

## **The complaint**

Ms S complains about Lloyds Bank PLC holding her liable for transactions she says she didn't authorise.

## **What happened**

In August 2019, a series of transactions were made from Ms S's account which she says she didn't make. She said she received a suspicious phone call from who she thought was Lloyds telling her that her card had been blocked. And around the same time, she received an email stating her TV licence direct debit had been cancelled – so she followed the link and entered her card details to reset her direct debit. Around a week later she received a text message from Lloyds stating her online banking had been changed. At this point, Ms S called Lloyds and she found out her account had been used and money had been taken.

Lloyds held Ms S liable for the fraud. They said they didn't know how a fraudster would have got hold of her bank details and so there hadn't been a point of compromise. Ms S remained unhappy and brought the complaint to our service.

Our investigator didn't uphold it. She confirmed that Ms S hadn't given her card to anybody and hadn't shared her PIN so she couldn't find a reasonable explanation as to how the physical card was used if it wasn't Ms S or somebody with her permission. Our investigator also said Ms S checked her balance on 12 August and 13 August but didn't report the fraud until 14 August.

Ms S responded to our investigator and queried the transactions in dispute, as some differed from her account statement. She also admitted to making a couple of the payments in question herself. Ms S also pointed out that the evidence she has shows a point of sale transaction – which could have been contactless rather than chip and PIN. Ms S has also since provided our service with a text message to show that 'Android pay' had been successfully set up on her phone – from the same number relating to the online banking being changed. Ms S confirmed she thought she did report the fraud prior to 14 August but learned that the messages she was receiving weren't from the genuine Lloyds – which they confirmed during the phone call on 14 August 2019.

Our investigator asked Lloyds for further evidence and Lloyds confirmed they weren't able to show the location of the payments or how they were made. Our investigator remained of the opinion that Ms S should be held liable. As a decision couldn't be reached, the complaint was passed to me to review.

In September 2022, I issued a provisional decision. In it, I said;

*Where there is a dispute about what happened, as there is in this case, I have to base my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence that is available.*

*The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Lloyds can hold Ms S liable for the*

*disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them. If Ms S made the disputed transactions herself, it wouldn't be fair to ask Lloyds to refund them. But Ms S says she wasn't responsible for the payments in dispute. So, the key question for me to consider is whether Lloyds has provided enough evidence to hold Ms S responsible. Unless Lloyds can show that consent has been given, they have no authority to make the payments or to debit Ms S's account and any such transaction must be regarded as unauthorised.*

*Firstly, the technical evidence Lloyds has provided in relation to the payments which were made differs from the statement Ms S has provided. As it was up to Ms S to dispute the payments, I have based my findings on the statement provided to her by Lloyds. Ms S has admitted to some payments between the dates in question were made by herself, and therefore there is £583.49 worth of disputed transactions outstanding. I have detailed the disputed transactions below for the benefit of both parties.*

<b>Date</b>	<b>Description</b>	<b>Type</b>	<b>Money Out</b>
07-Aug-19	FIRST BUS - MOBILE	DEB	£1.50
07-Aug-19	FIRST BUS - MOBILE	DEB	£1.50
07-Aug-19	APPLETON MINI MARK	DEB	£15.00
07-Aug-19	APPLETON MINI MARK	DEB	£15.00
07-Aug-19	APPLETON MINI MARK	DEB	£30.00
07-Aug-19	APPLETON MINI MARK	DEB	£30.00
07-Aug-19	APPLETON MINI MARK	DEB	£30.00
08-Aug-19	APPLETON MINI MARK	DEB	£15.00
08-Aug-19	APPLETON MINI MARK	DEB	£15.00
08-Aug-19	APPLETON MINI MARK	DEB	£30.00
08-Aug-19	APPLETON MINI MARK	DEB	£30.00
08-Aug-19	APPLETON MINI MARK	DEB	£30.00
09-Aug-19	APPLETON MINI MARK	DEB	£30.00

09-Aug-19	APPLETON MINI MARK	DEB	£30.00
09-Aug-19	APPLETON MINI MARK	DEB	£30.00
12-Aug-19	APPLETON MINI MARK	DEB	£10.00
12-Aug-19	APPLETON MINI MARK	DEB	£15.00
12-Aug-19	APPLETON MINI MARK	DEB	£30.00
12-Aug-19	APPLETON MINI MARK	DEB	£30.00
12-Aug-19	APPLETON MINI MARK	DEB	£30.00
12-Aug-19	APPLETON MINI MARK	DEB	£15.00
12-Aug-19	APPLETON MINI MARK	DEB	£15.00
12-Aug-19	APPLETON MINI MARK	DEB	£30.00
12-Aug-19	APPLETON MINI MARK	DEB	£30.00
12-Aug-19	APPLETON MINI MARK	DEB	£30.00
14-Aug-19	NETFLIX.COM	DEB	£11.99
14-Aug-19	FIRST BUS - MOBILE	DEB	£3.50

#### *The transfers from savings to current account*

*I appreciate I haven't included the online transfers from Ms S's saving account to her current account in the table above despite her disputing them. I'm satisfied based on the evidence, that these transfers were made using online banking. Ms S has confirmed she didn't share any personal details with anybody – and I take that to also mean her user ID number, password, and memorable information for online banking. I've thought carefully about the scam call Ms S says she received, but I haven't seen anything in Ms S's testimony to confirm she shared these details. And even if she had, she is responsible to keep her security details safe. So, if she had shared them, I still couldn't hold Lloyds responsible for these transfers. Therefore, I can't reasonably uphold this part of the complaint and therefore don't consider these transfers to be unauthorised.*

#### *The point of sale transactions*

*Lloyds has provided evidence and their own testimony to say the genuine card and PIN were used for the transactions. Of course, if this was certainly the case, I'd find it reasonable enough to hold Ms S liable for the transactions. I say that because, Ms S says her card was always in her possession and she hadn't shared her PIN details with anybody. She's also admitted to making transactions in between the disputed payments, and therefore I would find no other explanation to persuade me that Ms S wasn't at least involved in the transactions in question.*

*However, Lloyds haven't been able to provide sufficient evidence to show the genuine card and PIN were used for the transactions. Ms S has rightly pointed out that a point of sale transaction could mean the payment was made through contactless, or another method – such as Android pay. Our investigator didn't think the payments could be made by a token other than the genuine card but hasn't supplied a detailed explanation for this. I've thought carefully about this point, and I'm not satisfied I can say the genuine card and PIN was used. Ms S has told us that she entered her bank details onto a website linked with TV licencing. She has supplied a copy of the email to our service, and it appears this was a phishing email based on the sender address. I find this to be a reasonable explanation as to how a fraudster could have accessed Ms S's card details in an illicit way.*

*Ms S has also provided a copy of a message from Lloyds showing that Android pay was set up around the same time she received the text message relating to her online banking details being changed. Lloyds haven't commented on this being set up, so I am unsure if this was a scam – or if this is a potential way the fraudster could have made the transactions without Ms S's consent. I appreciate Ms S would have been responsible for reporting this text message if she didn't set up Android Pay but it is clear from the text messages she received, she wasn't aware of when she was talking to the real Lloyds and when she wasn't.*

*Based on the evidence, Ms S has provided a reasonable explanation as to how her details could have been used to set up an Android pay token. And as Lloyds can't provide evidence to show how the transactions were made (through chip and PIN, or contactless), I find this to be a reasonable explanation as any other persuasive evidence is lacking.*

#### *Reporting the fraud*

*Ms S checked her account balance through ATM machines on a couple of occasions before reporting the fraud. I appreciate she is responsible to report any fraud on her account straight away. I've explained above why Ms S was sometimes confused about when she was communicating with the real Lloyds and when she wasn't. She was under the impression her card had been blocked and only learned through a phone call on 14 August, that wasn't the case. I recognise I'm giving Ms S and her testimony the benefit of the doubt here – but having considered the lacking evidence from Lloyds on the transactions, and Ms S's consistent story, I find it more likely than not she believed the contact from the Lloyds scam were genuine. Therefore, I don't think reporting the transactions late is enough on its own to hold Ms S responsible for them.*

#### *Overall*

*I accept this is not a clear-cut case and Lloyds have rightly raised several points that could suggest Ms S authorised the transactions herself or allowed somebody else to make them on her behalf. However, having considered the circumstances of this complaint and the evidence which is available, I'm satisfied that it's more likely than not Ms S didn't authorise the transactions I've listed above. And therefore, I think Lloyds should reimburse her for these amounts.*

*I don't consider Lloyds are entitled to make any deductions to the refunds for contributory negligence. Contributory negligence carries a high bar and I don't think Ms S is at fault for the circumstances of this complaint.*

*I also think a compensation amount of £150 is appropriate due to the trouble and upset this whole situation has caused Ms S. I say this because, although I appreciate a large part of the distress Ms S suffered was caused by the fraudsters, I think Lloyds have held her responsible for transactions made without clear-cut evidence which has meant she has been without her money for a prolonged period of time.*

So, I thought Lloyds should:

- Reimburse Ms S for the disputed transactions totalling £583.49.
- Calculate interest at 8% simple per year on this amount.
- Pay Ms S £150 compensation for the distress and inconvenience caused.

Lloyds responded to my provisional decision and accepted it.

Ms S responded to my provisional decision and overall agreed with it – however pointed out that some transactions were missing from the disputed payments. Ms S explained that a further two payments were made to 'First Bus – Mobile', and a further three payments to 'Appleton Mini Mark'. This meant the total in dispute was £661.99, rather than £583.49.

I reached out to Lloyds to inform them of the additional payments in dispute, and after reviewing things again, Lloyds agreed to refund the £661.99, plus 8% and pay £150 compensation.

### **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.

As both parties have agreed with my provisional decision, and the further points raised by Ms S have been accepted by Lloyds, I see no reason to depart from the original findings and the reasons as stated above.

### **Putting things right**

Having considered the circumstances of this complaint and the evidence which is available, I'm satisfied that it's more likely than not Ms S didn't authorise the transactions in question. And therefore, I think Lloyds should reimburse her for these amounts.

I don't consider Lloyds are entitled to make any deductions to the refunds for contributory negligence. Contributory negligence carries a high bar and I don't think Ms S is at fault for the circumstances of this complaint.

I also think a compensation amount of £150 is appropriate due to the trouble and upset this whole situation has caused Ms S. I say this because, although I appreciate a large part of the distress Ms S suffered was caused by the fraudsters, I think Lloyds have held her responsible for transactions made without clear-cut evidence which has meant she has been without her money for a prolonged period of time

## **My final decision**

For the reasons explained, I uphold this complaint. To put things right, Lloyds Bank PLC should do the following:

- Reimburse Ms S for the disputed transactions totalling £661.99.
- Calculate interest at 8% simple per year on the amount they refund Ms S. They should calculate this from the date the money was taken to the date they refund.
- HM Revenue & Customs requires Lloyds Bank PLC to withhold income tax from the above-mentioned interest. Lloyds should give Ms S a certificate showing how much is taken off if Ms S asks for one.
- Pay Ms S £150 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 9 December 2022.

Hayley West  
**Ombudsman**