DRN-3770739

The complaint

Mrs E complained because Lloyds Bank plc refused to refund her for transactions she said she didn't make.

What happened

On 17 April 2022, Mrs E, represented by her partner, contacted Lloyds and said there had been two fraudulent transactions on her account the previous day:

- a £66.66 debit card payment to an online payment company; and
- a £120 cash machine withdrawal using the genuine card and correct PIN.

Mrs E told Lloyds that she still had her debit card and no-one else had access to it. She also said no-one else had access to her PIN.

Lloyds' adviser couldn't identify how the card and PIN had been compromised, and refused to refund Mrs E. When Lloyds' complaint manager spoke to Mrs E about the outcome, she raised more transactions as fraudulent. These were multiple transactions to an online gambling organisation, which had taken place a couple of months earlier on 21 and 22 February 2022.

Lloyds dealt with the new report of fraudulent transactions in the same complaint, and it didn't agree to refund those either. Lloyds issued its final response letter to Mrs E's complaint on 20 April. It said that Mrs E had said she still had her debit card and no-one else had access to it, and no-one else knew her PIN and she hadn't written it down. The transactions had been carried out using the genuine card and correct PIN, and Lloyds couldn't see how anyone else could have carried out the transactions.

Lloyds also said, about the gambling transactions, that they'd been done from the same IP address (a unique computer identifier) as the one used for activity which Mrs E hadn't disputed. So it couldn't offer a refund.

Mrs E wasn't satisfied, and contacted this service. She also closed the Lloyds account.

Our investigator didn't uphold Mrs E's complaint. He'd listened to the calls, and said that the first report was that Mrs E still had her card, hadn't written down her PIN, and had made a £50 cash withdrawal after the disputed transaction. But this story had changed several times during the calls with Lloyds. He also pointed out that to carry out the disputed payments, any third party fraudster would have had to have taken Mrs E's card and returned it to her, as well as knowing her address, and being able to use her IP address.

Mrs E didn't agree. She said she'd never been in contact with the gambling firm and had never done any gambling, so why would she suddenly make all the transactions. She said Lloyds were accusing her of trying to extort money from them, which wasn't the case. And she said she lived on benefits so she couldn't afford to spend that amount of money in one day, let alone on gambling. She said this had left her heavily in debt which she couldn't afford. Mrs E asked for an ombudsman's 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.

First, I recognise that Mrs E said that she couldn't afford to spend so much money in one day, let alone on gambling, and she couldn't afford the debts from these disputed transactions. I can see that Lloyds offered Mrs E the opportunity to talk to its financial assistance team, and also that Mrs E was in contact with an advice service when she contacted our service. But I have to look at the evidence, much of which is computer evidence, to assess whether it's more likely than not that Mrs E, or an unknown third party fraudster, authorised the disputed transactions.

There are regulations which govern disputed transactions. The relevant regulations for disputed transactions taking place in February and April 2022 are the Payment Services Regulations 2017. These say that the payment service provider (here, Lloyds) must show the transaction was authenticated. That's the technical part, and here, Lloyds has shown evidence that Mrs E's genuine card with its chip, and the correct PIN, were used. So the disputed payments were authenticated.

The regulations also say that it's necessary to look at whether the card holder authorised the payments. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence.*"

I've looked separately at the three sets of disputed payments:

- a £66.66 debit card payment to an online payment company on 16 April;
- a £120 cash machine withdrawal on 16 April;
- multiple gambling transactions on 21 and 22 February.

The £66.66 debit card payment was carried out online. The recipient was set up using Mrs E's genuine card, and there was a match with her address. Mrs E used her card for undisputed transactions after this, and when she first contacted Lloyds said that she still had her card. So any third party fraudster carrying this out would have had to steal Mrs E's card without her knowledge, then return it to her, also without her knowledge. Returning a card in this way isn't what a fraudster would normally do – there would be a risk of being found out, and also fraudsters tend to try to maximise their gains. Mrs E told Lloyds that no-one else had access to her card and PIN, but if she had allowed anyone to use her card and let them know her PIN, this would count as her having authorised the payment. I can't see how any third party not known to Mrs E could have carried out this transaction.

The £120 cash machine withdrawal was also carried out using the genuine card. This is shown by the computer records, and there have never been any known instances of the chip in a card being copied or cloned. And Mrs E's correct PIN was input too. There are 10,000 possible combinations of a four-digit PIN, so I don't consider it's likely that anyone have correctly guessed her PIN. As with the debit card payment, anyone who carried out this transaction would have had to steal then return Mrs E's card, which isn't what a fraudster would do. And if she let anyone use the card and gave them the PIN, this would count as her having authorised the payment. So again, I can't see how any third party not known to Mrs E could have carried out this transaction.

Mrs E didn't report the multiple February gambling transactions until mid April. She told Lloyds she'd noticed them when printing a mini statement, but those don't show transactions going so far back. These transactions were set up using Mrs E’s genuine card and address. I’ve also seen other computer evidence, including the IP address used for these transactions. As Lloyds told Mrs E in its final response letter, the transaction were made from the IP address which Mrs E had used for transactions which she hadn’t disputed. I can’t see how any third party fraudster unknown to Mrs E could have done this.

Taking all these elements into account, I think it’s more likely than not that Mrs E authorised the payments herself, or allowed someone else to use her card, PIN and details, which also counts as Mrs E authorising the payments. So I don’t uphold her complaint, and Lloyds doesn’t have to refund her.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs E to accept or reject my decision before 20 December 2022.

Belinda Knight
Ombudsman