

The complaint

Mrs J is unhappy Lloyds Bank PLC have not agreed to refund a cash machine withdrawal she says she didn't make or otherwise authorise.

Mrs J has been helped by a representative, Miss J, in bringing this complaint. But for simplicity and ease of reading I've mostly referred to Mrs J throughout. And any reference to her includes the comments and actions of her representative unless otherwise specified.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In October 2021, Mrs J says she attempted to make a cash machine withdrawal of £10 which was unsuccessful. The same day, when she later logged onto her online banking to make a transfer, she saw £500 had been debited from her account (cash machine withdrawal). She reported this to Lloyds immediately.

Lloyds investigated Mrs J's fraud claim. It established that the £500 cash machine withdrawal was a separate transaction to the £10 withdrawal Mrs J says she did attempt, (which was declined due to the daily cash withdrawal limit being exceeded). It was unable to provide a refund as there was no evidence of third-party compromise and the £500 cash withdrawal was authenticated using Mrs J's genuine card and corresponding PIN.

Unhappy with Lloyds' response, Mrs J asked our service to consider her complaint. One of our Investigators looked into things and didn't uphold Mrs J's complaint. He thought it's more likely than not that Mrs J carried out the disputed withdrawal herself or provided someone with access to her card and PIN. Therefore, he didn't think Lloyds needed to do anything further.

Mrs J disagrees. She thinks the outcome that our Investigator reached is unfair as CCTV footage had not been obtained and reviewed. She requested an Ombudsman review her complaint.

What I've decided – and why

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've reached the same conclusions as the Investigator, and for broadly the same reasons. I realise this will come as a disappointment to Mrs J as this isn't the outcome she'd been hoping for. But I'll explain why.

Firstly, I recognise Mrs J feels that our service should review the CCTV footage before reaching a decision, but often this is not possible nor is it definitive in resolving disputes of this nature. Further, given the length of time which has passed, it's most likely that it would no longer be available as CCTV data is generally only stored for a short period of time. It would not be fair of me to speculate on what the CCTV may or may not have shown, and it not being provided by Lloyds, isn't on its own a basis upon which I can fairly direct it to refund the disputed cash machine withdrawal. In circumstances like these where the evidence is incomplete, inconclusive or contradictory, I am required to decide the case on the balance of probabilities and what I think is more likely than not to have happened. And ultimately whether I think Lloyds' decision to decline Mrs J's claim was fair and reasonable.

In short, Lloyds is generally required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (PSRs). But it can hold Mrs J liable for any disputed transaction if the evidence suggests that it's more likely than not that she made or authorised it. So I've carefully considered the evidence and thought about everything both Mrs J and Lloyds have told us. And from what I've seen, I don't think it's unreasonable to conclude Mrs J, or someone with her consent, made the disputed cash machine withdrawal. I say this for the following reasons:

- I'm satisfied from the technical evidence provided by Lloyds that Mrs J's genuine card and corresponding PIN were used to make the disputed cash machine withdrawal. The PIN was entered correctly on the first attempt.
- Mrs J says the card was always in her possession and she'd not shared or disclosed her PIN to anyone. The last time (before the disputed transaction) she'd used her card and PIN was the day before. So there doesn't appear to be an obvious point of compromise for her PIN.
- Mrs J's testimony about what happened when she attempted to withdraw £10 at the cash machine has not been consistent. So, it can't be relied upon as credible evidence.
- I've placed greater weight on the technical evidence, which shows that the disputed cash withdrawal was in fact made less than two minutes before Mrs J's attempt to withdraw £10.

Mrs J has provided Lloyds with slightly differing versions of events about what happened on the day; there is no identifiable point of compromise for the PIN; the disputed transaction was made before the £10 withdrawal Mrs J says she was trying to make; and there was a relatively short time between the two transactions – so it's unlikely an unknown third party could have taken and replaced the card. For these reasons, on balance, I think the conclusion Lloyds have reached that the cash machine withdrawal was most likely made by Mrs J or by someone with her consent is reasonable.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 9 August 2023.

Sonal Matharu
Ombudsman