

The complaint

Mr K has complained that Lloyds Bank PLC has unreasonably refused to refund him £45 made via a contactless payment which he says he never made.

What happened

Mr K contacted Lloyds on 21 September 2022 saying he didn't recognise a contactless debit card payment on his account of £45. He also said he had not lost his debit card and that he still had the card in his possession.

Lloyds said on that basis given the transaction required the physical card to be presented it couldn't say it was an unauthorised payment therefore it wouldn't refund Mr K the £45.

Mr K remained dissatisfied, so he brought his complaint to us. The investigator didn't think Lloyds has done anything wrong. Mr K didn't agree and so his complaint has been passed 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.

Having done so I'm not upholding this complaint. I'll now explain why.

The rules which concern disputed transactions like this are called the Payment Service Regulations (PSR's). Under these rules a customer is deemed liable for any authorised transactions. 'Authorised' under the PSR's means the following:

*'A payment transaction is to be regarded as having been authorised by the payer for the purposes of this part only if **the payer has given its consent** to the execution of the payment transaction; or the execution of a series of payment transactions of which that payment transaction forms part.'*

Consent is also defined by the PSR's and it doesn't have the more usual meaning in everyday speech. It is as follows:

*'Such consent must be given **in the form, and in accordance with the procedure**, agreed between the payer and its payment service provider.'*

The transaction here is a contactless card transaction. The 'form' and manner, in which a customer makes a contactless payment is to present the physical card to the payment machine/terminal. For a contactless payment to be made the chip on the card needs to be present. It's generally not thought possible to copy the data held on the chip, and I've no indication this is what happened here. So, I would say it's more likely than not Mr K's

genuine card was used. Therefore, I consider the payment was both authorised and consented to under the PSR's.

Mr K is adamant that he didn't lose his card or indeed give it to someone else to use. He's also adamant that he was at home the day on the date of this transaction and therefore didn't make this transaction.

It's not unusual for some transactions to have a delay before being processed. That can be for numerous reasons even just Wi-Fi dropping at the time of the transaction or something similar. It's also not unusual for transactions to show on statements days after they were made, as the statement date is usually the date the merchant collects the transaction rather than when it was authorised. So, it may be possible that the date shown on Mr K's statement might be incorrect by a day or two. Lloyds has shown me that it tried to ask questions of Mr K to discuss this, but Mr K declined to answer saying 'he didn't have time for this'.

Crucially it does appear from Mr K's own evidence that he knows this merchant and that it's a restaurant about 20 miles away from him. His sole argument is was that he was definitely at home that day as he had some contractors cutting down some trees.

So, given the occasional delay issues with transactions hitting the statement; and given Mr K knew of this merchant but didn't visit that day; and given it was contactless payment which meant the physical card had to have been produced at the merchant, I consider it's more likely than not that Mr K did indeed make this transaction but not on the day it said on his statement. Or failing that he gave his card to someone else on his behalf to make the transaction instead.

Therefore, I agree with Lloyds that as there was no point of compromise such as a lost or stolen card there is no duty on Lloyds given the requirements under the PSR's to refund Mr K this £45.

It has since transpired that following some further contact by Mr K after Lloyds sent us its file that Mr K has in any event been refunded £45.

My final decision

So, for these reasons it's my final decision that I don't uphold this complaint.

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

Rona Doyle
Ombudsman