

complaint

Miss D has complained Lewisham Plus Credit Union Limited won't give her money back which she says she didn't take from her credit union account.

background

In September 2014 Miss D went to the cash machine and found she couldn't get money out as there wasn't enough in her account. She went to Lewisham Plus to find out what had happened. There had been seven lots of money taken out of her account at different cash machines. Lewisham Plus told her they wouldn't refund the money so Miss D complained.

In April 2015 Lewisham Plus told her they didn't think there was any evidence to show there had been any fraud. As the PIN had been used to make these transactions, they felt there were no grounds to give her the money back. However they did recognise it had taken some time to get back to her and offered her £100.

Miss D brought her complaint to the ombudsman service. Our adjudicator reviewed the evidence provided by Lewisham Plus and the police (as Lewisham Plus had contacted the police). She noted the card used wasn't a chip and PIN card so theoretically could be copied – although Lewisham Plus had thought otherwise. She was also aware other frauds on Lewisham Plus cards had been carried out around the same time as Miss D's money was taken. She asked Lewisham Plus to pay back £473.84 along with £200 for the trouble this has caused Miss D.

Lewisham Plus feel what they proposed is the fair outcome and wanted an ombudsman to review the case.

my findings

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

In cases where payments are in dispute, there are some general principles that apply. Firstly I need to examine whether the customer authorised the transactions, or not. That is they made them themselves or allowed someone else to make them. Then if I am satisfied the customer did not authorise them, I need to consider whether the customer has acted "*with gross negligence*" and not kept their cards and security features safe. A customer who has acted "*with gross negligence*" can be held liable for payments even though they didn't allow them to be made.

did Miss D authorise these transactions?

I've looked at the evidence the bank, who runs Lewisham Plus' bank account, provided. Like our adjudicator I felt it was very telling. Confirmed fraud transactions had taken place at the same cash machines, and sometimes at the same time, as Miss D's disputed transactions.

I can also see Miss D's verbal evidence is convincing and credible. And the disputed transactions were carried out somewhere she doesn't live or visit.

Lewisham Plus has said the transactions could have been carried out by someone Miss D knows. I agree that's a possibility. But there's nothing to show she allowed someone else to use her card.

Miss D's raised the problem caused by Lewisham Plus not telling the police about this until too late. I know why she's annoyed by this but actually how they manage their fraud cases, and when and how they tell the police, is really an issue for them. I may have taken a different view if the absence of a police investigation had caused her the problems she feared it might.

One of the issues the police raised, as did the other bank involved is the card Miss D used is not a chip card. Therefore I believe there is a chance her card was copied. This aspect certainly introduces enough doubt whether the genuine card was used at all.

was Miss D grossly negligent?

If these transactions were carried out by someone other than Miss D, they'd have needed her PIN and either her card, or a copy. I'm aware Miss D thinks she had her card with her at all times. She certainly had it in September when she was unable to take out the money she wanted.

This means somebody needed to know her PIN. This can be obtained in a number of ways and I'd want to see Lewisham Plus's evidence Miss D was grossly negligent. I've not seen anything from them about this.

Overall I don't believe Lewisham Plus has shown Miss D made or allowed these transactions to be made from her account nor is there any evidence to show she was grossly negligent. As Lewisham Plus knows, the burden of proof lies with the bank, or in this case credit union, to show a customer has authorised a payment and I've not seen anything which shows this.

I believe Lewisham Plus must give all the money back. This is £473.84 taken out from seven cash machine transactions.

I've seen there were quite a few delays in managing Miss D's complaint. Lewisham Plus took nearly nine months to tell her they thought she was responsible for what had happened. This caused her a great deal of worry because for this period she had lost nearly £500. Lewisham Plus had offered her £100 for this delay and I believe £200 is a fairer amount because of the worry caused.

Where a customer has been without their own money, as in this case, it is normal for us to add 8% simple interest to the missing money. This is the rate the regulator suggests we use. In this case this period should be from 2 September 2014 until the date Lewisham Plus settles with Miss D.

my final decision

For the reasons I've given, my final decision is to instruct Lewisham Plus Credit Union Limited to put things right for Miss D by:

- paying back £473.84 taken out at cash machines between 28 May and 2 September 2014 from Miss D's account;

- adding 8% simple interest from 2 September 2014 to the date of settlement;
and
- giving her £200 for the upset the delays caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 26 February 2016.

Sandra Quinn
ombudsman