

complaint

Miss A complains that The Co-operative Bank Plc (“the Co-op”) has held her liable for the value of transactions on her account that she says she did not authorise.

background

Miss A had a current account which she says she had stopped using. She had opened an account with another bank and as there was an overdraft on the account with the Co-op, Miss A wanted to come to a repayment arrangement to repay it and close the account.

Subsequently, a counterfeit cheque was paid into the account before five disputed transactions occurred. The cheque was returned unpaid putting the account further overdrawn although the full value of the counterfeit cheque was not used. Miss A received a letter saying that the bank had received a telephone call but the person had not passed security. She was surprised by this so she called the bank and found out what had happened on the account. Miss A reported the matter to the police.

Miss A says she did not know about the transactions that she was disputing but, in January 2010, a similar fraud had occurred on the account which the bank reimbursed Miss A for. The bank decided it would now treat her as liable for the outstanding balance – which was partly made up of the disputed transactions from 2011.

In both incidents of Miss A disputing that she was responsible for transactions, the circumstances were similar in that the original card and personal identification number (“PIN”) were used in cash machines and for gambling transactions. Miss A had said, in the most recent case of the disputed transactions, she thought that her card was left at home in a drawer - as she was not regularly using it.

Our adjudicator considered whether the transactions were likely to have been made with Miss A’s authority or not. The card used for the second set of disputed transactions was sent to replace the card used for the previous set of disputed transactions. The Co-op had said that a new PIN would have been sent with the card and the bank’s records indicate that this PIN was never changed. Miss A cannot recall whether she destroyed the PIN notification.

The last time Miss A used the card and PIN together appears to have been a number of weeks before the disputed transactions. So the adjudicator did not consider it likely that an unknown third party had observed Miss A entering the PIN and made the transactions after obtaining the card.

Miss A says she lives alone and no one else has access to her home when she is not there. Indeed, she cannot think of any way that someone could have accessed both the card and PIN in order to carry out the transactions. The adjudicator therefore considered that the Co-op was entitled to hold Miss A liable for the disputed transactions.

Miss A has asked that her complaint be reviewed by an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Miss A considers that this matter has not been investigated thoroughly. For instance, she remains concerned that CCTV footage was not reviewed. However, I agree with the adjudicator that the lack of such evidence is not material here. Such footage does not help me to establish whether an account holder should fairly and reasonably be held liable for transactions, even if it might show that they may not have actually been present when a transaction took place.

Put simply, the bank may hold Miss A liable for disputed transactions if sufficient evidence is put forward to show either that she made (or was involved in) the transactions herself.

I note that Miss A has her concerns about cards being copied but I have seen no evidence in this case to suggest the card was cloned, the PIN could have been obtained from the card, or how a cloned card could have been used in a manner that led to the bank's records reflecting the recorded use of chip and PIN.

Where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Having taken account of all the evidence available to me, I agree with the findings and conclusions of the adjudicator and for the same reasons. There exists no explanation that I am sufficiently persuaded of, as to how a third party fraudster has been able to access the card and PIN. On balance, it seems to me more likely than not that Mrs A did make - or she otherwise authorised - the transactions. And on that basis, I do not consider that I can fairly and reasonably require the bank to refund the value of the disputed transactions to Miss A's account.

my final decision

My final decision is that I do not uphold this complaint.

Ray Neighbour
ombudsman