

## **The complaint**

Mr and Mrs K dispute four transactions which were carried out on their account. They say Lloyds Bank PLC (Lloyds) should refund the transactions and compensate them for the distress they have experienced as a result of Lloyds' investigation into their complaint.

## **Background**

On 6 April 2021 Mrs K contacted Lloyds to report transactions on her account that she did not recognise. During this call it was established that there were four transactions which she says she and Mr K didn't authorise - they totalled £25.94. The transactions are well known to both parties, so I don't need to list them here.

Mr and Mrs K complained about Lloyds' decision not to refund two of these transactions as the other two were refunded. Lloyds explained the merchant had confirmed the goods were delivered to Mr and Mrs K's home address. Lloyds also explained the merchant confirmed the IP address matched Mr and Mrs K's. As Mr and Mrs K did not agree with this, they referred their complaint to our service.

Our adjudicator reviewed the complaint and recommended the remaining two transactions also be refunded. The adjudicator explained that Mr and Mrs K did not consent to the two disputed transactions, and the available evidence suggested the transactions were carried out by their son. Mr and Mrs K's son is also the representative for their complaint.

The adjudicator explained that although Mrs K had given her son her card details for a transaction in 2020, this authority did not extend to the two transactions in question.

Lloyds agreed with the adjudicator's recommendations and said it would refund the transactions. However, Mr and Mrs K's representative did not agree with the recommendations. He explained the transactions were made by a fraudster and the adjudicator's finding that they were likely to have been made by him has caused serious emotional distress to himself and Mr and Mrs K.

As no agreement could be reached, the complaint has been passed to me – an ombudsman – to issue a final 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.

Having done so, I've decided to uphold the complaint.

Under the relevant regulations – the Payment Services Regulations 2017, Mr and Mrs K are liable for transactions they have authorised – either by carrying them out themselves or giving permission for another party to carry them out on her behalf. The PSRs 2017 also set out that where a payment isn't authorised by the account holder, they may still be liable for it

if they've failed with intent or gross negligence to adhere to the terms of their account or keep their personalised security credentials safe.

More broadly the law recognises that, in circumstances where a third party has been given authority to act on the account holder's behalf, any activity carried out by the third party can properly be considered authorised, even where the account holder has not given specific permission for each and every transaction to take place. Mr and Mrs K say the activity on the account was carried out without their knowledge or permission. The adjudicator, and eventually Lloyds agreed with this. It seems to me the crux of the complaint now is whether this conclusion is fair, based on the available evidence.

In order for the adjudicator to find the transactions were not authorised by Mr and Mrs K, it was necessary to review the available evidence to ascertain how the transactions could've been made with Mr and Mrs K's details, but without their authorisation. Lloyds relied on details from the merchant which indicated the goods were ordered and delivered to Mr and Mrs K's home address. I appreciate Mr and Mrs K's representative does not agree with this, and has explained the track and trace details from Royal Mail, along with the GPS co-ordinates available support their claim the items were not delivered to Mr and Mrs K's home address.

In situations where I have conflicting evidence, I must decide on balance, what is most likely to have happened. In this particular case, whilst the track and trace details may not support the details from the merchant, I think greater weight must be given to the information provided by the merchant. I say this as this evidence is from the point at which the transactions were made, and I think the merchant's comment that both the IP address and billing address match Mr and Mrs K's details is significant, and outweighs any information we have about GPS co-ordinates and track and trace details.

Alongside this evidence, I must also consider the evidence provided by Mrs K. I can see the adjudicator has spoken to Mrs K, and she confirmed her son lived with them and had been given the card details in September 2020 to make a transaction. This means he would've been given explicit authority at this time to use Mr and Mrs K's account. The two disputed transactions were made using the card details, CVV details, along with address details.

The key point I need to decide here is if I think Mr and Mrs K authorised the payments they dispute – not who I think is likely to have carried them out.

As it stands, I don't have any information which shows how a fraudster would have appropriated Mr and Mrs K's card details to carry this out. In other words, how the card details were compromised. So, if it was an unknown fraudster, I'm persuaded Mr and Mrs K didn't authorise the transactions.

Mr and Mrs K have said they gave their card details to their son a few months before the transactions to carry out an unrelated payment. But even if it was Mr and Mrs K's son who carried out the transactions – to be clear I'm not making any finding that it was - I'm satisfied they didn't intend for their card details to be used again in this way.

That means any previously given apparent authority was most likely removed after the payment in September 2020 was made.

As I've alluded to earlier, I need to decide if I think Mr and Mrs K authorised the payments they dispute. Having considered what could have happened, I'm persuaded they didn't.

I can see Mr and Mrs K's representative has mentioned our review to be elder abuse. I appreciate the information presented may be upsetting for Mr and Mrs K. However, I think the necessary evidence and reasoning has been used to reach a fair outcome.

### **Putting things right**

I've decided that Lloyds Bank PLC should refund two remaining disputed transactions. It should also restore the account to the position it would have been in had the two transactions not occurred.

### **My final decision**

I uphold this complaint and require Lloyds Bank PLC to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 3 August 2022.

Chandni Green  
**Ombudsman**