

The complaint

Mr R complains that Lloyds Bank PLC won't refund transactions that he says were made without his authority.

What happened

Mr R had an account with Lloyds – and was in prison overseas. After his release, he says he discovered that someone had transferred his savings into his current account, and then spent or withdrew all his funds. He reported this to Lloyds.

Lloyds looked at this, but didn't agree to refund these payments. It said it wouldn't refund these payments because they'd occurred more than 13 months before Mr R reported them. Lloyds also says that Mr R told it that he'd given his account details to a friend – which breached the terms and conditions of the account.

Our investigator looked into this but didn't think Lloyds should refund the payments. Mr R didn't agree. The complaint has been referred to me to decide.

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.

I've taken into account relevant law and regulations, regulators' rules guidance and standards, codes of practice, and what I consider to have been good industry practice at the relevant time.

In this case the relevant regulations are the Payment Service Regulations 2017. In general, a business needs to refund transactions which weren't authorised by the consumer. But they go on to state that a payment service user is only entitled to a refund of an unauthorised transaction if it notifies the payment service provider without undue delay, and in any event, no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment authority.

This is reflected in the terms and conditions that applied to Mr R's account which said that "we will not refund the payment if you tell us more than 13 months after it was made that the payment was not made properly or was unauthorised".

In this case, someone transferred £4,338.01 from Mr R's savings account to his current account in October 2019, and a further £2,973.22 (the remaining balance of the account) in November 2019. The current account statements, meanwhile, show that someone then withdrew some of the funds at ATMs – and from November began making payments by debit card. This continued until all the funds had been spent, in late December 2019.

I accept that as Mr R was in prison throughout the relevant period he couldn't have made these payments himself. But the last of the disputed transactions took place at the end of December 2019. The terms and conditions meant that Mr R needed to report this transaction

to Lloyds before the end of January 2021. Mr R didn't contact Lloyds until September 2022, another 18 months later. So I need to consider whether Lloyds can fairly rely on this term in the circumstances of this complaint.

Mr R says he couldn't do anything as he was in prison during the period that these transactions took place – and didn't have access to online banking.

I've thought about this. The terms and conditions of Mr R's account said that "you must tell us if your name or contact details change. If you don't tell us, we will not be responsible if we cannot contact you or we send out confidential information to an old address." Mr R didn't tell Lloyds he was no longer living at his old address.

Further, Mr R has told us he in fact allowed a friend to have access to his online banking because he couldn't access it abroad. And although he was in prison at the time, he has nonetheless been able to supply screenshots showing that he lost access to internet banking in mid to late November 2019. So it appears that Mr R – or at least the friend he'd allowed to act on his behalf – would have known at that point that there was a potential issue with the account.

Finally, it appears Mr R was aware that a third party may have tried to get access to his savings. I note that when Mr R contacted Lloyds, in 2022, to regain access to his account, he told Lloyds's fraud department that he'd blocked his debit card as "lost" because "a friend" had been taking money out of his savings account, which is why he'd blocked it. (This appears to have happened a few months before the disputed transactions). Mr R now claims that he meant something rather different: that he was concerned that his card might be used by someone else in his absence as he'd previously used his card online. I don't find what Mr R has said about this persuasive – it appears Mr R knows rather more about what has happened than he's told us and Lloyds, and that Mr R was aware that third parties had tried to access his account before he left the UK. And his account of what happened has changed significantly while we've been looking at the complaint – he initially told us he'd been living abroad with family while he was unemployed, and only explained he'd been in prison after our investigator said she wasn't minded to uphold the complaint. Based on what Mr R has said, I find on balance that Mr R knew that someone else had access to his account but didn't report this at the time. This also raises the possibility that someone was using Mr R's account with his permission – in which case Mr R can be treated as having authorised the payments.

For these reasons, I'm not persuaded that Lloyds has acted unfairly here. The terms and conditions required Mr R to report unauthorised transactions within 13 months, but he didn't. I find it fair for Lloyds to rely on these terms. I'm also mindful that because of the time that passed, Lloyds no longer has important evidence about what happened to Mr R's account – in particular, it is not clear how the third party was able to apply for a new payment card for Mr R's account.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 September 2023.

Rebecca Hardman
Ombudsman