

Complaint

Mr A has complained that Lloyds Bank PLC won't refund transactions, which he says he didn't make.

Background

Mr A said his nephew stole his debit card details and opened an account with an online casino. He said his nephew spent £19,000 of his money on the casino. This sum was debited from his Lloyds' account.

Mr A said he contacted Lloyds when he first saw the payments on his account. He said Lloyds told him it was blocking his card. However, two payments went through after he'd reported the fraud.

He asked Lloyds for a refund. He said he didn't know about the online casino account or that his nephew had stolen his card details. He also said Lloyds was responsible for the last two payments because it failed to block his card, as agreed.

Lloyds investigated his complaint and decided not to refund him. It thought he'd made the payments himself because:

- the disputed transactions were completed online using the same IP address as the one Mr A used when he logged on to his online banking account
- some of them were completed on the same day as other large genuine transactions to another gambling site
- his nephew couldn't benefit from any winnings as they would be paid into Mr A's account
- there were too many inconsistencies in Mr A's explanation of what happened.

As Mr A didn't agree with Lloyds' decision, he asked this service to investigate.

Our investigator didn't uphold Mr A's complaint. In summary, she felt unable to conclude that the nephew made the payments. She was persuaded they were most likely made and authorised by Mr A.

Mr A didn't accept our investigator's view. He's asked for an ombudsman's final decision.

My findings

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Both Mr A and Lloyds have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mr A that I've read the file, including his comments and evidence.

Having considered all the available evidence and arguments, I'm afraid my review has led me to the same overall conclusions as those reached by the investigator and for broadly the same reasons. I will explain why.

In short, Lloyds is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Mr A says he didn't open the account with the online casino or make the disputed transactions. So, my primary concern is to come to a view about whether or not I think Mr A authorised the transactions by making them himself.

Having reviewed Lloyds' technical evidence I'm satisfied Mr A's card details were used to make the disputed transactions and that they were authenticated. However, despite what Mr A has said, I'm not persuaded his nephew opened the account or made the transactions. In coming to that view, I've taken into account the evidence below.

IP address

Mr A told us his nephew took pictures of his debit card and used Mr A's phone to perform the transactions. He said his nephew often went into his room to use his PlayStation when he visited. He also said his nephew and his parents used to live with him.

Lloyds' technical evidence shows that Mr A logs on from two IP addresses – one for his online account and the other for mobile banking. The disputed payments to the casino were made from the same IP address as the one he uses for online banking. I understand the device was a laptop, not his phone.

Mr A has explained how the opportunity might have arisen for his nephew to be in his house. However, according to the bank's audit report, the first four payments were made between 5.44am and 7.06am on 4 June 2018, which was a Monday. It seems unlikely to me that his nephew would be 'in his room' at these hours, even if he were still living with him, especially as Mr A works.

Based on this evidence, I'm satisfied the disputed payments were made on Mr A's laptop and from his home. I don't consider his nephew was in the house or in his room on 4 June when the first four payments were made. I think Mr A made these payments. And I think it follows that he made the last two payments on 5 June.

Online and mobile banking activity

Lloyds online audit report shows that Mr A logged on to his online and mobile banking several times before and after the disputed payments. For example, he logged on several times between 07:19am and 5:48pm on 4 June 2018. So, he would have seen that £10,000 had left his account. Yet, he didn't contact Lloyds until the next day at 7.55pm.

Mr A said he thought the payments were his monthly direct debit payments for his outgoings and that's why he didn't question it. However, his bank statements show five direct debits each month totalling £1,580.81 – a significantly lower sum. I can't see how he could confuse the £10,000 with his normal outgoings. He would also have seen where the payments went – to the casino. I can only conclude that he knew what the payments were.

Payments to other gambling sites

There is a history of gambling on Mr A's account. The disputed payments are consistent with other similar payments, which he hasn't disputed. For example, on 3 and 6 June there were

several payments to another gambling website. The amounts are similar to the disputed payments.

As the disputed transactions are consistent with the other gambling payments, I think it's more likely than not that Mr A made them.

No financial benefit

As already pointed out, any winnings would have been paid into Mr A's account. There's no explanation for how his nephew could benefit from the winnings. So, there was no financial benefit to the nephew in placing the bets. And it makes no sense for the nephew to use his card and not benefit financially.

Telephone numbers

The first transaction was declined. It was followed within one minute by a successful payment to the online casino. Lloyds said it would have sent a text message to Mr A's mobile number. Mr A said he didn't receive any text messages. He said his phone was stolen earlier that year and although it was later returned, his number might have changed.

However, the evidence from the bank shows that he registered three numbers with it on multiple occasions. This suggests he used different sim cards, as he'd been using the same device for mobile banking. The investigator has set out the phone history in details. I agree that it's more likely than not that he received the text message and responded to it.

The casino account

Mr A relies heavily on the evidence from the online casino, which shows that the name, address and email address on the account are not his. However, the mobile number, which was registered to the account, was one of the three numbers he'd registered with Lloyds. And his card details must have been registered to the account so that winnings could be paid into his account. This is evidence linking him with the casino account.

Again, I've thought about whether his nephew opened the account using his details but as I've already mentioned it's difficult to see how he would have benefited from any winnings. Also, the mobile number, which was registered on the casino account, was originally registered with Lloyds in May 2018 and again in September 2018. It wasn't a number he was using at the time, which means another sim card must have been in the phone. This begs the question, how did the nephew know the other number? I don't think he did. I think Mr A opened the account.

For all the reasons I've given, I think it's more likely Mr A made the disputed payments to the online casino himself, rather than his nephew. It follows that Lloyds is entitled to hold him liable for them.

Fair and reasonable

Mr A's main complaint is that Lloyds failed to block his card, as promised, when he first telephoned it. This is his only comment on the investigator's view. He hasn't responded to the evidence, which connects him to the disputed transactions.

The investigator's view sets out the history of Mr A's first phone call to the bank. Initially, Lloyds said he didn't call on 5 June to report the disputed transactions. It later confirmed he had called and it had told him it would block his card and stop further transactions. Lloyds now say it was a block for a specific transaction.

I think Lloyds did mislead Mr A into thinking it would stop transactions to the casino. I've considered what this means for Mr A's request for a refund. My primary task has been to decide if he authorised the disputed transactions. I can't decide he didn't authorise them just because Lloyds failed to block his card. I have to look at the evidence, which connects him to the disputed transactions. And that evidence is set out above.

Having decided there's no evidence of fraud here and that he authorised the transactions, I'm afraid I don't think it's fair and reasonable to ask Lloyds to refund him – not where he has made the payments.

I'm sorry this will be disappointing news for Mr A, especially after a long wait. I hope the reasons for my decision are clear and I thank him for his patience.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 April 2020.

Razia Karim
ombudsman