

The complaint

A, a small business owned by Mr T, complained because Lloyds bank PLC refused to refund a cash machine withdrawal, where he said the machine didn't dispense his money.

What happened

On 20 April 2023, Mr T was abroad. He wanted to withdraw money from his Lloyds business account in his trading name of A. He used his business debit card in a cash machine, but it didn't dispense his money. Mr T went into the bank branch, but they told him he'd have to contact Lloyds.

On 19 May, Mr T contacted Lloyds and told it that the money hadn't been dispensed. Lloyds gave him a temporary credit for the disputed withdrawal and fees while it investigated. The sterling equivalent of the cash withdrawal was £646.01, with an associated non-sterling transaction fee of £17.76, and a non-sterling cash fee of £9.69.

On 18 July, Lloyds wrote to Mr T. It said it had contacted the bank concerned, which had confirmed that Mr T's card and PIN had been present, and that the cash machine had been operating correctly with the cash dispensed. Lloyds said that the bank had also said the machine had balanced at the end of the day, and it had sent a copy of the log showing this. So Lloyds re-debited the temporary credits.

Mr T complained.

In Lloyds' final response letter, it repeated what the bank abroad had told it about the cash machine, and said it couldn't uphold Mr T's complaint.

Mr T wasn't satisfied and contacted this service.

Our investigator upheld Mr T's complaint on behalf of his business, A. She pointed out that the electronic evidence which the cash machine owner had sent Lloyds showed that the transaction had taken place on 20 April. But the evidence didn't confirm that the funds had dispensed correctly.

She considered whether there was any evidence that the machine had had an error. Mr T had told her that he hadn't seen anything unusual about the machine, and there were no error messages before carrying out the withdrawal, but the machine returned his card but not the money.

So the investigator asked Lloyds for more information. Lloyds replied that it couldn't obtain the information and the investigator would need to contact the bank abroad. It said *"we have no way to prove or disprove whether [bank name]'s statement is correct and we have accepted their decision in good faith."*

As Lloyds weren't able to provide this essential information, the investigator said that Lloyds should refund the disputed amount plus the fees and charges, together with interest at 8% from the date of the disputed transaction to the date of settlement.

Lloyds twice asked our investigator for an extension to the deadlines for responding to the investigator's view. The investigator granted these requests, but Lloyds wasn't able to meet either of the new deadlines. So the case was referred to me 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.

Regulations

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017, and the relevant section here is section 75 (1). Here, the "payment service user" is Mr T and the "payment service provider" is Lloyds.

"75.—(1) Where a payment service user—

...

(b) claims that a payment transaction has not been correctly executed, it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency in the service provided by the payment service provider."

This means that it's for Lloyds to prove that there wasn't a technical breakdown or other deficiency with the cash machine. Lloyds said that it relied on the bank abroad, and that that bank hadn't provided the proof, and it suggested we could contact the bank abroad. But the responsibility under the Payment Services Regulations rests with Lloyds, not the bank abroad. This is because the consumer doesn't have a direct relationship - as defined in the rules set by the regulator, the Financial Conduct Authority (FCA) - with the machine owner. Also, the consumer is being held liable for the transaction by their bank and not the machine owner.

Information provided by Lloyds

I've looked carefully at the computer information from Lloyds, which the bank abroad provided to Lloyds. This shows the date and time, card number and withdrawal amount. But it doesn't show the rest of the information which we'd normally expect to see, in order to meet the requirements of the Payment Services Regulations.

This includes:

- the electronic journal roll, which is a breakdown of the step-by-step process a cash machine follows when it is used. The information which this would provide includes evidence about whether or not the cash successfully dispensed;
- computer evidence showing that the machine balanced;
- purge bin evidence. A purge bin is a container within a cash machine, where faulty / returned cash and cards are held until the machine is reviewed by a technician;
- whether or not there is evidence of a third-party device having been fitted to the machine.

What this means for the complaint

As Lloyds didn't provide the necessary evidence under the Payment Services Regulations 2017, I uphold Mr T's complaint on behalf of his business, A.

My final decision

My final decision is that I uphold this complaint. I order Lloyds Bank plc to pay A, represented by Mr T:

- £646.01 for the disputed transaction on 20 April 2023;
- £17.76 for the associated non-sterling transaction fee;
- £9.69 for the associated non-sterling cash fee;
- Interest at 8% on the above sums, from the date of debit to the date of settlement.

If Lloyds deducts tax from the interest on the award, it should provide business A, represented by Mr T, with a tax deduction certificate to show how much it has deducted, in order to allow him to reclaim the tax from HMRC if appropriate to his business A's circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 3 July 2024.

Belinda Knight
Ombudsman