

complaint

Mrs W complains that Metro Bank PLC (“Metro”) is holding her liable for a large number of cash machine withdrawals that were made using her debit card. Mrs W says she didn’t make or authorise them and that Metro should therefore refund them.

Mrs W’s daughter, Miss W, is helping her to bring this complaint.

background

Over a period of nearly five months Mrs W’s debit card was used to make 45 cash machine withdrawals that she says she doesn’t recognise. All the withdrawals were made within close proximity to Mrs W’s home. The total amount withdrawn was £13,110.

Mrs W says she never used her debit card and always went into the branch to make any withdrawals. The main purpose of the account was to deposit savings for her grandchildren. On 19 April 2018, she’d received a large sum into the account, which was her sister’s and her inheritance, and she was devastated when she learned most of it had been withdrawn.

Metro looked into the matter but concluded that either Mrs W or someone known to her with her consent probably had been responsible for the cash withdrawals. It said her genuine card had been used together with the correct PIN. As the card was still in Mrs W’s possession and there was no point of compromise for her PIN, it didn’t agree to a refund.

Mrs W didn’t accept Metro’s findings and referred the matter to this service where it was considered by one of our investigators. The investigator recommended that the complaint should be upheld as she wasn’t persuaded Mrs W had authorised the cash withdrawals.

Metro didn’t agree and asked for an ombudsman to review the complaint. I did that but reached – provisionally at least – a different conclusion from the investigator.

I sent Mrs W and Metro my provisional decision on 11 February 2020 explaining why I wasn’t intending to uphold Mrs W’s complaint. I’ve attached a copy of my provisional decision, which forms part of this final decision.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Metro didn’t respond.

Mrs W didn’t accept my provisional decision; she was extremely upset and said that she will be taking the matter to the police.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I have to base my decision on the evidence that has been shared with me - neither party has provided anything further to change my mind so I’m unable to reasonably depart from my provisional conclusions; which are that I think it’s more likely than not that Mrs W either

made the withdrawals herself or let someone else make them. Either way it wouldn't be fair to require Metro to refund them.

I realise this will probably seem unfair to Mrs W and she will be disappointed with my decision. But, for the reasons I've given already, I think the outcome I set out in my provisional decision is fair and reasonable - in the circumstances.

Mrs W is not obliged to accept what I've said, in which case she remains free to pursue this matter by alternative means should she wish to do so.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 28 March 2020.

Sonal Matharu
ombudsman

copy of my provisional decision

complaint

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my provisional 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 currently considering not upholding the complaint. I know this will be disappointing for Mrs W, so let me explain why.

Where the evidence is incomplete, inconclusive or contradictory as it has been for parts of Mrs W's complaint, my findings and decision are made on a balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. I think it is important at this stage for me to make clear that; I won't always be able to say what definitely did, or didn't happen.

Generally, Metro can only hold Mrs W liable for the disputed transactions if the evidence suggests that it's more likely than not that she made or authorised them herself.

Miss W told us that she thinks Mrs W's card must've been 'cloned'. Let me start by explaining that when cards are cloned, the magnetic stripe on the back can be copied. Chip technology is more advanced and there haven't been any known cases where the unique chip on a card has been copied, or the PIN identified from a card.

So, I'm satisfied with Metro's technical evidence that the genuine card was used with the correct PIN to make the cash withdrawals. Metro's records show that the chip embedded in the genuine card ending '7916' was read – making the use of a cloned card most unlikely. It

has also provided evidence to show that the corresponding PIN was entered correctly to make the withdrawals – with no incorrect PIN attempts. But the regulations relevant to this case say that is not, on its own, enough to enable Metro to hold Mrs W liable. So, I also need to think about whether the evidence suggests that it's more likely than not that Mrs W consented to the transactions and what I need to consider is how someone other than Mrs W could've obtained both her card and her PIN.

Mrs W has said that she has only ever received two cards for her Metro account – one when she opened the account in December 2014 and the second in January 2019 when she visited branch 'B' to withdraw money for her father's headstone. This was also the day she became aware of the disputed cash machine withdrawals.

However, Metro's records show that there have been three cards issued since Mrs W opened her account with Metro;

- First card issued on 29 December (card ending '7916') – expiry December 2016
- Replacement issued on 23 August 2018 (card ending '7916') – expiry August 2020
- New card issued 2 January 2019 (card ending '9952') – expiry August 2020

All 46 disputed cash machine withdrawals took place using the replacement card ending '7916' – which was produced in branch 'B' on 23 August 2018 around the same time an over counter cash withdrawal for £1,250 was made from Mrs W account.

Mrs W has confirmed the £1,250 withdrawal was made by her. She had gone to branch 'B' on 23 August 2018 to withdraw money to pay for her nan's headstone. Mrs W has said she was alone – which is usually the case when she visits branch 'B'. She recalls handing the cashier her card to make the withdrawal – which was then returned to her with the money she withdrew. She did not make a request for a new card and disputes having received one.

Metro has provided evidence to show; Mrs W's cash withdrawal, the production of the replacement card ending '7916' and cancellation of the first card ending '7916' all happened within minutes of each other;

- Cash withdrawal processed at 11.05am
- Replacement card request made at 11.07am
- First card marked as cancelled at 11.14am

I think the close proximity in which these actions took place, make it more probable than not, that Mrs W was present when the replacement card was issued and the card which was given back to Mrs W with her money was the replacement card ending '7916'. Also, the card Mrs W handed to the cashier had expired in December 2016 – so it's possible and more likely than not that the cashier replaced the card. And it's plausible that as both cards had the same long card number (PAN) – with the only noticeable difference being the expiry date Mrs W mistook the replacement card for her original card.

This is further supported by the fact that when Mrs W visited branch 'B' on 2 January 2019, she had her card in her possession. During this visit she reported the disputed transactions and her card was destroyed, a new card issued, and her PIN number changed. After which there were no further attempts made to withdraw funds. If Mrs W, as she has claimed, was never in possession of card ending '7916' and her card was in possession of a fraudster, I'd expect to see further attempts to withdraw funds – as the fraudster wouldn't have been aware the card had been cancelled.

I would've also expected the branch staff to have noticed the card in her possession was not her replacement card and made a note of this – or have discussed this when they called the fraud team – but I've seen no evidence of this. So, on balance I'm persuaded that the replacement card ending '7916' was given to Mrs W on 23 August 2018. And this card was in her possession when the disputed transactions took place and when she visited branch 'B'

on 2 January 2019.

Mrs W has said that she has never used her card to make cash withdrawals and always visited a branch to withdraw funds over the counter. So, I've carefully looked at the account activity and I do agree with Mrs W that the disputed transactions' spending pattern is not typical of her prior use of the account. But it is also not typical of a fraudster's use of an account i.e. transactions were made over a period of months rather than full use of the card in quick succession. So, I've not placed too much weight on this point, but I think it's helpful in building a picture.

Mrs W has said her card was kept in her purse, in her bag at home and only she knew the location of where it was kept. Mrs W's testimony has also been consistent that the PIN for her card was four random digits – she'd plucked off the top of her head when she opened the account. She did not use this number for any other cards and/or device, nor had she written it down anywhere or shared it with anyone. I've also reviewed the account activity prior to the disputed transactions and can see Mrs W had never used her card and PIN to make any payments or to make cash withdrawals – so I can't see there has been an opportunity for someone to observe her entering her PIN.

Mrs W has said that CCTV footage from the supermarket where the debit card was used several times to withdraw cash was viewed by the police. They couldn't share this with her for data protection reasons but have told her that it appears a gang or group of individuals were at the cash machine at the time of the withdrawals. Mrs W has said some of the other withdrawals were made at the Metro cash machine and if we were to obtain CCTV, we would see that the withdrawals were not made by her. We were unable to obtain CCTV footage due to the length of time that has passed but even if we did identify that someone other than Mrs W had made the withdrawal - looking at the evidence in this particular case, I don't think I could go onto confidently say Mrs W didn't authorise someone else to withdraw the funds – which would still make her liable.

Mrs W has maintained that she didn't make the withdrawals herself. So, if someone else did - they did so, using her card and her PIN. I must therefore consider how someone could've obtained and used her card on several occasions over a period of more than four months without her noticing. And in considering that, I must also ask how that person could've taken the card on 2 January 2019, used it at around 10am to make a cash withdrawal and then known to return the card to Mrs W, as she was going to visit the branch later to make a withdrawal. I'm not persuaded these were the actions of a fraudster or a third unknown party. But I've considered the possibility it could've been someone who knew Mrs W.

Mrs W shares her home with her husband and three of her daughters – so it's possible any one of them could've known the whereabouts of her card and had access to it. And they may also have had the opportunity to take the card and replace it each time – which could explain the sporadic and irregular usage over a long period of time. But they would still have needed to know the PIN.

I can't rule out the possibility that someone Mrs W knew made the transactions. But I have to base my decision on the evidence that has been shared with me. So, I think it's most unlikely that if the cash withdrawals were made by someone other than Mrs W, they were made without her knowledge and consent – as there is no convincing explanation for how anyone could've known her PIN. And I don't believe, given what Mrs W has said about her PIN that someone would've been able to guess it correctly first time.

So, I'm afraid I have to conclude in my view there are only two possible explanations here;

- Mrs W made the withdrawals herself; or
- she allowed someone else to make them;

I can't with any certainty say which of the above is most likely to have happened. It could be that the cash withdrawals were the result of a combination of these. But whether she made them, and/or authorised someone else to make them, I don't believe it would be fair to say that Metro should refund them.

Miss W had also suggested this could be an 'inside job' by someone at the bank. I've considered what Miss W has said and the only potential point at which this could've occurred was during Mrs W's visit to branch 'B' on 23 August 2018. However, when a card is produced in branch an audit is created that shows who issued the card and at what time, so, I think the risk of being caught was seriously high and outweighed any potential financial gain. Metro branches are also open plan, with no partitions between cashiers' desks, so I think it's unlikely the cashier who served Mrs W could've re-issued a new card, generated a PIN and retained this without another member of staff being aware.

I'm also not persuaded that if it was a member of staff, they'd risk using a cash machine at their place of work to withdraw funds. Metro have also confirmed it has no record of any such incidents against the cashier that served Mrs W and no reason to believe they have been acting in a fraudulent capacity in their role. So, taking everything into consideration there isn't evidence to support that what Miss W has suggested is what's happened here.

statements

Mrs W says she has never received statements for her Metro bank account. Had she received them, she would've reported the matter sooner. I appreciate what Mrs W has said but as I've concluded the most likely explanation for the disputed card use is, in my view, that Mrs W either made the withdrawals herself or consented to someone else making them, it makes no difference whether she did or didn't receive her statements. However, for the sake of completeness, after making further enquires, I established Mrs W had opted for paperless statements, but as Metro did not hold a valid email address for her, it was unable to send them. So, I accept Mrs W didn't get the statements. If she hasn't already done so, she should speak with Metro and either provide her email address or change to paper statements.

I'm very sorry to send disappointing news and especially after such a lengthy delay. I would like to reassure Mrs W that I've seriously considered all the evidence and what she's said before reaching my decision. But, based on the evidence, I think it's fair and reasonable for Metro to refuse a refund for the disputed cash machine withdrawals.

my provisional decision

For the reasons outlined above, but subject to any further information I receive from either Mrs W or Metro Bank PLC, I'm not currently intending to uphold this complaint.