DRN-3964179

The complaint

Mrs B, represented by her daughter, Ms M, complains that Lloyds Bank PLC won't refund transactions that she says were carried out without her consent.

What happened

Ms M says that her mother's account has been subject to unusual activity since 2014 and, since December 2020, large sums were removed from her account. Some of the transactions were carried out using online banking, which Ms M says Mrs B didn't have and didn't know how to use.

Mrs B believes that her son, whom she was living with after returning from another country, carried out the activity. Lloyds considered the matter to be a family dispute and advised Mrs B to report the loss to the police.

Mrs B was unwilling to do this, so referred the matter to our service. Our Investigator didn't uphold the complaint. They were of the view that there was nothing suspicious about the payments and without Mrs B's son's testimony, or a police investigation, it wasn't possible to say that Mrs B's funds were taken without her consent.

Ms M strongly disagreed. She said that it was irrelevant whether Mrs B reported the matter to the police and there was no obligation on her to do so. She pointed out that the same regulations applied regardless of whether this action was taken and Mrs B's funds had been left in the care of the bank. She said that her mother had not been negligent but was vulnerable. In addition, she alleged that Lloyds had failed to confirm Mrs B's identity when the internet banking facility was set up.

As no agreement could be reached, the case was passed to me for a final 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.

I'm sorry to hear about what's happened. I can imagine how upsetting these events have been, particularly when they involve family members.

Ms M has made two main allegations:

- That Mrs B didn't consent to the activity that took place; and
- That Lloyds failed to pick up on the activity as being out of character and unusual and follow its own procedures for confirming the identity of customers.

As Ms M has pointed out, the Payment Services Regulations 2017 ("PSR 2017") dictate that an account holder will not generally be responsible for transactions they haven't carried out themselves or given authority to another person to carry out. So, a finding that Mrs B didn't give any consent for the payments which took place and didn't fail with 'intent or gross negligence' to keep her account secure would result in liability for Lloyds. It's important to note that it is recognised in law that transactions can be considered authorised where a third party is acting (or even appears to be acting) under a broad authority given by the account holder (whether or not the account holder has given specific authority for a particular transaction). So, while Ms M has questioned exactly how each payment was authorised, I think the relevant question is whether it's more likely than not that the person making the payments was acting with Mrs B's broad or specific authority (or apparent authority) or not.

In addition, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, should it be found that Lloyds ought to have realised that Mrs B was at risk of financial harm from fraud but failed to take action *and* that failure would have prevented the loss, it would also be liable.

But, neither of the above findings are straightforward to decide. Ms M quite rightly points out that in many fraud cases the alleged perpetrator will be unknown and, as such, impossible to report to the police. But it's exactly because the alleged perpetrator is not only known to Mrs B, but shared a close relationship with her, that makes those findings more difficult to make.

I understand that Mrs B's son denies any wrongdoing. We do not have his account of events and are unlikely to ever receive it. But it's highly likely that he disputes that the payments he made were taken without Mrs B's authority. A police investigation might be able to establish whose version of events is true, but I fully accept that it might not.

But in the absence of a formal police investigation, I'm left with little more than Mrs B's account of events (as reported by Ms M). And, as I understand it, Mrs B has been diagnosed with dementia and the bank's notes quote Ms M as saying she has a poor memory and is very forgetful. I also have to consider that in a close relationship – such as the one between parent and child – there is often considerable trust.

I've thought about Mrs B's account of events – that she denies granting any authority to her son, that she didn't set up or use online banking, didn't know a card existed for the account and that she was shocked to learn that money had been removed from her account.

But I'm also mindful that Mrs B seems to have given authority to other people to manage her finances or make decisions for her in the past. There was a third-party mandate on her account for the benefit of another of her daughters. And, more importantly, Mrs B's son seems to have obtained Power of Attorney "(POA") over Mrs B. I haven't seen that document and I don't know whether the POA covered Mrs B's financial affairs. I do know that it was never registered with Lloyds. However, as Ms M is aware, for a POA to be put in place, Mrs B would have to have signed a document confirming that she understood the process. That document would have to be countersigned by someone Mrs B knew well or a professional, such as a solicitor. I know Ms M has raised some concerns about how the POA was obtained, but I haven't seen any evidence she's attempted to formally challenge it. So, in the absence of evidence to the contrary, I have to conclude that Mrs B willingly gave her son the Power of Attorney. The relevance of that finding is that it further suggests a close relationship and one in which Mrs B was prepared to let her son act on her behalf.

I also understand that a significant amount of the money was spent on improvements to one of Mrs B's children's homes and this was contrary to Mrs B's wishes as she was expecting her own home to undergo improvement. It strikes me as odd that Mrs B's son would spend money in this way if it was illicitly obtained and I don't think it's unreasonable to suggest that Mrs B might have (at some point) agreed to and approved of this use of her money.

Overall, I'm afraid the weight of evidence (albeit limited) as it stands does not support the finding that Mrs B's son acted without her authority. That means I don't think the bank is liable for her losses under the PSR 2017. And, even if I accepted there had been a failure by the bank to intervene and question the payments or take additional steps to identify Mrs B when internet banking was set up, I wouldn't be persuaded that those failures caused Mrs B loss. I cannot safely conclude that Mrs B wouldn't have consented to the activity if asked. And, though I acknowledge Mrs B may have been vulnerable, given the nature of the transactions and the circumstances I've set out, I think Lloyds could have reasonably taken any consent as being freely given.

So, while I appreciate this has been a distressing experience for Mrs B and her family, I'm not upholding this complaint.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 22 September 2023.

Rich Drury
Ombudsman