

The complaint

Mr C complained because Lloyds Bank plc refused to refund him for a transaction he said he didn't make.

What happened

At 2.07 am on 18 December 2022, there was a £300 cash machine withdrawal from Mr C's Lloyds account. There were two further attempted withdrawals a couple of minutes later, one for £190 and the other for £100, but these didn't go through.

Mr C said he was out on a night out on 17 December, and he got home at 1 am on 18 December. He said that when he woke up on 18 December, he saw messages on his phone and rang Lloyds. This was around 8.30 am.

Mr C told Lloyds he hadn't made the £300 withdrawal. He said he didn't know the PIN for his card, because he didn't often use it. He also said no-one else had access to his PIN, which he hadn't written down or recorded in his wallet or phone, and he hadn't told anyone what it was. Lloyds said it couldn't see how it was possible to have been a third party fraudster, as there was no point of compromise to the PIN. Mr C asked what a point of compromise was, and was told an example would be if the PIN had been written down. Mr C asked the adviser whether, if he said he'd given it to a friend, he could raise the case, and was told no. Lloyds advised Mr C to speak to the police or Action Fraud. Mr C complained.

In Lloyds' final response to Mr C's complaint, it said that it didn't believe the withdrawal had been made by a third party fraudster. It commented that Mr C had said he didn't know the PIN for the card – but on 18 December at 1.25 am Mr C had logged onto his online banking using biometrics and had viewed the PIN for his card. Lloyds pointed out that this fitted as the cash withdrawal had then been made at 2.07 am.

Lloyds also said that on the initial call, Mr C had said his cards had been stolen – but he'd later changed that, saying instead that his cards had been taken out of his wallet and replaced with identical cards, and he didn't know how this had happened. Because of this, and the fact Mr C had said no-one had access to his PIN, Lloyds wouldn't refund him.

Mr C also complained that Lloyds staff left him feeling as if it was accusing him. Lloyds listened to the call and said that what the advisor had said had been correct. Mr C had also asked about the blocked transactions after the disputed £300 cash withdrawal. Lloyds explained that the two further attempted cash withdrawals had failed because of an error with the cash machine.

Mr C said he could provide CCTV footage showing he was in his block of flats. He said he'd been asleep at the time of the 2.07am transaction. Lloyds said that Mr C could provide this CCTV to the police for any investigation. It pointed out that the police should also be able to check the CCTV at the cash machine.

Mr C wasn't satisfied and contacted this service.

Mr C told our investigator he believed that during his evening out, someone had replaced his cards with the same bank cards he'd held, but in different names. He also told us that he didn't use his Lloyds card much and didn't know the PIN. He said that during the evening, he'd been having problems making a payment with another card, which was why he then viewed his Lloyds PIN. He said he couldn't have made the £300 withdrawal at 2.07 am as he'd been asleep. He said he'd contacted his flat management, told them what he'd been wearing, and they'd confirmed that someone matching his description had entered the building, and his key fob had been registered as entering at 1.34 am.

Our investigator didn't uphold Mr C's complaint. He noted that Mr C had said he'd viewed his Lloyds card PIN, and that he'd accessed his mobile banking app using biometric identification before viewing the PIN at 1.25 am. So the investigator said it was reasonable to conclude that Mr C had his Lloyds card in his possession at that time.

But he said there was no reasonable explanation about how and when anyone could have taken Mr C's wallet, reviewed which cards he had, replaced them with the same bank cards and returned them to the wallet without Mr C knowing – in the nine minutes between Mr C viewing his PIN at 1.25 am, and entering his block of flats nine minutes later.

Mr C also hadn't confirmed anyone was around him to look over his shoulder when he viewed his PIN at 1.25am, and there was no evidence to indicate the card and PIN had been compromised. So he thought it more likely than not that Mr C had authorised the withdrawal.

The investigator also thought Lloyds responded to his dispute in a timely manner. He said that in the final response letter, Lloyds had apologised if Mr C felt he had no support. The investigator pointed out that when a disputed transaction is raised, Lloyds had to ask questions, including uncomfortable ones, as part of investigating any claim.

Mr C wasn't satisfied. He sent detailed emails. In summary, he said:

- All his cards had been replaced by a third party, and that was why he'd resorted to trying to use his Lloyds card – except that it wasn't his, because someone had swapped it;
- Contactless wouldn't have worked because it wasn't his card and would have already been cancelled by its real owner. To try using chip and PIN, he'd tried to obtain his PIN at 1.25 am but that didn't work because it wasn't actually his card;
- He'd thought at the time the card machine had been faulty but he discovered in the morning the cards weren't actually his cards. He said withdrawals using his cards with other banks had been tried at other cash machines around 1 am. He sent screen shots of attempted activity on his cards with other banks;
- He thought someone could have taken his wallet in a takeaway shop just after midnight, which was the last time he'd used his card. He said someone could have reviewed his cards, replaced them with someone else's cards with the same banks, then returned his wallet without him noticing, while he was waiting for and eating his food. He said it was more than nine minutes between using his Lloyds card in the takeaway shop, and the first failed transaction with one of his other cards just after 1 am.

Mr C said he didn't authorise the payment, and had made this abundantly clear to Lloyds, the police, Action Fraud, and this service. He said everyone involved knew it was unauthorised so he didn't know why there was such an effort being made to trip him up and find loopholes. He said that one of the other banks had refunded him.

Mr C 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.

As I've set out above, Mr C has raised multiple points in his submissions to the service. I've understood all of those and considered all he's said and sent us, but in reaching my decision here I've focused on what I think is vital to my conclusions.

Regulations

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. 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. So what I have considered is whether it's more likely than not that it was Mr C, or a third party fraudster, who carried out the disputed £300 cash withdrawal at 2.07 am on 18 December 2022.

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*."

Mr C's card and PIN

The computer evidence shows that Mr C's genuine Lloyds debit card, and correct PIN, were used for the disputed cash withdrawal. There are 10,000 different combinations of a four digit number, so it's very unlikely that any fraudster would have been able to guess Mr C's PIN. So a key question here is how any third party fraudster would have been able to obtain Mr C's card, and know his PIN.

Mr C told Lloyds and this service that he hadn't written down or recorded his PIN, or told anyone what it was. So there's no explanation for how a third party fraudster could have known this.

In relation to the card, Mr C has put forward a complex suggestion which he didn't originally raise with Lloyds. He says he believes all his various cards were taken during his night out, probably at the takeaway shop around midnight. He says that person would then have checked what cards he had in his wallet, removed them, and replaced them with cards which were for the same financial organisations, but someone else's cards. He says that the fraudster then replaced the wallet without Mr C knowing.

I appreciate that Mr C said that on his evening out he was in a busy city where there were always people about, and that nothing seemed any more unusual or suspicious than a regular level of suspicion on a Friday night in the city. He also said that he kept his wallet, containing his cards, in his back trouser pocket, "*occasionally moving it into my coat pocket from time to time*." I accept that there are very skilful thieves, especially in cities late at night. And keeping his wallet in his back pocket was very unwise in these circumstances.

But what seems particularly improbable here is that any such thief, having managed to steal Mr C's wallet and remove multiple cards, would then have replaced the cards with others for the same banks, and would then have put the wallet back on Mr C's person. It's highly unlikely that a thief would have had suitable, and identical-looking, cards for the exact banks for which Mr C had cards. There are many financial institutions, and they all have multiple types, colours and patterns of card. And there would have been no benefit – and considerable risk of being found out – to any such fraudster in putting the wallet back in Mr

C's back trouser pocket. So I don't think this scenario is at all likely. It also conflicts with what Mr C first told Lloyds, which was that his cards had been stolen. He didn't raise this complex scenario at that point.

Nor have I seen any evidence to indicate that Mr C handed in, either to the police or to Lloyds, any of the cards which he said were put into his wallet but were someone else's cards.

Mr C said that when he was out, he couldn't use his non-Lloyds cards, which was why he tried to obtain his Lloyds PIN. Mr C did obtain his Lloyds PIN at 1.25 am, as I've set out. But there are no failed attempts to use his Lloyds account using chip and PIN, and any such attempts would have shown on the records. There's only the disputed cash withdrawal at 2.07am.

In terms of carrying out the withdrawal, Lloyds told Mr C that its computer showed that Mr C had logged into online banking at 1.25 am and checked his PIN. That login was done using Mr C's biometrics. Mr C had initially told Lloyds that he arrived home at 1 am, but he then said that he had indeed logged in, but that he'd done so during his night out because he had problems with his other cards. I agree with the investigator that when Mr C logged in to find out his PIN, it's likely that he'd have had his genuine Lloyds card at that point. Otherwise there would have been no point in checking his PIN in order to try and make a transaction. Bank cards aren't that similar, and normally have the customer's name on, so I think Mr C might reasonably have realised if the unusual scenario he's set out had meant he had someone else's card, planted by the fraudster. He didn't report anything to Lloyds at that point, although there's a 24-hour service available for such matters.

Mr C provided evidence showing that he asked his flat management about entry records between midnight and 3 am on 18 December. The flat management representative replied saying that the records showed Mr C's fob was recorded as being used to enter the building at 1.34 am, and there were then no further records of its use before the 3am time specified by Mr C. Mr C says that this indicates he couldn't have carried out the cash withdrawal at 2.07am. But I'm not persuaded that this is definitive. There's a range of other possibilities, including, just as one example, that Mr C might have gone out again before 2.07 am, without using his fob to record his exit, and returned after the 3am time he specified to the flat management representative.

Who is most likely to have made the withdrawal?

The overwhelming issue here is how any fraudster could have obtained Mr C's PIN. Also, the complex scenario put forward by Mr C is implausible, and as set out above I can't see that any fraudster would have had a range of cards readily available in order to match the exact types held by Mr C. Nor can I see why any fraudster would have attempted to swap cards and put them back in Mr C's back pocket. I think the evidence indicates that it was most likely to have been Mr C who carried out the disputed withdrawal. So Lloyds doesn't have to refund him.

Other points

Mr C told us about the actions of other banks, and said one of them gave him a refund. But that's not relevant to this complaint which is solely about Mr C's card with Lloyds. We consider all the circumstances of an individual case, to determine whether or not a specific bank – here, Lloyds - acted fairly and reasonably in line with the relevant regulations, which here are the Payment Services Regulations 2017.

Finally, I've considered Mr C's complaint that Lloyds didn't provide him with support and weren't "*by your side*" but instead were accusing him. I can see that in Lloyds' final response letter, it apologised for Mr C feeling this way, but that it explained that what the advisor said was correct. In any fraud investigation, detailed questions are a necessary and inevitable part of the investigation. So I don't consider Lloyds acted wrongly in asking necessary and probing questions to try to find out what really happened.

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 Mr C to accept or reject my decision before 23 February 2024.

Belinda Knight
Ombudsman