

Complaint

The estate of Mrs W has complained that Lloyds Bank PLC won't refund unauthorised transactions on her account.

Mrs G is the executor and authorised representative for the estate.

Background

Mrs W had a stroke, which made her dependent on her family for help. She gave her debit card and PIN to her daughter-in-law so she could help her with shopping and finances.

Sadly, Mrs W passed away on 18 May 2018, after a spell in hospital.

On 24 May 2018, the daughter-in-law closed Mrs W's account.

Mrs G is Mrs W's daughter. She needed money to pay the funeral costs and was surprised to discover that the balance in her mother's account was lower than expected. She found a bank statement and discovered that between 2013 and 2018 there were frequent weekly ATM cash withdrawals, purchases and regular payments of £500 to another account.

Mrs G didn't believe that her mother had authorised all these transactions. She said her mother lived in a care home and had modest needs. Nine transactions, totalling £1,740, were made while Mrs W was in hospital from 6 April to 14 May 2018, shortly before she died.

Mrs G believes the daughter-in-law made the transactions without her mother's consent. She asked Lloyds for a refund of all transactions, except for those made for rent and utilities.

Lloyds investigated her complaint and decided not to refund the estate. It said it didn't know what arrangement had been agreed between Mrs W and her daughter-in-law. But it didn't matter because when Mrs W gave her card and PIN to her daughter-in-law, she authorised all transactions on the account.

As Mrs G didn't agree with Lloyds' decision, she asked us to investigate.

Our investigator looked into her complaint and decided not to uphold it. In summary, she felt unable to conclude that the transactions were unauthorised because Mrs W had given her card and PIN to her daughter-in-law.

Mrs G disagreed with our investigator's view. She said she couldn't see how her mother could authorise the transactions, which were made while she was in hospital. She asked Lloyds to refund only those transactions but Lloyds refused, saying there were still authorised.

Mrs G has now asked for an ombudsman's final 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, I'm afraid my review of the evidence has led me to the same overall conclusions as those reached by the investigator.

The investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Both Mrs G and Lloyds have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mrs G that I've read the file, including her comments and evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In short, Lloyds is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2009 and 2017 (the PSRs).

The PSRs say that a payment out of someone's account can only be treated as authorised if the payer has consented to it. So, the customer must have consented to a payment transaction taking place. My primary concern is to come to a view about whether or not I think Mrs W consented to the transactions.

I don't think there's any doubt that Mrs W gave her card and PIN to her daughter-in-law so she could help with her financial affairs. Mrs G has confirmed this with us.

Also, the bank's internal notes record that Mrs G said she knew her mother had given the daughter-in-law her card and PIN after she'd had the stroke. She told Lloyds the daughter-in-law looked after her mother's financial affairs and she would get money out for her. She also told the bank that her brother and his wife lived closer to their mother so they would take her out shopping and to hospital and other appointments. She said she thought her mother would've asked them to get money out for her for any reason and that she asked the daughter-in-law to get cash for her other daughter when she used to visit. Mrs G said she didn't think the daughter-in-law would've given the card back to her mother.

But Mrs G doesn't believe her mother would've consented to all the transactions because she had no need for the frequent cash withdrawals or purchases, such as petrol. And she's asked how her mother could've authorised the last few transactions while she was in hospital and didn't leave the ward.

I sympathise with her feelings on this subject. And I completely understand why Mrs W shared her card and PIN with her daughter-in-law. Sadly, this is a common situation.

However, under the PSRs a payment transaction is regarded as having been authorised by the payer only if the payer has given its consent to the execution of the payment transaction.

The regulations go on to say that 'such consent must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider.'

The form and procedure are usually set out in the terms and conditions. The terms and conditions for Mrs W's account state:

'Payments out of your account (withdrawals)

8.1 General conditions about payments out of your account

(a) We are entitled to assume we are dealing with you, and that you have agreed to us acting on any instructions, without getting further confirmation from you:

- (i) if you ask us to make a payment using your Security Details (for example a card and PIN at a cash machine or the passwords you have chosen for Telephone or Internet Banking) as long as any relevant security checks have been completed by us or, in the case of a card with contactless functionality, using that functionality; and
- (ii) otherwise, if you have signed a cheque or other document containing the payment instruction.

The Financial Conduct Authority has also stated that,

‘The procedure for giving consent to execute a payment transaction could be in writing, by using a payment card and PIN.’ (Payment Services and Electronic Money – Our Approach 2017)

What this means in summary, is Mrs W is treated as having consented to the transactions because she allowed her daughter-in-law to use her card and PIN.

And when telephone banking was set up, Lloyds were entitled to believe the instruction came from Mrs W, as the person would’ve have needed her banking details to set it up. After registration, a password would’ve been used to make a payment instruction.

For this reason, I’m afraid Lloyds is entitled to treat Mrs W as having authorised the transactions, even though she might not have made them herself.

The regulations also say that Lloyds doesn’t have to refund the disputed transactions if Mrs W intentionally did something, which she shouldn’t do under the terms and conditions, such as giving her card and PIN to her daughter-in-law. I understand why she did this but I’m afraid it also means Lloyds can refuse a refund.

I’ve considered whether Lloyds should’ve been alerted to any or all of the transactions.

Lloyds had an obligation to follow the payment instructions. But, occasionally, there are situations where a bank should reasonably have a closer look at the circumstances surrounding the transactions.

I’ve thought about whether this was one of those situations.

I’ve looked at the statements for the account. Unfortunately, Lloyds can only provide statements for 2013 to 2018. So, I don’t know what Mrs W’s spending was like before she had the stroke. However, looking at the statements, I don’t think the type of payments, or the amounts shown, are particularly unusual or suspicious. From what I’ve seen, the payments are mostly direct debits for rent and utilities and shopping at high street stores, mainly grocery stores.

There are frequent weekly cash withdrawals, other one-off purchases, for example for jewellery, repayments for a loan, and regular transfers to a family member. Again, I don’t think there’s anything about these payments in terms of either their value or their payment

type that would be remarkable or strikingly unusual to the bank at the time, bearing in mind it knew nothing about Mrs W's situation.

I think the fact that Lloyds didn't flag these payments as suspicious was fair and reasonable given the circumstances. And besides, we don't know if Mrs W had agreed that her daughter-in-law and son could take some payment for helping her out, such as for petrol. I'm afraid, based on the available evidence, I can't safely say that the disputed transactions were made fraudulently.

Considering everything, I think it's fair and reasonable for Lloyds to refuse a refund.

I am very sorry for Mrs G's loss. And I sympathise with her concerns and the financial difficulties, which the shortage of money for the funeral costs has caused her. Clearly, this has been a distressing time for her and her family. No one wants to deal with a problem like this after losing a loved one. So, I am sorry I can't give her better news. I hope she can resolve this within the family.

I thank Mrs G for her patience while we looked into her complaint.

My final decision

My final decision is that I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 10 March 2020.

Razia Karim
ombudsman