

## **complaint**

Mr S complains that Lloyds Bank PLC won't refund disputed cash machine withdrawals and petrol transactions made on his account.

## **background**

Mr S says that a number of fraudulent transactions, totalling £5,380, were made from his Lloyds current account between 10 April 2018 and 21 April 2018 – these were made up of cash machine withdrawals and transactions for petrol.

There were some large deposits into the account prior to this – on 28 March 2018 a deposit of £2,650 was made into the account, with a further deposit of £3,000 made into the account on 29 March 2018. Mr S has told us that these transactions were also genuine and were proceeds from an insurance claim and the sale of an off road vehicle.

Mr S explained that he lost his card during a night out on 1 April 2018. On 2 April 2018, he contacted Lloyds to report this and ordered a new card and PIN. Mr S says that he didn't receive either the PIN or card, which Lloyds say were dispatched separately on 3 April 2018 and 4 April 2018.

Mr S has told us he only noticed the money was missing when he received an alert text from Lloyds on 21 April 2018, saying there was only £3.50 left in his account – he called Lloyds on the same day to report the disputed transactions.

Lloyds didn't accept Mr S's disputed transaction claim. It said the transactions were made using the replacement card and PIN and it thought Mr S authorised the payments. Lloyds say there is no explanation of how his new card and PIN could have been intercepted. It said that Mr S normally checked his online banking regularly, but stopped using it when the disputed transactions started.

Lloyds also said that it couldn't see any reason for why Mr S asked for his PIN to be changed – Mr S told Lloyds that he wanted to change it as he'd previously given the PIN to his girlfriend, as she used the card sometimes. Lloyds thought it evident that as Mr S had given his PIN to his girlfriend, he trusted her, so there would have been no reason to change the PIN.

Mr S was unhappy with Lloyds' response and so he referred his complaint to us.

An investigator looked into Mr S's complaint but she didn't uphold it. Having looked at the sequence of events and the circumstances she thought it more likely than not that Mr S authorised the transactions.

Mr S didn't agree with the investigator's opinion. He's said that he wasn't in the area at the time and has sent evidence, through an invite and photographs, of a wedding that he was attending. He didn't agree that he had authorised the transactions and asked for his complaint to be passed to an ombudsman for a decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my review of the

evidence has led me to the same overall conclusions as the investigator previously set out and for much the same reasons.

Lloyds is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the *Payment Service Regulations 2017 (the PSR's 2017)*. I'm satisfied from the bank's technical evidence that Mr S's replacement card and PIN were used to make the disputed transactions. But Mr S says he didn't make or know about the transactions, so is asking for a refund to the value of the disputed transactions. So I need to think about whether the evidence I have suggests that it's more likely than not Mr S consented to the transactions being made.

From what I've seen and having considered everything carefully, I think it's more likely than not Mr S did authorise the transactions. I say this because:

- The technical evidence Lloyds has provided shows me that the new card and PIN were used to make the disputed withdrawals
- Lloyds' systems show that the new card and PIN were dispatched separately to Mr S's correct address on different days. Mr S has provided us with a photograph of his front door. The letterbox isn't shared and delivers mail directly into the house and Mr S has told us there is no problems with his post. So on balance, I'm satisfied the card and PIN were delivered to Mr S's home address.
- It follows that somebody Mr S knew, who had access to the property, could have intercepted the card/PIN following delivery. I also don't think the pattern of the disputed transaction is typical of an opportunistic fraudster. Had the card and PIN been intercepted by an unconnected third party, I would expect they would have tried to gain as much from the account, as quickly as they could. Alongside this, there were no balance enquiries during the disputed transactions, or attempts to use the card after the disputed transactions are reported. Again this is not what I would expect to see from an opportunistic fraudster.
- It is also unusual that the last disputed transaction happened less than two hours before Mr S reported the disputed transactions to Lloyds. The last transaction was at 14:23 on 21/4/2018 and Mr S contacted Lloyds at 15:50 on the same day. There are no further attempts to use the card. But how would an opportunistic fraudster have known that Mr S had cancelled the card and PIN. This suggests to me that the person using the card knew Mr S had reported things to Lloyds, so it follows they knew not to use the card anymore.
- It's not entirely clear how Mr S lost his card on a night when he hadn't used it, he's told us that he frequently loses his card and it can fall out when he takes his phone out of his pocket. I'm not persuaded for why Mr S changed his PIN due to suspicion over his girlfriend knowing it. As he'd previously indicated to Lloyds that he'd given his card to his girlfriend to use, so presumably he was well aware that she knew the PIN
- Lloyds' records of when Mr S accessed his online banking shows that he checked it frequently on the days leading up to the transactions but then stopped. With the account not being checked for 19 days between Mr S reporting his card lost and receiving a text saying he had £3.50 left in his account.
- I think this is surprising and it seems unusual that Mr S would stop checking his account at the same time his card had left his possession. I would expect that Mr S would've been keen to have access to his funds, having recently deposited a large sum. Looking at the spending patterns on Mr S's account, 19 days seems like a long time for him to go not needing his card. Had Mr S not been aware of what transactions were being made on his account I think it's more likely than not he would

have logged on to check his account or been concerned about not receiving his card/PIN - in which case I would have expected him to contact Lloyds sooner, but that didn't happen here.

I acknowledge that Mr S has said that he wasn't at the locations at the time of the transactions. But Mr S didn't have to carry out the transactions himself in order to be liable for them under the relevant rules. All things considered, for the reasons above, I'm persuaded that it's more likely than not Mr S was aware that transactions were taking place on his account and so authorised the payments. It follows that Lloyds is entitled to hold him liable for them.

**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 S to accept or reject my decision before 29 September 2019.

Stephen Wise  
**ombudsman**