

The complaint

Miss G complains London Community Credit Union won't refund transactions on her account which she says didn't authorise.

What happened

In early September 2022 Miss G said she used her card at a cash machine, and it wasn't returned to her. After this she noted fraudulent transactions were carried out using the card and PIN. These were a combination of cash withdrawals and merchant sales.

Miss G says she contacted LCCU immediately by phone about the transactions but received no response. Miss G raised a fraud claim and LCCU responded in April 2023 rejecting it. LCCU contacted Miss G again in June 2023 explaining it was obtaining further information to review her complaint. In July 2023 it said it had gathered the necessary information and as there was no evidence of the cash machine being tampered with it wouldn't be refunding the transactions.

Miss G brought her complaint to our service and an Investigator asked LCCU for its submissions. After repeated requests, as no information was received the Investigator issued a view upholding Miss G's complaint. The Investigator recommended the following:

- LCCU refund the transactions Miss G was disputing in full.
- Apply 8% interest on the amount from 10 September 2022 to the date of settlement.
- Pay £100 in compensation for its poor handling of Miss G's claim.

As no response was received from LCCU the complaint was referred to an Ombudsman for a final decision.

I issued my provisional decision on 13 March 2024.

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.

I've included my provisional decision below.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what is fair and reasonable, I'm required to take into account the relevant account terms and conditions, relevant law and regulations; regulators' guidance and standards and, where appropriate, what I consider good industry practice at the relevant time.

While Miss G's complaint was awaiting an ombudsman decision a final attempt was made to obtain evidence from LCCU. A response was received explaining the complaint would be reviewed. However, as the deadline provided to LCCU has now passed the complaint has progressed to decision without any final submissions from LCCU.

Miss G says she used a cash machine in September 2022 which didn't return her card. Miss G has consistently maintained she had entered her PIN, and when it wasn't returned to her, a man and woman who were present at the time said they had experienced similar issues and suggested she report the issue to the supermarket where the cash machine was based. Miss G says she went in and did this, but the supermarket staff weren't aware of any issues. Following the incident at the cash point Miss G says she contacted LCCU repeatedly on the phone to report the issue but received no response. Miss G then attended an LCCU branch to report the issue the following morning. By this stage Miss G says the unauthorised transactions had been made.

As a starting point I've considered the terms and conditions of Miss G's account which I have located on LCCU's website. In relation to unauthorised payments, they read:

4.5.4 You are responsible for the payment and your account will not be refunded where you have acted fraudulently. None of the provisions limiting your liability set out in General Conditions 4.5.6 to 4.5.7 will apply.

4.5.5 Where you have:

- (a) allowed another person to make payments (other than someone that we have agreed may be allowed to use your account); or
- (b) failed intentionally or with gross negligence, to keep your security details secret and a credit balance on your account is reduced by the unauthorised payment(s), you will be responsible for all payments made in this way before you tell us that any transactions are unauthorised.

4.5.6 You will not be responsible for any unauthorised payments where:

- (a) you have not yet received your security details; or
- (b) these have been made by someone who has your security details and has used them without your authority to make a payment where the account holder does not need to be present, such as the purchase of goods or services by telephone, over the internet or mail order.

4.5.7 Unless General Conditions 4.5.4 to 4.5.6 above apply, where your security details are lost or stolen, or you do not keep them safe as you are obliged to do under this agreement, you may be responsible for unauthorised transactions, up to a maximum of £100. You will not be responsible for any unauthorised payment which is made after you have told us that your security details are no longer safe.

Based on Miss G's account of events, I am satisfied Miss G has taken steps to report the card issue immediately to LCCU and the subsequent unauthorised transactions. LCCU initially declined Miss G's claim, stating the card and PIN had been used to make the disputed transactions. However, LCCU hasn't provided this service with the technical evidence it has to support this review, and its overall decision to decline Miss G's claim.

I haven't seen anything to suggest Miss G allowed another person to make payments, or that she failed intentionally or with gross negligence to keep her credentials safe. Without evidence to show how the transactions were made and authenticated, I can't fairly conclude that Miss G provided her authority for the transactions which she claims she didn't consent to. So I'm not persuaded LCCU have been reasonable in declining to refund the transactions in dispute. I'm satisfied that the account terms and conditions and good industry practice, would require them to be refunded to Miss G.

I am also mindful of Miss G's comments about the impact the complaint has had on her. The service provided by LCCU from the outset of her claim has been slow, with multiple delays and incomplete information. LCCU has in my view further exacerbated what is an already stressful and worrying situation for Miss G. As a result, I think LCCU should compensate Miss G for the distress and inconvenience its poor service has caused her.

Responses to my provisional decision

Neither Miss G or LCCU responded to my provisional decision. My decision therefore remains the same as set out in my provisional decision, and I uphold this complaint.

Putting things right

For the reasons explained above, I direct London Community Credit Union to:

- Refund the payments Miss G says she didn't make.
- Pay 8% simple interest* from the respective dates of loss to the date of settlement.
- Pay Miss G £250 for the distress caused by the poor handling of her dispute.

*If London Community Credit Union deducts tax in relation to the interest element of this award it should provide Miss G with the appropriate tax deduction certificate.

My final decision

For the reasons above, I uphold this complaint. London Community Credit Union must now put things rights as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 24 April 2024.

Chandni Green
Ombudsman