

The complaint

Mr M, helped by a representative, complained because Lloyds Bank plc refused to refund him for a transaction which he disputed.

What happened

Mr M went to prison in January 2023. The same day he went to prison, his relatives cancelled the direct debits on Mr M's Lloyds account.

On 17 March, there was a £530.90 payment from Mr M's account. It was coded DEB on the statement, showing that it was a debit card payment. The payment went to a car insurance business.

On 5 April, the car insurance business credited £253.03 as a bank giro credit.

Mr M complained to Lloyds, saying his direct debits had been cancelled and the £530.90 payment had been unauthorised. He wanted a refund, saying he was out of pocket by £295.87.

Lloyds refused to refund Mr M. It said the payment hadn't been a direct debit, but a debit card payment. In its final response, Lloyds told Mr M that if he was disputing the payment, he should contact the merchant direct.

Mr M didn't agree. Helped by a representative, he contacted this service.

Our investigator didn't uphold Mr M's complaint. She said that the payment had been a debit card payment, not a direct debit, so the direct debit guarantee, which Mr M had mentioned, didn't apply.

The investigator considered whether or not Mr M had authorised the payment. Mr M's representative had provided a copy of a letter from the car insurance business which said that Mr M was in breach of his credit agreement, and the business would recover £530.90 from the card which Mr M had provided. The investigator asked Mr M's representative for a copy of Mr M's original agreement with the car insurance business, but this wasn't provided. So the investigator concluded it was more than likely that Mr M had provided his card details as part of the original agreement with the car insurance business, to be used to collect any overdue amounts. She considered Mr M had authorised the payment, and Lloyds didn't have to refund Mr M.

Mr M didn't agree. His representative said that the payment might not be a direct debit but it was paid as a direct debit so the payment taken by the car insurance firm was unauthorised. The representative said Lloyds hadn't explained why it refused to refund an unauthorised payment. And the representative said that the investigator hadn't been able to show there had been an agreement to allow the car insurance firm to take money from his account without his authorisation. Mr M asked for an ombudsman's decision.

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.

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So I've considered whether it's more likely than not that Mr M authorised payment to the car insurance business.

Mr M hasn't provided a copy of his original agreement with the car insurance business. His representative said the investigator hadn't shown there had been an agreement. But it isn't correct that the absence of this document means Mr M automatically succeeds in his complaint. It often happens that we don't have all the evidence we'd ideally like, and when that happens, I take my decision on what's most likely to have happened, in the light of the available evidence and all the circumstances of the case.

I've seen two letters which the car insurance business sent to Mr M. The first, dated 17 January, said that Mr M's bank had been in touch to let it know that the direct debit had been cancelled, and that this meant Mr M was in breach of the terms and conditions of his Credit Agreement with the car insurance business. The letter asked Mr M to get in touch straightaway, so the business could continue to collect payments or arrange payment of the account. This letter went on to say that it was a notice under section 26E of the Consumer Credit Act 1974 and related to Mr M's default sums.

The second letter which I've seen from the car insurance business to Mr M was dated 21 February. This said that Mr M was in breach of his Credit Agreement. It pointed out that it had written before, and said Mr M was now in default. It went on to say that it enclosed a Default Notice, and an information sheet about default notices. It said *'If you don't pay £530.90 by 7 March 2023, we'll recover £530.90 on 14 March from your credit/debit card [number] which you authorised us to use to collect any overdue amounts.'*

In the light of this evidence, and in the absence of any contractual paperwork from Mr M to counter this, I find that it's more likely than not that Mr M authorised the payment. It's most likely that he did this by entering into an agreement with the car insurance business, and that there was a clause in the original agreement which authorised the business to collect any overdue amounts from Mr M's Lloyds account. This means that Lloyds didn't refuse to refund an unauthorised payment, and it doesn't have to refund Mr M, because the payment was authorised.

It doesn't make any difference to the outcome that the car insurance business later refunded Mr M with £235.03. This was presumably a refund for the remainder of the insurance period when Mr M wouldn't be driving.

Finally, I'll deal with the point raised by Mr M's representative, who has argued that *'it may not have been a direct debit but it was paid as a direct debit.'* I don't agree with that. The disputed payment taken on 14 March wasn't a direct debit. Technically, the payment taken was a debit card payment, not a direct debit. And even if the payment had been a direct debit - which it wasn't - the direct debit indemnity deals with payment errors, where the direct debit originator hasn't challenged the claim. The letters, which I've referred to above, indicate this was a contractual dispute between the consumer and the originator, and the direct debit indemnity doesn't deal with contractual disputes between the consumer and the originator.

My final decision

My final decision is that I do not uphold this complaint and do not require Lloyds Bank plc to refund Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 October 2023.

Belinda Knight
Ombudsman