

The complaint

Mr W complains Lloyds Bank PLC (“Lloyds”) won’t refund payments made from his account which he disputes having authorised.

What happened

The details of this complaint are well known by both parties, so I won’t repeat them again here in detail. Instead, I’ll focus on setting out some of the key facts and on giving my reasons for my decision.

In early July 2023, two payments to a crypto currency platform were made from Mr W’s account which amounted to £2,999. A transfer of £20,000 from Mr W’s savings account with Lloyds was made into his current account. Mr W disputes to having made all three transactions.

Mr W says his phone was stolen from him the night preceding the transactions being made. Mr W reported the theft of his phone to the police and has since replaced his phone and SIM.

Mr W also contacted Lloyds to report what had happened and claim for a refund of the funds. Lloyds didn’t uphold Mr W’s claim, and he complained about this decision. Lloyds didn’t uphold Mr W’s complaint and in summary it made the following key points:

- Mr W’s phone was locked, and it could only be accessed using facial recognition or a passcode. Mr W informed Lloyds that no one else knew his passcode
- The disputed transactions were made using Mr W’s mobile phone. For Lloyds to accept fraud had occurred, it would need to see how it would’ve been possible for anyone else to have accessed the phone
- As Lloyds can’t see how it would’ve been possible for anyone else to access Mr W’s phone, it cannot accept the payments were made by an unknown third-party who was able to fraudulently access his online banking

Mr W referred his complaint to this service. One of our Investigator’s looked into it, and they recommended it not be upheld. In summary, their key findings were:

- Lloyds has provided technical evidence which shows Mr W’s banking app was accessed to make the disputed transactions using his mobile phone password. It’s not been possible to identify how an unknown third party would have known this to enable them to log into the mobile banking app
- The disputed payments were made to an existing payee on Mr W’s account that had been there since 2017. They can’t see how that would benefit a fraudster
- £20,000 was moved from Mr W’s savings account but it wasn’t utilised. This isn’t typical of a fraud scenario where funds would be dispersed quickly

Mr W didn't agree with what our Investigator said. In response, the key points he made were:

- Mr W's research shows that there is evidence in the media that both his mobile phone type and Lloyds' banking app are vulnerable to being breached. Mr W attached various reports and his research shows other people have fallen victim to similar instances of fraud to his
- He has provided evidence of an email received from the phone manufacturer which show his ID password had been changed and the functionality to remotely monitor and access the phone had been disabled
- Given the reports Mr W has seen, Lloyds is failing to protect its customers in cases where their device has been stolen
- The Investigator suggested the £20,000 transfer from his savings account not being utilised was not typical of fraud behaviour. But it's because Mr W asked Lloyds to freeze his account very soon after the disputed transactions were made.

So Mr W argues the fraudster was likely intending to utilise all the £20,000, but his prompt action likely saved him from suffering further material loss

- Other disputed transactions were made on three of Mr W's other account providers around the same time. Those providers all acknowledged the vulnerability of their systems in relation to physical device theft and refunded him

Relevant considerations

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.

Of particular importance to my decision about what is fair and reasonable in the circumstances of this complaint, are the Payment Services Regulations 2017 (the PSR 2017) which apply to transactions like the ones Mrs M disputes. Among other things the PSR 2017 include the following:

Regulation 67 of the PSR 2017 explains:

67.— (1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to —

(a) the execution of the payment transaction; or

(b) the execution of a series of payment transactions of which that payment transaction forms part

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, payment service provider's will be liable for unauthorised payments.

As there was no agreement, this complaint was passed to me to decide. I then sent both parties my provisional decision in which I said I was planning on upholding this complaint. For ease of reference, here is what I said:

Provisional decision

"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'm planning on upholding this complaint. I'll explain why.

I'm satisfied from Lloyds' technical evidence that Mr W's account was accessed through its mobile banking app through its security processes to make the transactions. So, that means I'm satisfied the transactions were authenticated in line with what the PSR's say. But the PSR's say that is not, on its own, enough to enable Lloyds to hold Mr W liable.

I also need to think about whether the evidence suggests it's more likely than not that Mr W consented to the payments being made. Having given this careful thought. I'm persuaded, on balance, that it's most likely Mr W didn't consent to the transactions he disputes. I say that because:

- *Mr W has sent an email which shows he reported the theft of his phone and fraud on the morning shortly after the disputed transactions had been made to the police. I think it's unlikely Mr W would have reported this matter to the police if he wasn't making a genuine claim. Mr W had also reported this to Lloyds at a relative proximate time to informing the police and to that of the theft.*

Mr W argues it's most likely all the £20,000 transferred from his savings account was not utilised by fraudsters because of how quickly he reported the theft to Lloyds and asked it to freeze his accounts. From the information I've been provided, I'm satisfied that his timeliness of reporting the fraud and theft was most likely what stopped any further transaction being made. The timeline of events and information I have been given is consistent with this.

I also question why Mr W would have reported and thwarted further transactions if he had directly or indirectly authorised them. I haven't seen compelling evidence to suggest any reason why he would do this

- *Mr W has provided evidence that his mobile phone company had sent emails to him which show the functionality to access his mobile remotely and locate it through the internet had been disabled. The emails also show his email address needed verification, and a request to reset the password and/or unlock the account was made. This type of activity is consistent with what I'd expect to see if a fraudster had stolen a mobile phone and attempted to access the phone using its security protocols including the biometrics*
- *Mr W has also sent evidence which shows he was able to replace his phone with a family member's old one which meant he didn't need to buy a new one or make a claim on his insurance. He has also sent in evidence from his network provider of requesting a new SIM card, and that a new one was sent to him within three days of the theft.*

When taken together, I'm persuaded this shows Mr W was genuinely the victim of his mobile phone being stolen. And since he had his phone stolen, he can't have made the transactions himself

- *Lloyds argue that as Mr W never shared his phone's passcode with anyone, and the only other way to access the phone was through face recognition, there is no plausible explanation as to how the phone was compromised.*

But there could be other ways in which a fraudster was able to access his phone. When taking into account everything I've said above, I'm persuaded that its most likely that something like this happened. I also haven't seen any evidence to suggest Mr W had been grossly negligent – so this isn't something I need to consider

- *The two payments were made to a crypto currency platform and Mr W had sent a payment to the same company in 2017. But I'm not persuaded this is evidence enough to show Mr W authorised payments to them in 2023. That's because I don't have any evidence to whom these payments were made to with that platform and who benefited from them*
- *Mr W has sent in media articles related to this type of fraud and said that his other successful claims with different payment providers should support his complaint. But I have not put weight on this, as I must decide the complaint on its individual merits and circumstances*

*So, after weighing everything up, I'm persuaded Mr W didn't authorise the payments he disputes. To put things right, Lloyds should refund Mr W £2,999. It should also pay Mr W 8% simple interest on this amount from the day the payments were taken up until settlement to compensate him for the time he's been deprived of their use***

The deadline for responses has now passed. Mr W has indicated he is happy to accept what I said. And Lloyds say it has no further points or information for me to consider.

What I've decided – and why

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, and for the reasons in my provisional decision, as above, I uphold this complaint.

Putting things right

To put things right, Lloyds must:

- Refund Mr W £2,999
- It should also pay 8% simple interest on £2,999 from the day the payments were taken up until settlement to compensate Mr W for the time he's been deprived of its use*

*If Lloyds considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

My final decision

For the reasons above, I have decided to uphold this complaint. Lloyds Bank PLC must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 July 2024.

Ketan Nagla
Ombudsman