

The complaint

Miss D complains that Lloyds Bank PLC won't refund money she didn't withdraw from her account.

What happened

Miss D explains that she deposited £8,500 in cash she had saved for her children into her account on 17 May 2022. She ordered a new card and PIN. She contacted Lloyds when she hadn't received this. On 13 June 2022 she was told when she called that £8,000 had been withdrawn from her account using that card. And she raised a claim of fraud.

Lloyds said it wouldn't be refunding this money. When it issued a final response letter it said that it found no evidence that it was liable for these payments. And that there was no explanation how a third party could have taken the money. It paid Miss D £50 for poor service. Lloyds said that it would cooperate fully with the police if Miss D reported the matter to them.

Our investigator recommended that the complaint be upheld, and the money refunded. Miss D said she'd called several times about the missing card. He said it was '*entirely plausible*' that the card and PIN could have been delivered to the wrong address in a building of flats. Lloyds had provided CCTV evidence of Miss D depositing the money on 17 May 2022 and the person withdrawing the money on 10 June 2022. He didn't agree that this was the same person. There'd been declined transactions on 13 June 2022, and he thought this, and the pattern of payments was consistent with the actions of a fraudster.

Lloyds didn't agree and asked that an ombudsman consider the case. It maintained that the person withdrawing money on 10 June 2022 in a branch was Miss D. It pointed out that the account hadn't been used before this deposit and that Miss D hadn't explained why she'd had so much money at home. The card and PIN were sent out on separate dates and to an independent address with its own letter box. The first withdrawal was made on 28 May 2022, the day after Miss D had called about not having her card and PIN. The first withdrawal was made in a branch which was a risk for a fraudster. The final unsuccessful attempt to withdraw money came two hours before Miss D had called. Lloyds concluded that the money was taken out by Miss D, or someone known to her acting with her authority.

My provisional decision

I issued a provisional decision on 24 January 2023. I set out below what I said.

I explained that I won't be able to say *exactly* what happened and I'm thinking about what is *most likely* based on the information that is available.

I needed to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Miss D wouldn't generally be responsible for them.

So, I would be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of what happened to the card and PIN used for these payments?
- Did Miss D authorise the payments on the account including by allowing someone else to use the card as Lloyds says?

The withdrawals were made in cash and using the card and the PIN. The first seven withdrawals were made in branch for £1,000 each between 28 May 2022 and 10 June 2022. There were cash machine withdrawals of £500 in total both on 12 and 13 June 2022. I was satisfied that these were authenticated when the chip on the genuine card was read, and the correct PIN entered.

I needed to decide whether Miss D consented to them. I wanted first to say a bit about some of the evidence.

I'd considered the CCTV still images Lloyds has provided. The person withdrawing money on 10 June 2022 was wearing a cap and a face mask. I didn't consider this is of sufficient quality to be able to conclude whether this was or wasn't Miss D. The most I could say is that the image isn't inconsistent with it being her. In any event CCTV often doesn't help resolve whether if any third party was involved that person was acting with authority or not.

Miss D told this service she called a number of times about the missing card and PIN. Lloyds has provided its records about this and copies of the calls. There was a call on 27 May 2022 as she says. In that call she was told to wait another two to three days and if there are any problems call back. There is no record of any call again until 13 June 2022. During that call Miss D says she called a week and a half ago. I thought it likely that had she called in the interim that the same concerns raised on 13 June 2022 would have been identified as withdrawals were then being made - and any reasonable timescale for receipt of the card and PIN would have been passed.

The pattern of withdrawals shows that although there were sizeable withdrawals, the money wasn't taken out as quickly as possible. There were gaps of days when no money was withdrawn. There was no balance enquiry before the first withdrawal. There were repeated attempts on 13 June 2022 to take out more money which were declined after £500 had been withdrawn. The only further use of the card was on 14 June 2022 when it was retained by a machine.

Miss D has explained that she lives only with her young children. While at times she has received neighbours' post she doesn't report any other instances of post going missing. She has her own letter box. She says she was home for most of the period as it was half term from school and could have received the post. Miss D explains she hadn't told anyone about the card and PIN and depositing the money or allowed anyone else to use the account.

Lloyds has shown that the card and PIN were dispatched on different dates and explains that these would be in unmarked envelopes. Taking into account what Miss D has said about her address I considered it highly unlikely that both her card and PIN would go missing in this way. And that they could both go to the same person even if they had. No one knew that these were coming and so would be anticipating them.

In making my overall assessment I set out all the things I'd need to think are most likely to find that Miss D didn't consent to these payments:

- Miss D decided to use the account after some time and had kept what is a very substantial amount of cash in her property until then.
- As I set out somehow both the card and PIN ended up with the same person and who was a fraudster.

- Miss D having enquired about her card did nothing more until 13 June 2022. I didn't find her evidence about further contact with Lloyds to be reliable for the reasons I set out above.
- An unknown third party who couldn't know the amount of money in the account didn't make a balance enquiry before using the card.
- That person was bold enough instead to go to a branch to impersonate Miss D not knowing what security questions might be asked and if by then the card and PIN had been reported missing.
- A significant withdrawal was requested again without knowing the balance.
- That person risked detection in branch on a further six occasions with it becoming more likely that the loss would have been detected and that there could have been CCTV evidence.
- That person didn't take money out as quickly as possible as I set out above.
- But that person had tried to take out money of varying amounts on 13 June 2022 up to 15:01 on 13 June 2022. And it is a coincidence that Miss D reported the fraud on the account just over two hours later on that day and by when the majority of the money had gone.

I said that in my provisional view these weren't all findings I thought most likely based on the evidence. And so, I didn't conclude that an unknown third party made these withdrawals. I found that Lloyds acted reasonably in holding Miss D responsible for the payments and in saying that it would assist any criminal investigation if matters were reported to police. I didn't have any information about that here. I said I could appreciate how disappointed Miss D would be by my provisional decision given what's at stake for her.

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.

Lloyds didn't make any further comments.

Miss D didn't agree and made a number of points. She said that she wanted to know why Lloyds had provided still images and not the video footage. And that the reason it had refused her claim was because it said that she was the person in the branch and captured on CCTV on 10 June 2022. She now knew that this person had been wearing a mask and a hat. And so, she'd lost confidence in what Lloyds has said and thought it was providing material in a certain way. She said all the CCTV needed to be viewed to get a full grasp of the fraud activity.

Miss D said that she had been to two named branches while waiting for the card and PIN and in one her information had been looked up. And that she'd got the same response to wait a few more days. She hasn't set out exactly when that was. She thinks that Lloyds has hidden this. This wasn't her main account and she said she was never going to be on top of it.

Miss D disclosed that she'd been suffering from mental health issues at the time and that it was hurtful that her evidence about calling more often had been questioned. She'd called when she could, but her medication had a known side effect of making it difficult for her to remember to do simple tasks. And she needed to look after her children.

She said that the money in the account wasn't supposed to be regularly touched. This had been saved during the pandemic and also on children's birthdays.

Miss D wanted to know how I could be sure there'd been no balance enquiry. And she

wanted to know what identification had been asked for when the withdrawals were made. And why she hadn't been informed about them when she'd notified Lloyds that she hadn't received her card and PIN.

In summary Miss D said she'd followed the advice of staff, had been affected by her mental health issues and responsibilities, there was no notification of the entries from Lloyds when it knew she hadn't had the card and PIN and it had unfairly relied on a CCTV image. It was easy to look at things with hindsight, but it hadn't crossed her mind that someone was going to intercept her card. To be held liable there should be 100 per cent certainty.

I'm sorry to hear about the mental health difficulties Miss D has now described and have no reason to doubt what she says about that noting that she's offered to provide evidence.

I appreciate Miss D is unhappy with the way in which Lloyds used the CCTV. I can say to her that I didn't put any weight on that in my provisional decision and said that at best it wasn't inconsistent with it being her. But I don't think that further CCTV even if it did now exist would help me for the reasons I gave in my provisional decision. And my assessment is independent of what Lloyds had said before and I'm deciding what is important and required to resolve the issues in this case.

I hadn't seen or heard any other clear reference to Miss D further going into two branches to ask about her card and PIN before in the information available. As I set out above what was said in her call of 13 June 2022 was consistent with her having made one earlier call. Miss D specifically told us that she called a number of times when she spoke to one of our team at this service on 17 August 2022. And in some ways based on what she says about her health, what Lloyds told her and the fact that she didn't need to use the account I'm unclear why she would be in contact more often as she says she didn't suspect anything.

I've seen the audit information about the use of the card, and I can say from that no balance enquiry was made before the first withdrawal. I had asked Lloyds if it could tell me anything more about the withdrawals and it wasn't able to. But clearly the person who went into the branch each time as I'd said was confident on Miss D's version of events to impersonate her and increasingly risked detection. And for it to be relevant for Lloyds to have contacted her I'd need to think that a third party had been involved and she hadn't most likely authorised the payments.

Miss D hasn't added anything further in my view to what she's already said about the source of what was a significant amount of cash or whether she's pursued things further with police. And why and how the two items of her post here would be intercepted especially as she says no one knew about the card and PIN and the substantial amount of money in the account.

As I'd explained in my provisional decision I won't be able to say exactly what happened, but I'm thinking about what was most likely. I set out in my provisional decision *all* the things I'd need to find most likely if as Miss D claims an unknown third party was responsible for the payments. And as I've said reliance on the actual CCTV evidence made available didn't feature in that. I've considered what Miss D has further said carefully but on balance I remain of the view that I don't think it's most likely that an unknown third party made these withdrawals for the reasons I've given.

If Miss D doesn't accept my findings she remains free to pursue this in court and subject to any relevant time limits.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 11 April 2023.

Michael Crewe
Ombudsman