

## The complaint

Mrs C complained because Bank of Scotland (BoS) refused to refund her for two cash withdrawals she said she hadn't authorised.

## What happened

On 6 July 2024, Mrs C was on a city break with a friend. When she was home on 8 July, she saw that the balance on her BoS account was lower than she'd expected. She checked her banking app and saw two cash machine withdrawals which she said she didn't recognise. One was for £500 and the other for £250.

Mrs C blocked her account and contacted BoS, saying she hadn't made the two cash withdrawals. She told BoS that she still had her debit card, and she hadn't written down her PIN or shared it with anyone.

BoS didn't accept that Mrs C hadn't made the cash withdrawals. She complained.

BoS sent Mrs C its final response to her complaint on 18 July. It said it didn't think the payments had been fraudulent. It said it had considered what Mrs C had said, the activity on her account and the information on its systems. It said Mrs C had confirmed she still had her debit card, and it hadn't left her possession. BoS told Mrs C it isn't possible for the debit card to be cloned. She'd also confirmed she hadn't written down or shared her PIN. So BoS refused to refund Mrs C.

Mrs C wasn't satisfied. Helped by her friend acting as her representative, she contacted this service. Mrs C said she'd been told the disputed cash withdrawals had been made at 16:40 and 16:41. There had been a £26.80 transport payment at 16:42 which Mrs C said was genuine, but she said that she'd made that in a different part of the city from where the disputed cash withdrawals had taken place. She said it wasn't possible for anyone to have got from the location of the cash withdrawals to the location of the transport payment, in the time. Mrs C also said that as the disputed cash withdrawals had been outside a bank, there should have been CCTV.

Our investigator didn't uphold Mrs C's complaint. She explained that the computer information from BoS showed the genuine chip in Mrs C's card had been read by the cash machine, and the correct PIN had been entered, without any incorrect attempts. Mrs C still had her card. Although Mrs C had said there was a short time between the disputed withdrawals and the transport payment, the investigator thought it was more likely that the genuine transport payment had taken place near the cash machine. The investigator also pointed out that the pattern of spend wasn't typical of fraud, because if a third party had obtained Mrs C's card and PIN, it was likely they'd have taken the maximum possible, and not returned the card – but there was still money left in Mrs C's account.

Mrs C, helped by her representative, didn't agree. She didn't agree that it was likely that the payment to the transport business had taken place near the cash machine. She also disagreed with the investigator's view that fraudsters would probably have taken more money. She said the amount taken was close to the maximum allowed in 24 hours, and

even if it wasn't the case, it didn't prove it hadn't been fraud if it didn't follow a usual pattern, because new trends can occur. Mrs 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.

#### *What the Regulations say*

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.

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*."

So what I have to consider is whether Mrs C, or a third party fraudster not known to her, carried out the two disputed cash withdrawals. And if I consider it's most likely that a third party fraudster had obtained Mrs C's card and security information and carried out the disputed transactions, I need to consider whether she'd kept these secure.

#### *What this means for Mrs C's complaint*

To see what's most likely to have happened, I've looked closely at the computer information about the transactions. This shows that the two disputed cash withdrawals were carried out using Mrs C's genuine debit card, with the unique chip embedded into it. It's not generally thought possible to copy the chip on a card, and our service hasn't come across any cases where we felt this was a likely explanation of what happened. So I find that it was the genuine card which was used to make the disputed cash withdrawals.

Mrs C still had her debit card throughout, and used it for undisputed transactions before and after the disputed cash withdrawals. So if any third party fraudster had stolen Mrs C's genuine card without her knowledge, they'd have had to return it to her, also without her knowledge. This seems most unlikely. First, Mrs C would have been likely to have realised if someone had tried to do this, and secondly, a third party fraudster would have no reason to return it to her, with the risk of being caught.

The computer evidence also shows that the correct PIN was used at the first attempt. Mrs C said she hadn't written down or disclosed her PIN. There are 10,000 possible combinations of any four-digit number, so it couldn't have been guessed. So I can't see how any third party fraudster – even if they'd been able to take and return Mrs C's card – could have known her PIN. And although Mrs C says that the £750 was close to the BoS cash withdrawal limit of £800 in 24 hours, I think it's most unlikely that a fraudster wouldn't have taken out the maximum £800.

Mrs C said in her reply to the investigator that new trends do occur, but I think it's very unlikely a fraudster would take out less than the maximum. Similarly, I can't see any reason why a fraudster would return the genuine card to Mrs C – when there might be the possibility of stealing more the next day. The timescales also make this most unlikely, with a genuine £26.80 transaction within around 40 seconds of the second disputed cash withdrawal. This scenario where a third party stole and returned Mrs C's card just doesn't seem practical.

Taking all this into account, I consider the most likely explanation is that Mrs C made the disputed cash withdrawals herself, or allowed someone else to make them with her genuine card and correct PIN. If she allowed someone else to make them, that counts as Mrs C authorising them.

I note that Mrs C and her rep have argued that the £26.80 transport payment at 16:42:06 was made at a different part of the city from the disputed cash withdrawals at 16:40:14 and 16:41:22. I'm not persuaded by this. The same, genuine, card was used for all three. So it's most likely that the transport payment was made near to the cash machine location. Mrs C said her friend had made a payment at 17.20 which would prove where they'd been at that time, but that isn't relevant to deciding who's most likely to have carried out the disputed cash withdrawals around 16.40.

Finally, Mrs C has also suggested there might be CCTV at the cash machines. In practice, CCTV rarely shows what a customer hopes it might, as it would need to show clearly both the face of the person making the withdrawals, and at the same time the card and withdrawal information being entered. In any case, CCTV is normally recorded over, after around 30 days, so that would no longer be available now.

As I consider it's most likely that Mrs C made the disputed cash withdrawals herself, BoS doesn't have to refund her.

### **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 Mrs C to accept or reject my decision before 21 April 2025.

Belinda Knight  
**Ombudsman**