduct Authority. Equally we are not a court service.

My decisions are based on the evidence. Where such evidence is incomplete, inconclusive or contradictory, I am bound to reach a decision on the balance of probabilities – in other words, I consider what is more likely to have happened in the light of that evidence and the wider circumstances of the case. Looking at the available evidence, I think we have an unfortunate situation here.

I have thought about the £100 offer of compensation Lloyds made to Mr L. This was to reflect the accepted poor service in relation to giving him the wrong advice. It was not meant to be compensation for the loss of the funds. So, for those discrete complaint issues I think the sum offered was reasonable. It is in line with the awards this service would make for distress and inconvenience in circumstances like this, and I think it is fair and enough to put matters right.

But I now turn to the more substantial issue of the loss of the funds. In May 2017 Mr L has said he trusted J. So, even if he had been given the correct advice it is unlikely he would have chosen simply to have sole access to the accounts. He was in the USA and J was here in the UK near to his mother. It is more likely than not that he would have had a shared access arrangement. J would therefore have been in the same position as she was to begin with.

J did not start to misappropriate the funds until the latter part of December 2017. I have looked at the statements and can see that by mid May 2018 the funds had virtually all gone. That is a very short period of about 19 weeks. The question which arises is whether Mr L would, within that period, have been able to do anything to prevent the misappropriation. I have no doubt that he would have raised an alarm had seen the alarming rate at which the funds were being depleted, since I agree with him that that rate of expenditure for an elderly woman with Alzheimer's disease would have been very unusual. But I know from what actually happened that J was quite creative in deceiving Mr L, when she prevaricated and put forward excuses as to why the online access had not been set up. That was during the period January 2018 to November 2018. So I think on balance that it would have been likely that J would have equally prevaricated and found another reason to keep Mr L from the fact that she had misappropriated the funds.

However it is also the case that I should consider whether there was anything which would or could have alerted Lloyds to the fact that funds were being misappropriated. In this case Lloyds would only know that the funds were being transferred by one of the lawfully appointed attorneys. They had no reason to suspect that J had a problem with gambling or indeed that she was otherwise misappropriating the funds. I agree that they would see that the funds were reducing fast but in itself there is nothing wrong in that, without further indication of wrongdoing. In other words Lloyds had no power or cause to stop what appeared to be lawful transfers. I suspect that even if Lloyds had approached J she would have advanced an excuse or reason as to why she was transferring funds. Equally she might have declined to make any comment at all which would have been her right.

I know Mr L will be disappointed with my decision but I have come to the same conclusion as the investigator and for similar reasons. Mr L's mother has been the victim of a terrible breach of trust by J, but I cannot, on a balance of probabilities, find that the loss sustained

on the account was by reason of anything Lloyds did or didn't do. In other words I think it is likely the loss would have occurred in any event even if Mr L had been provided with access to his mother's account in May 2017.

**my final decision**

Lloyds has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Lloyds should pay £100 to Mr L.

For the reasons set out above I do not uphold the complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 January 2020.

Jonathan Willis  
**ombudsman**