

complaint

Mrs M complains that Lloyds Bank PLC won't refund cash withdrawals that she says that she didn't make from her account.

background

Mrs M went to a branch of Lloyds on 6 November 2017 to deposit £2,000 in cash. Her account hadn't been used for a number of months. She also ordered a new debit card for her account and PIN number reminder as she said she'd forgotten it. Mrs M says that she didn't receive the card. The disputed cash withdrawals were made from the account between 11 and 14 November 2017 and totalled £1,800. Mrs M reported the loss on 15 November 2017 when she says she'd gone to a branch to withdraw money herself.

Lloyds said that it didn't accept that this was fraud. Mrs M had told it that no one else knew that this money was being deposited or that she'd ordered a new card and PIN. There were no further attempts to use the card after it had been cancelled and the money wasn't taken out as quickly as possible. It thought that Mrs M had authorised the withdrawals.

Our adjudicator didn't recommend that the complaint be upheld. He said that:

- Through her representative Mrs M had now explained that the deposit was a combination of income as she was paid in cash and money from the sale of a car abroad. She had no evidence of the sale but said that the money was brought in sterling to this country.
- She said she lived at the time in a house with five or six people and while her room could be locked all post came through a shared letterbox. She had only had one problem with her post in the past when a letter went missing - she thinks this was when there was a resident with a similar name to her.
- The card and PIN were dispatched on separate days and most likely would have arrived on different days. No one knew these were coming or about the money in her account.
- The withdrawals were made when the chip on the genuine card was read and the correct PIN entered. There were no balance enquiries.
- Mrs M had provided evidence to show she was working on 13 and 14 November 2017 in the local area. And the withdrawals were made some distance away although Mrs M did seem to have some connection to where they were made. This was based on past entries on her bank statement and some coach and rail expenses which indicated she had visited regularly.
- He didn't think that a third party would likely have been able to obtain her card and PIN, known that money was in the account without making a balance enquiry and also known to stop trying to use the card after it was cancelled.

Mrs M's representative said that she didn't agree. He thought that a discriminatory approach was being followed as Mrs M wasn't born in this country. He wasn't happy with the outcome having waited so long. And he said that Mrs M might take legal action.

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'd like to assure Mrs M and her representative that we deal with all complaints in an unbiased way. And the questions we've already asked for example about the source of the money or how her accounts were used are ones we would typically ask in complaints about fraud. That's so we can build as complete a picture as possible. Even so I still won't be able to decide *exactly* what happened with these withdrawals and I will make findings about what I think is most likely.

I need to take into account the Payment Services Regulations 2009 in considering this complaint. These state that a payment service provider bears the risk of sending a payment instrument or any security information relating to it. I'll consider the evidence about this. And a payment can only be authorised if it was consented to. So it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Mrs M wouldn't generally be responsible for them.

So I will be thinking about the following areas in looking at his complaint:

- What is the most likely explanation of what happened to the card and PIN used for these payments?
- Did Mrs M either authorise the payments on the account, or allow someone else to use the card as Lloyds says?

the card and PIN

Lloyds has provided clear evidence to show that the card was dispatched on 9 November 2017 and the PIN on 7 November 2017. The reason for this is so that these don't arrive together. So I think that would have been unlikely to have happened. And Mrs M had only one letter go missing before and she reported no loss of any other post at the time. There were a number of people living with her. But to find someone else intercepted these specific items I'd need to think that someone was actively scanning her post, could recognise these items from the envelopes and could obtain them before Mrs M got them without her realising. I'm afraid I don't believe that this is the most likely explanation of what happened.

the use of the account

Mrs M hadn't used the account since December 2016. She decided to pay in a significant amount of money compared to past deposits before she had the ability to use that account with her card. And when she first spoke to Lloyds about what happened she was reluctant to explain the source of that money. When she complained she then said it was from her self employed income and that she was paid in cash. I haven't seen a record of her being asked where that money was held and it didn't seem to have come from a different account with another business that she had been using more regularly in 2017. At some point the explanation through her representative became that this also involved the sale of a car abroad, the conversion of that money to sterling and then it being brought to her. She hasn't been able to provide any evidence of that sale.

Mrs M says she hadn't told anyone about that cash. And this was paid into an account that she hadn't been using. So I don't see a way in which a fraudster would have anticipated this was in the account and withdraw it.

what most likely happened?

I'm satisfied based on the technical evidence from Lloyds that these withdrawals were authenticated using her genuine card and the PIN. I need now to think about whether Mrs M

consented to them. Mrs M has given some evidence to show that she couldn't have made all the withdrawals herself when she was working in a different location. But that doesn't rule out the possibility of her allowing someone else to use the card and account and take out the money.

To find instead that these withdrawals were made by an unknown third party acting without her authority I'd need to think all of the following were most likely:

- The fraud by chance happened just at the time Mrs M had paid in a significant amount of money into an account she'd not been using.
- A fraudster was able to obtain Mrs M's card and PIN without any prior knowledge that these were being dispatched.
- That person made a first withdrawal some distance from where Mrs M lived having gone there without even checking the balance. That person somehow seemed to be confident that there were funds in the account even though Mrs M hadn't told anyone about this.
- Again by chance the attempts to make withdrawals stopped after Mrs M had reported the card lost. There was still money in the account and this would suggest that somehow the person using the card found out it had been reported as missing.

I'm afraid that these aren't all findings I'm able to make as most likely based on the available evidence. So I consider that Mrs M consented to these withdrawals and either made them herself or allowed someone else to use her account card to take out this money. These payments were authorised by her.

I appreciate the time that this review has taken. And I know I'm going to disappoint Mrs M when I say that I don't have a basis to require Lloyds to take any further action.

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 M to accept or reject my decision before 22 November 2019.

Michael Crewe
ombudsman