

Complaint

E complains that Lloyds Bank PLC hasn't refunded several unauthorised transactions.

Background

The background to this case is well known to the parties, so I only intend to set out the facts briefly here.

E holds a personal bank account with Lloyds and complains that several unauthorised transactions were debited from their account. Some were contactless payments to shops, withdrawals from cash machines and online payments to a fast-food restaurant. E says that they asked Lloyds to block any payments to that specific fast-food restaurant. E says that they didn't make these payments and has speculated that their card has been cloned by a fraudster.

The case was looked at by an Investigator who concluded that, on the balance of probabilities, E most likely did authorise the transactions in question or someone else did so with their consent or knowledge. E disagreed with the Investigator's opinion and so the complaint has been passed me to consider and come to a final decision.

Findings

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

Under the regulations that apply to this case, the basic position is that Lloyds can hold E liable for the disputed payments if the evidence suggests that it's more likely than not that they made or authorised them.

With the ATM withdrawals and the contactless payments, Lloyds has been able to provide evidence showing that E's genuine card was used, and the chip was read. They've also shown that the PIN was entered correctly for the cash withdrawals.

The online payments were authenticated because the details of the card were input onto the fast-food restaurant's payment system. So all of the payments that E disputes were appropriately authenticated, depending on the relevant criteria applicable to that payment type. But that isn't enough on its own for it to hold E liable. I also need to consider whether the evidence suggests it's more likely than not that they consented to these transactions.

From what I've seen, I don't think it's unreasonable for Lloyds to hold E liable for them. E has told us that the card was in their possession throughout the period in which the disputed transactions took place. In the circumstances of this case, I find it unlikely that a fraudster would have taken and used the card only to return it without this being noticed. I also think that, if an opportunistic fraudster had genuinely managed to get access to this account, they would've looked to make full use of that opportunity. However, there were no other attempts to withdraw money or use the card around this time. Furthermore, E also told us that they didn't write down their PIN anywhere making it difficult to see how a third-party could've

found out what it was.

It's also significant that E contacted Lloyds on 12 April and ordered a new card. A new card with a different number was sent out. Despite that, there were three more online payments made to the fast-food restaurant which E also says they didn't authorise. These payments were interspersed with several transactions which E has confirmed as being genuine. Unfortunately, I'm not persuaded it's plausible that a third-party could've taken and replaced the card *and* managed to intercept and take down the details of its replacement.

E has speculated that the card might have been cloned. However, although it's possible to clone the magnetic strip on a card and produce a replica, there's no evidence to suggest that the same process has been successfully carried out on the chip. Given that Lloyds has been able to show that the chip was read, I'm persuaded that these transactions were carried out with E's genuine card.

I recognise that I can't know for certain how these transactions were made. I have to look at the available evidence and come to a decision on the balance of probabilities – i.e. is it more likely than not that these payments were authorised? I know that my decision will be hugely disappointing to E, but I'm afraid I think the evidence strongly suggests they were and so my decision is that it's fair and reasonable for Lloyds to hold E liable for them.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 29 September 2023.

James Kimmitt
Ombudsman