

The complaint

Mr F complains that London Community Credit Union Limited (LCCU) has been fraudulently accessing his account and removing his funds.

What happened

I issued a provisional decision (PD) on this complaint on 10 March 2022 and both parties have been given an opportunity to respond. I've copied the content of that PD below, *in italics*, as the background remains unchanged, and the findings I explained remain relevant. I'll then go on to explain what's happened since the PD, and what my final decision is.

Mr F has complained that LCCU has been acting fraudulently in its management of his account. He believes it is stealing his money by duplicating transactions and lying about when money has been paid in. We don't have a complete list of all the transactions Mr F is disputing, but he's said this goes back some six years.

Mr F has highlighted some specific transactions that he says LCCU has interfered with. He says he didn't carry out at least some of these as LCCU has instead duplicated his legitimate spending so it can steal his money. Some of the highlighted transactions appear on his statement as follows:

- *27 April 2020 – a £30 transaction at an ATM, a £40.05 transaction at a supermarket, and a further £50 withdrawal at an ATM (which appears on Mr F's statement to be the same ATM as the other £30 transaction)*
- *4 May 2020 – two transactions of £30 and £50 at an ATM*
- *5 May 2020 – a transaction of £30 at an ATM and a £50 transaction at a Post Office in Cambridge*

This isn't an exhaustive list, but it represents a sample of the kind of transactions Mr F has disputed. Some transactions haven't necessarily been described as duplicates by Mr F, but instead as suspicious. He's also said there are lots of excessive balance enquiry charges, which suggests LCCU is fraudulently mismanaging his account.

Mr F has said that he thinks someone senior at LCCU must be involved, given recorded transaction data would have to be manipulated.

Mr F has also raised concerns over incoming payments. He says the bank has given him incorrect information about payments coming into his account, including a payment in of £407.14 on 28 April 2020 from his local council. Mr F has said the bank took this from his account before trying to then put it back in. He says LCCU told him the money hadn't been received but then it was suddenly there. He's explained that when he discussed the inward payment with the council it told him it was unlikely the payment would have cleared on 28 April 2020. Mr F believes this shows LCCU has been acting inappropriately.

LCCU itself has had very little to say about Mr F's complaint. We've been provided no records of its contact with Mr F on this matter and so it's been unclear what its position is, other than that it hasn't refunded any of the disputed transactions.

One of our investigators requested specific evidence and information from LCCU.

But it failed to respond for several months and so she issued findings without having had a response and with very little evidence available. It was on that basis she upheld Mr F's complaint. She explained that LCCU had provided no evidence to show the disputed transactions were authorised. And so she concluded that LCCU couldn't fairly hold Mr F responsible for them. She recommended all the disputed transactions be refunded.

Mr F accepted the outcome but LCCU still didn't respond and so the case was passed to me for review. I then entered into communication with LCCU for a final request for evidence and it began to respond.

Since the case has been with me, LCCU has provided electronic records of various payments made from Mr F's account. These records show – among other things – when a payment was authorised, the method of payment, and where the transactions took place. I have asked it for this same type of evidence for some specific transactions, including those in the list I set out earlier.

Despite giving LCCU ample opportunity to supply this evidence it still hasn't done so. And so I'm proceeding to issue this provisional decision without it.

What I've provisionally 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.

I intend to uphold Mr F's complaint in part. I don't believe LCCU should refund Mr F the transactions he's disputed. But I do find LCCU's failure to respond to this service within reasonable timeframes warrants a payment of compensation to Mr F. I'll explain in more detail below.

The transactions disputed by Mr F

The principle question to be answered here is whether Mr F can be fairly held responsible for the transactions he's disputed. The Payment Service Regulations 2017 broadly state that a customer can only be held responsible for transactions they have authorised. And it is for the account holding firm to evidence that transactions have been properly authorised, and that there hasn't been a system error, if it is to hold its customer responsible for them.

I can understand why the investigator came to the outcome she did. LCCU had, at that time, provided nothing in defence of Mr F's complaint against it. There was little to show Mr F had authorised the transactions, with the only evidence being account statements. But I don't find that the answer given represents a fair and reasonable outcome as it doesn't reflect what I consider more likely than not to have happened.

Often when this service considers complaints evidence will be incomplete or missing, even when a firm fully cooperates with an investigation and provides all we ask for. Where that is the case, we base our findings on the balance of probabilities. That is to say what we believe is more likely than not to have happened.

Whilst Mr F has disputed payments on his account, I don't believe the more likely than not explanation for those payments is that LCCU has been defrauding him. Mr F's own version of events has not been entirely consistent throughout. It is the case that he's sent us statements where he's highlighted transactions that are in dispute. But then statements covering the same period have been sent to us at a later date, and the transactions in dispute have changed; new transactions are disputed and previously highlighted ones are not.

At times Mr F has only described transactions as suspicious, rather than as fraudulent or duplicated. It's not entirely clear what he means by that as there's been no context or

reason given alongside. And it seems he isn't entirely sure they are transactions he didn't authorise himself.

Despite the bank's lack of evidence, I can see that the majority (if not all) of the payments Mr F is disputing are made using his card and the PIN. That is evident from the account statements alone, which show the transactions to be a mix of point of sale purchases and cash machine withdrawals. LCCU has also provided the electronic records of a range of different transactions, showing specific data and information for individual payments. Those records confirm the payments as having been properly authorised using Mr F's card and PIN. So I'm persuaded Mr F's card and PIN were used for the transactions that appear on his statement and that it was him using them.

I'm not persuaded LCCU has somehow fabricated these records. Even if such a thing were possible, which I'm not persuaded it is, it seems very unlikely such a thing has taken place. How or why a member of LCCU staff would go to a significant amount of effort to remove small sums from an account, considering the risks attached to doing so, is a question that lacks a reasonable answer. It is true that Mr F's dispute over a period of six years could add up to a considerable sum. But the likelihood of an unknown person at LCCU being able to achieve this at all, and not be discovered for so long, is an incredibly remote prospect.

I've looked at a number of the specific transactions where Mr F has said the activity has been duplicated. But in those examples, it's often the case that the transaction amounts and/or locations are different. And so it's self-evident that those transactions haven't been duplicated, either fraudulently or as a result of some kind of processing error. All the transactions I listed earlier fit this description. So even without the electronic records for each specific transaction, I can say I'm satisfied the transactions were more likely than not authorised by Mr F, rather than them being somehow duplicated or fabricated by LCCU.

A possible explanation for Mr F's not recognising certain payments, or for believing they may be duplicates, could come from how they are recorded on his account statement. It is the case that transactions won't always have a statement date that matches the date the transaction was actually made. That's particularly relevant – but not limited – to a transaction made on a weekend or bank holiday. The entry generally won't appear on a statement until the next working day. That can make it appear as though transactions have taken place on a different date than they actually did.

At other times it might be that the merchant hasn't actually claimed the payment on the same day it is made, and so it's processed later. That would also lead to the payment appearing on the account statement on a different day to which it was actually made.

Mr F has highlighted several statement entries which appear as charges for excessive balance enquiries. He's said this is further evidence of wrongdoing on the bank's part. But I don't agree that's the case. Instead, I'm satisfied they are legitimate charges applied to his account as a result of him carrying out balance enquiries before transactions. Those charges are set out in his account terms and conditions. That is the far more likely explanation, rather than that LCCU is adding the charges fraudulently in an attempt to steal his money.

Mr F has said that payments into his account have been handled in a suspicious manner too. I've set out some of the background as Mr F has described it already, with the council payment on 28 April 2020.

I've considered what Mr F has said here but I can't see anything that would suggest inappropriate action on LCCU's part. It's clear the money did credit his account and he went on to use those funds. Members of staff won't generally know when a payment is going to credit an account; they can only give estimates. Payments can sometimes take seconds to clear, or they can take several days. Mr F's suspicions about this payment

seem to arise from what he was told by the council when he queried it. But, if anything, it simply seems the money credited his account quicker than they expected it to. I can't see that this suggests any wrongdoing by LCCU or its staff.

Whilst LCCU has provided little evidence I'm not persuaded it (or particular members of its staff) have been defrauding Mr F or mismanaging his account. The more likely explanation is that Mr F is mistaken about when he has made transactions.

LCCU's response to Mr F's complaint

I've spent considerable time chasing LCCU for a response to this complaint, as did our investigator. Reasonable requests have been made for evidence on numerous occasions and yet those have either gone unanswered or the responses have been incomplete.

I requested specific evidence from LCCU in December 2021, though this request differed little from those made by our investigator previously. What was required was clearly set out. And whilst LCCU has replied at times, even supplying some evidence, it has still failed to provide what's been asked for. That's despite at least two additional attempts to clarify what's needed between December 2021 and February 2022.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines; and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that...

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

In light of what I've said it's clear LCCU has failed to comply with numerous time limits. And this has unnecessarily delayed the resolution of Mr F's complaint. Even now, he's not being given as satisfactory an answer as he might, as LCCU hasn't provided all the evidence it's been asked for. While I'm persuaded the provision of that evidence would strengthen the findings I've already made and provide further clarity, I consider it's fair and reasonable to proceed with the complaint. I also find that Mr F ought to be paid compensation for LCCU's delay and I intend to direct it to pay him £300 in that respect.

My provisional decision

I intend to uphold Mr F's complaint against London Community Credit Union Limited, but only to the extent that it should pay him £300 compensation. I'm not upholding his complaint about the disputed transactions.

LCCU has remained disappointingly silent on this complaint and has provided no response to the PD.

Mr F did respond and provided lists of transactions in handwritten and statement form, though it look like most of this had already been submitted. He also questioned some counter withdrawals.

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.

I've had the chance to review the complaint again and to consider the further correspondence from Mr F. Having done so, I'm not departing from the findings set out in my PD. I won't repeat all of that detail here, it's not necessary to do so as my findings remain the same. But I will address the further correspondence from Mr F.

I appreciate the time Mr F has taken to send through more lists of transactions that he either outright disputes or says he finds suspicious. But there's nothing within what he's sent me that alters my findings. We had the vast majority of the transactions already logged as part of the dispute. And so there's nothing for me to take from the further submissions from Mr F there. And my reasoning for not upholding his complaint still stands.

Mr F has said that there were counter withdrawals which he disputes and assumes were authorised with his signature. This is an area where LCCU has provided persuasive evidence. It does have at least some records of withdrawal slips bearing Mr F's signature. And it's provided other documentary evidence which bears a matching signature, including a loan application form and his request to close his account. That evidence, in line with the other circumstances of the case, satisfies me the transactions were authorised. I've been presented with no persuasive evidence or explanation that would lead me to a different outcome and I've no reason to suspect wrongdoing on LCCU's part.

Putting things right

London Community Credit Union Limited should pay Mr F £300 in compensation for the reasons set out in my PD.

My final decision

I uphold this complaint against London Community Credit Union Limited in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 April 2022.

Ben Murray
Ombudsman