

The complaint

A partnership, which I'll refer to as C, complains that Lloyds Bank PLC shouldn't have paid one of its cheques. The partners say the cheque in question had been fraudulently amended, so the funds weren't paid to the correct payee.

C is represented by an employee in bringing this complaint, although some submissions have also been made by the partners. For ease of reading, I'll refer to all submissions as being from the partners or simply from C.

What happened

C's partners told us:

- On 9 September 2021, C issued a cheque for £29,142 to its rental company and posted it recorded delivery.
- The cheque was intercepted and "C/O" and a name added to the end of the payee's name. The cheque was then paid into a bank account, which was not that of the rental company, at a different bank ("the receiving bank").
- The cheque was debited from C's Lloyds bank account on 10 September 2021.
- On 8 October 2021, C phoned up Lloyds and asked to stop the cheque. Lloyds said that they would do so.
- C then sent a second cheque to its rental company, which was received and paid in without issue.

Lloyds said:

- They were unable to stop the cheque as it had already been paid. They are sorry they gave the incorrect information about stopping it and have paid C £200 in compensation for this error.
- They didn't think they had done anything wrong in paying the cheque.
- They had referred the matter to the receiving bank's fraud department, as they considered this to be a case of cheque conversion, that is, where the cheque has been paid into an account not in the payee's name.
- They passed on the comments of the receiving bank, which also considered it hadn't done anything wrong. The receiving bank said the cheque had been paid into an account in the same name as the cheque and the correct procedures for opening an account had been followed.

I issued a provisional decision on 6 June 2023. I provisionally upheld the complaint and said:

My provisional conclusion is that there are legal grounds for concluding that the cheque in question was not a valid payment instruction at the point when it was presented to Lloyds for payment. I'll explain why below and I'll give both sides a chance to consider my provisional findings and provide further evidence.

A cheque is a written order from a customer (the drawer), instructing their bank to pay a specified sum of money to a named beneficiary (the payee). Cheques are legal documents and their use is governed by the Bills of Exchange Act 1882 ("BOE"), as well as some later Cheques Acts. I don't think the latter Acts are relevant here, but I do think the BOE is relevant.

Section 64 of the BOE covers alteration of bills and says:

(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that, where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

This section of the Act says that, if a cheque has been "materially altered", it is "avoided". Case law confirms that "avoided" in this context means that it becomes a worthless piece of paper. A bank would therefore have no right to debit their customer's account for the value of the cheque if it was presented for payment after material alteration.

No copy exists of the cheque as originally written in this case, but I think there's little doubt about C's version of events. This was a regular payment to a payee and a replacement cheque was issued to that regular payee when the cheque in question wasn't received by them. Given the knowledge of who the regular payee was, I think it's more likely than not that the payee name was altered by adding additional wording to it.

I'm therefore currently persuaded that this cheque was originally made out to the regular payee. It follows that I'm provisionally satisfied that it was intercepted and amended by a third party, who added some wording to the payee line, without the knowledge or authorisation of C. It was then paid in to an account, which was not the recipient intended by C. I don't think Lloyds disputes this version of events, as their argument that the cheque was converted is predicated on it.

Section 64 of the BOE gives an exception where the drawer of the cheque has authorised or assented to the alteration. But this doesn't apply in this case. There is also a further exception where the alteration isn't apparent and the bill is in the hands of a "holder in due course". A "holder in due course" is defined in section 29 of the Act as someone who "took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it". That again does not apply here, as the person who altered and paid in the cheque was not acting in good faith or for value.

The BOE doesn't define material alteration, but I see no reason to conclude that the amendment to the payee name, which has occurred here, would not constitute a material alteration.

In reaching my decision, I need to take into account any relevant case law and there are several legal cases, which I consider relevant here. In *Slingsby v District Bank Ltd*, a cheque had been amended in a similar way to C's cheque, that is, by the addition of extra words after the payee name. The Judge found that the amendment to the payee was a material alteration and therefore the bank in that case had no right to debit the cheque from the drawer's bank account.

Similar conclusions were reached in the Court of Appeal's consideration of appeals in the case of *Smith v Lloyds TSB Group plc* [2001] and *Harvey Jones Ltd v Woolwich plc*, which also deal with the question of the tort of conversion in such cases (which has been argued by Lloyds here). In both cases, which were considered jointly, the Judge found that the claimants couldn't sue for damages in conversion for the face value of the cheque, because the alteration had rendered the cheques in question worthless.

I note that in these cases, the question of whether the alteration was apparent and hence whether the paying bank had been negligent was not considered to be a relevant consideration. The cheques were avoided before they reached the paying bank, so the bank had no contractual basis for paying them.

I therefore provisionally conclude that the cheque is avoided and Lloyds should therefore not have deducted that amount from C's bank account.

By way of completeness, on the side issue of whether the bank made an error in telling C that they could stop the cheque in question, I agree that Lloyds made a mistake. Lloyds has already acknowledged this and I think the compensation already paid of £200 in total is fair to compensate for the inconvenience caused by this error. My provisional intention is therefore not to award any more for this aspect of the complaint.

Finally, my provisional findings above may allay some of C's other arguments and concerns. In general, it isn't within my power to demand investigations be carried out or change banks' procedures, but rather to decide what's fair and reasonable in the specific circumstances of the case, after taking into account relevant law and regulations. I haven't addressed C's specific arguments here, because I consider this case turns on a legal consideration, not on questions of negligence or otherwise by any party.

Both C and Lloyds have made comments about the actions of the receiving bank, which I have read. But, as our investigator explained, the Financial Ombudsman doesn't have the power to look into a complaint from C about the receiving bank, because C is not their customer. So it would be wrong for me to comment about the receiving bank's actions. And any findings I did make wouldn't be enforceable.

I provisionally concluded that the bank should refund to C the value of the cheque, together with interest at 8% simple per year, by way of compensation for being deprived of this amount.

Both parties responded accepting my provisional findings. This decision therefore confirms that outcome.

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 sides accepted my provisional decision, there is no need for me to repeat the above or go into any further detail. For the reasons explained above, my conclusion remains that the cheque is avoided and Lloyds should therefore not have deducted that amount from C's bank account.

Putting things right

I consider fair compensation would be to put the partnership back in the position it would have been in without the bank's error.

The bank should therefore refund the sum of £29,142 to C. It should also compensate C for being deprived of this amount by adding interest to it at 8% simple per year, calculated from the date the second cheque was paid until the date of settlement.

My final decision

For the reasons explained, I uphold this complaint and direct Lloyds Bank PLC to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the partners of C to accept or reject my decision before 13 July 2023.

Louise Bardell
Ombudsman