

The complaint

Miss M is unhappy that Lloyds Bank PLC will not refund transactions on her account which she says she did not make or authorise.

What happened

Miss M was studying here in the UK between 2019 and 2020 but flew home when the covid pandemic hit and she didn't come back until 2023. When she arrived back in the UK she realised three sets of card payments for £1,000 had debited her account on 9 February 2021, which she says she didn't make or authorise.

Lloyds didn't uphold Miss M's complaint because she'd told them no one else had access to her card, this was kept in her possession at all times and she hasn't shared any of the card details with anyone. As such Lloyds couldn't see there had been a point of compromise. Lloyds also noticed that Miss M had continued to use the account after the fraudulent activity had taken place in 2021, but she didn't raise a claim until 2023.

Our investigator didn't uphold the complaint for the same reasons as Lloyds. She also added that the behaviour shown wasn't typical of a fraudster as there were funds that remained in the account which were not accessed. She looked at Miss M's bank statements and noticed Miss M made a faster payment on 3 May 2021 and it was likely she'd have needed to access her online banking at this time and that she could have noticed the transactions at this point, and therefore reported the fraud a lot earlier. She also noted statements had been sent to Miss M electronically so she could have identified the transactions that way as well.

Our investigator also explained the Payment Service Regulations (regulation 74) requires the account holder (Miss B) to notify Lloyds within 13 months and without undue delay of any unauthorised transactions– but this didn't happen here.

Miss M disagreed. She said she didn't see her bank statements and if there was any evidence of her accessing her online banking, she said Lloyds should prove this. Miss M also said that the place the payments were made to, were nothing to do with her.

Because Miss M disagreed, the complaint has been passed to me to consider.

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.

The relevant regulations here – the Payment Services Regulations 2017 – say that generally a consumer won't be held liable for any transactions made on their account that they didn't authorise, except in limited circumstances. In this case the most important question I need to answer is whether I think it's more likely than not Miss M, or someone acting on her behalf, carried out the transactions.

Did Miss M consent to the payment?

Lloyds no longer has its internal records for the transactions dated 9 February 2021 to show how they were authenticated but they believe the chip and pin were not required. I think it's more likely than not it was just the card details that were needed to make each of the transactions for £1,000. I say this because the payments were made to an organisation in the UK whilst Miss M says she had her card abroad.

Lloyds have said Miss M's card was issued in June 2019, and her statements support that this card was in use for genuine payments prior to the disputed ones. Lloyds has provided evidence to show that this same card was used to make the disputed transactions, and this is also supported by Miss M's statements.

I cannot see that another card was issued without Miss M's knowledge for a fraudster to use to make these transactions in 2021. So it does seem that the card Miss M had was the one that was used to carry out the alleged fraud.

The statements show that there was undisputed spending using the same card both before and after the disputed transactions which further suggests there wasn't a different card being used.

Miss M has confirmed that she has always had possession of her card, she hasn't lost it, nor had it been stolen, and she also confirmed she hadn't disclosed any details to anyone. Because of this, it is difficult to see how a third party would have been able to get hold of the card details without Miss M's knowledge or consent in order to carry out the transactions. So it follows that it wouldn't be fair or reasonable to ask Lloyds to refund these transactions to Miss M.

I do agree that the pattern of the disputed transactions isn't typical of fraudster behaviour. However, given that Lloyds doesn't have internal records going back to 2021, we cannot determine whether there were any declined transactions. But I do find it unusual that a fraudster would leave approximately £200 in the account, rather than transferring it out seeing as they already had access to Miss M's account. I also find the nature of the transactions unusual as the card payments were made to an educational institution – rather than to another account which a fraudster could access or a payment for goods which is what I'd usually expect to see.

Miss M has queried why she would make the payments to the place that they went to and what would be the point in making three separate transactions. But this isn't for me to answer, my role is to look at whether Lloyds have treated Miss M fairly in holding her liable for the disputed transactions. And as I've explained above, I think they have.

Miss M believes this is an issue with Lloyds systems not being secure but I haven't seen any evidence to suggest that this is the case. I appreciate Miss M will be disappointed with my findings but for all of the reasons outlined above, I do not think Lloyds should be held liable for the transactions in question.

Noticing the transactions

The Payment Services Regulation (regulation 74) requires the account holder (Miss M) to notify Lloyds as soon as practically possible, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised transactions. This is also confirmed in the account terms and conditions.

Our investigator said she thought Miss M ought to have realised the fraud had taken place by checking her account as she had online banking, and she also noted statements had been sent to her electronically as well.

I appreciate Miss M has said she didn't use her online banking and that she doesn't always check the statements. But I should explain that the onus is on the account holder to check statements to ensure everything is in order, so I would have expected Miss M to identify the fraud a lot sooner than she did.

Unfortunately, Lloyds no longer has internal records showing any activity in relation to Miss M's online banking dating back to 2021. I don't think that's unreasonable based on the length of time that has passed.

However, the statements show that the account had genuine usage after the fraud, and in May 2021, a bank transfer was carried out from her account. Miss M explained that payments that came in were from another account and that she used her card to make payments out so she wouldn't have seen the disputed transactions at the time.

But having looked at Miss M's account statements I can see that the account was being used, for example there was a transfer into her account on 9 April 2021 and a further transfer in on 13 April 2021 for £5,000. I can see that on 3 May 2021, there was a transfer out for £5,000 which would suggest Miss M was accessing the account and knew what was happening with her finances.

In addition to this, on 3 May 2021 there was a faster payment out of her account. In order to make this faster payment I think it's more likely than not that Miss M would have needed to log in to her banking because that is usually how a faster payment works. And given that Miss M was out of the country, she wouldn't have been able to carry out this transaction in branch.

So I think it's likely Miss M would have, or ought to have, seen the disputed transactions at this point. I think it would have been quite clear £3,000 had been debited because her balance went from £3,193.89 to £193.89, so there was quite a substantial difference.

I've also noticed that following the disputed transactions, the account continued to be used for genuine spending. For example there was a large faster payment credit into the account on 12 August for £17,500.15 and on the same day a faster payment went out of the account for £17,400 to an educational institute (which wasn't the same institution as the disputed transactions). This further suggests Miss M was accessing her account and was monitoring the balance.

Although, Lloyds' records regarding the online banking don't date back to May 2021, I can see that Miss M seems to have logged in to her online banking by at least August 2023 – so by this point I think it's likely she'd have seen the disputed transactions around this time. But these weren't reported to Lloyds until about October 2023.

So in any event, there was still a delay in Miss M reporting the disputed transactions to Lloyds. And it still stands that I don't think Lloyds have done anything wrong in declining to refund Miss M.

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 Miss M to accept or reject my decision before 7 June 2024.

Marie Camenzuli
Ombudsman