

The complaint

Miss B is unhappy that Lloyds Bank PLC won't refund disputed transactions made from her account and she'd like these refunded.

What happened

Miss B says that fraudulent transactions were carried out on her Lloyds account between the 2 and 7 October 2019 via online banking and chip and PIN transactions on her debit card.

She explained that the last time she used her card was on the 2 October 2019 and on checking her online banking on the 4 October 2019 she noticed a number of disputed transactions. Miss B explained that she noticed her phone was acting strangely and she was advised by her phone provider that her SIM had been cloned.

On the 4 October 2019 Miss B complained to Lloyds about several online transfers she didn't make. And a few days later she advised the bank of disputed debit card transactions.

Lloyds upheld Miss B's complaint in part for poor customer service they'd provided when investigating Miss B's case and the bank credited her £124 in compensation. The bank accepted that they'd failed to reset Miss B's online banking when she contacted the bank on the 4 October 2019 and further online transactions were carried out. However, because these payments were made to Miss B's family members they asked her to recover them herself which Miss B was able to do successfully.

Lloyds, decided not to refund the outstanding disputed transactions. The bank said there was no evidence of fraudulent activity. They thought Miss B had authorised the transactions or made them herself.

Ms B wasn't satisfied with Lloyds' response.

One of our investigator's looked into Miss B's complaint but didn't uphold it. In summary they thought that Miss B didn't authorise the disputed transactions but on balance she'd acted with gross negligence because she'd kept her PIN next to her card.

Miss B didn't accept our investigator's conclusion. In response she said:

- She didn't write her PIN down and leave it in her bag
- A new device was set up using a phone and number that she doesn't own
- The new device shouldn't have been set up without her authorization

A new investigator looked into Miss B's complaint, and reached a different conclusion. They thought that Miss B first noticed her debit card was missing when she was in hospital, and there was a possibility that her PIN was written down on a post it note. Overall, they thought that Miss B didn't authorise the card present transactions and asked Lloyds to refund almost £1,750 plus 8% interest.

The bank didn't accept our investigator's view. In response Lloyds said:

- Miss B confirmed that a payment for £1,800 prior to the disputed transactions was genuine. This payment was made using the same *new* device as the disputed online banking transactions.
- Miss B received a text message to her mobile number to confirm the new device was setup.
- Miss B didn't report the disputed transactions as quickly as you'd expect considering the time she first logged in.
- There's no evidence of a PIN compromise and if Miss B's SIM was cloned the fraudster would have needed to return the SIM to Miss B's phone after it was removed which seems unlikely.

As Lloyds didn't agree, it was passed to me for a decision.

On reviewing Miss B's complaint I came to a different conclusion to our investigator and issued my provisional decision to Miss B and Lloyds asking for their response and any comments.

Lloyds accepted my provisional decision and had no further comments.

Miss B didn't accept my decision. In summary she said:

- She doesn't understand where the evidence proving her number has been cloned has gone.
- She doesn't want to provide evidence which shows she was in hospital at the time of the disputed transactions and has previously been advised this wouldn't be a problem.
- She's advised the West Midlands police about the dates and times of the transactions in Birmingham to allow for CCTV to be obtained. Miss B questions why this hasn't been taken into consideration by the ombudsman.
- After complaining to Lloyds someone was still moving her money around – this shows that Lloyds or someone who has links to them was involved in the fraud.
- The fraudster must have seen the previous payments/references to Miss B's brother and tried to make it look like a family member was carrying out the fraud.
- Lloyds allowed a new phone and number to be set up without her consent and didn't contact her.
- She didn't receive a text message or any calls to authorise the payments.

As Miss B didn't accept my provisional decision I've considered her response and reviewed my decision.

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.

In my provisional decision I said:

Generally, Lloyds can hold Miss B liable for the disputed transactions if the evidence suggests that it's more likely than not that she made or authorised them herself.

I'm satisfied from the bank's technical evidence that Miss B's online banking details, genuine card and PIN were used to make the disputed transactions. But the regulations relevant to this case – the Payment Service Regulations 2017 and Consumer Credit Act 1974 - say that is not, on its own, enough to enable Lloyds to hold her liable. So I also need to think about whether the evidence suggests that it's more likely than not that Miss B consented to the transactions being made.

From what I've seen, I don't think it's unreasonable for Lloyds to conclude that Miss B authorised the transactions. This is because:

- The disputed withdrawals were made using Miss B's genuine card and PIN, but there's no convincing explanation for how a third party could have known her PIN. Miss B initially advised our service that she wrote her PIN down and saved it in her purse, however more recently she's informed our service that she doesn't think her PIN was recorded anywhere and she's not shared it with anyone. For this reason I'm unable to find a plausible explanation for how her PIN was compromised.*
- Miss B explained that she last saw her debit card when she was in hospital. And she couldn't have carried out the disputed transactions because she was admitted at this time. However Miss B hasn't provided any evidence to support this. Even if Miss B did provide this evidence, she doesn't need to have physically carried out the transactions to be held liable. Miss B would also be held liable if she consented for someone else to carry them out.*
- Some of the disputed transactions were carried out online. This means that a fraudster would have needed access to Miss B's online banking details without her knowledge. Miss B advises that her online log in details were saved in text messages on her phone but nobody has access to this – and she'd not shared these details with anyone.*
- Miss B has also explained that she thinks her SIM card was cloned, because of the way her phone was acting including a flashing screen, which is how a fraudster managed to gain access to her online banking details. However, usually when a SIM card is cloned the customer wouldn't receive text messages or phone calls and Miss B has made no mention of this problem. Miss B advises that she posted our service a compact disc from her mobile phone provider which details information about how her phone was compromised. Unfortunately I've not seen this evidence, and therefore I'm unable to consider this in my investigation.*
- A new device was registered to Miss B's account, on the 2 October 2019, prior to the disputed transactions. However, I've seen evidence from Lloyds that text messages were sent to Miss B's mobile number to enable the registration – and a four digit code was entered successfully. I can't see how a fraudster would have been able to obtain the four digit code without Miss B's knowledge.*
- On the 3 October 2019 Miss B called Lloyds to confirm some transactions were genuine – this included an online transfer of £1,800 made between her two Lloyds accounts in the early hours of the morning. I've seen evidence from Lloyds that this online transfer was made via the new device used to carry out the disputed online transactions.*
- On the 5 October 2019 Miss B explained that she deposited funds and immediately thereafter the money was transferred out. This means that a fraudster would need to have been monitoring Miss B's account at exactly this point to carry out the activity. I find this unlikely.*

- *Miss B transferred money into her account just prior to the disputed transactions including a total of £2,400 on the 3 October 2019.*
- *On the 8 October 2019 disputed payments were sent to Miss B's brother and cousin's account. These have since been refunded. I accept that Lloyds failed to cancel Miss B's online banking on the 4 October 2019, as they advised they would, however I'd question why a fraudster would decide to transfer funds to Miss B's family members.*

I understand this will be disappointing to Miss B however taking everything into account, I'm currently thinking of not upholding Miss B's complaint and concluding on balance she authorised the disputed transactions.

Miss B's response to my provisional decision:

Miss B explained that she can't understand where the evidence which shows her SIM card was cloned has gone. In my provisional decision I explained that there's no evidence our service received a copy of the compact disc showing Miss B's SIM card was cloned. I appreciate that Miss B is disappointed by this – however unfortunately I can't consider evidence that I haven't seen.

Miss B responded to my provisional decision by advising that she didn't want to provide evidence she was in hospital at the time of the disputed transactions. And believes there's CCTV evidence showing she didn't complete some of the disputed transactions. In my provisional decision I explained that even if there's evidence showing Miss B was in hospital at the time of the disputed transactions, she doesn't need to have physically carried out the withdrawals to be held liable. It follows that even if I viewed CCTV demonstrating Miss B didn't carry out the withdrawals this *wouldn't* change my conclusions.

In my provisional decision I agreed that Lloyds made an error in allowing access to Miss B's online banking once they'd been notified that fraud had been committed. However as the transfers were made to Miss B's brother and cousin I'm not satisfied this error caused Miss B any loss. Miss B's suggested that the fraudster saw previous payments to her brother on the account – and identified this by the reference 'Mum'. And tried to implicate her family in the fraud. I've considered this however I find this explanation unlikely. I can't see the benefit to a third party fraudster in moving funds to an existing payee – and would question why, if they still had access, they wouldn't remove the rest of Miss B's funds. Which is something I'd expect them to do.

Miss B's reiterated that she didn't receive any contact from Lloyds to authorise the new device, or any text messages or calls to authorise the payments. The evidence I've seen from Lloyds shows that a text message was sent to Miss B's mobile number to register the new device, and this code was entered successfully. Therefore I'm afraid I can't agree with Miss B here. I've not seen any evidence that Lloyds contacted Miss B to authorise any of the disputed transactions – however I wouldn't expect them to do so in this case considering the payments were carried out via Miss B's online banking (using an authorised device) and chip and PIN payments.

I understand this will be disappointing to Miss B however taking everything into account, I'm satisfied on balance that Miss B authorised the disputed transactions. And Lloyds are entitled to hold her liable for them.

My final decision

My final decision is I don't uphold Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 October 2021.

Jeff Burch
Ombudsman