

The complaint

Mrs A complained because Lloyds Bank PLC refused to refund her for transactions which she said she didn't make.

What happened

On Saturday 5 August 2023, shortly after 6am, two bank payments debited Mrs A's Lloyds account. Both were to the same recipient, and were labelled "debt rebate." One was for £946 and the other £336, totalling £1,392.

On Sunday 6 August, Mrs A rang Lloyds. She said her phone had been hacked. She said that when she'd woken up on 5 August her phone hadn't been turning on. She said that when she pressed the power button it showed the screen for a split second before turning off. Later, at around 2pm on Saturday 5th, she'd seen two apps were installed. She said she could see the phone being controlled and opening by itself, including her Lloyds banking app and two other banking apps. She said she could see that whoever was controlling the phone was sending codes through a remote access app. She said she deleted the app, then whoever was controlling the phone then locked her out of her phone so she couldn't access it again. She said that before she'd been locked out, she'd seen that a new payee had been added to her account which was how she found out about the two transactions, which she hadn't made.

During the call with Lloyds, it asked Mrs A how she'd made the call, and she said through a landline. Mrs A also told Lloyds that no-one else had access to her device, and she hadn't disclosed her internet banking details to anyone else.

Lloyds refused to refund Mrs A for the disputed transactions, and Mrs A complained. In Lloyds' final response letter, it said that it couldn't see how anyone else could have made the payments without Mrs A knowing. Lloyds explained that it could see that three characters from Mrs A's memorable information had been used to log into her mobile banking app. And the payments had been verified by Mrs A's password. Mrs A had said her details hadn't been written down and no-one else knew them – and Lloyds could see that her details hadn't been changed.

Lloyds also said it had checked, and there hadn't been any malware or remote access tools detected on Mrs A's phone when the payments had been made. The IP address (a unique computer identifier) used for the payments was the same as ones which Mrs A had used for genuine activity.

Mrs A wasn't satisfied and contacted this service. She said that Lloyds hadn't taken into account what she'd said, and it had affected her greatly. She said it was Lloyds' responsibility to block unauthorised transactions, and she wanted to put on record that Lloyds had a regulatory responsibility to adhere to the rules set out by the Financial Conduct Authority (FCA). She said these rules stated that a bank must refund unauthorised payments, unless certain things applied which they didn't in her case. She said she fully qualified for a refund based on the FCA rules.

Mrs A said that Lloyds should have contacted the recipient bank about the payments. She said the only way for Lloyds to put things right was to reimburse her, and to credit her with the amount of her overdraft, as she said it was Lloyds' responsibility to have blocked the payments.

Our investigator didn't uphold Mrs A's complaint. She said that she couldn't see how a third party had accessed Mrs A's device when there was no evidence of remote access or malware, so she didn't think Lloyds had acted unfairly when it concluded that Mrs A had authorised the transactions herself.

The investigator also said that she found it unusual that Mrs A had waited till the next day before reporting it to Lloyds. Nor did she think that the disputed transactions were so unusual that Lloyds should have blocked them, and it's not unreasonable that someone should make one-off large transactions, so she didn't think Lloyds should have blocked the transactions. And as Lloyds believed that Mrs A had made the transactions, she didn't think it should have contacted the beneficiary's bank.

Mrs A wasn't satisfied. She said:

- She hadn't used her overdraft before, so there was no reason why she'd suddenly do so;
- The disputed transactions had happened early in the morning. She never made transactions at that time of day, and was asleep at that time;
- The reason she left it till the Sunday to report to Lloyds was that it was a weekend. She didn't have access to her phone on the Saturday until 7pm and by then Lloyds was shut;
- She said money had also been taken from her accounts with other banks, which had intervened by contacting her;
- She enclosed articles which she said showed how this had been done;
- FCA rules said she must be refunded unless the bank believed she'd acted with gross negligence or was acting fraudulently. Having her phone hacked didn't meet this. She said presumably Lloyds believed she was acting fraudulently, but this wasn't true because she'd never leave herself with an overdraft;
- Lloyds was charging her interest on the overdrawn amounts, and she said she had no means to pay this back.

Our investigator answered Mrs A's points, but Mrs A remained dissatisfied and 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. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*."

So I've considered whether it's more likely than not that Mrs A authorised the two disputed payments herself. The computer evidence is important here. This shows that:

- the disputed payments were carried out on Mrs A's phone, which had been registered with Lloyds since June 2023;

- Mrs A's mobile banking app was logged into using her correct memorable information, which she'd told Lloyds wasn't written down or known to anyone else;
- the payments were verified by Mrs A's correct password, which she'd told Lloyds wasn't written down or known to anyone else;
- the IP address where the payments were made was the same one that Mrs A had previously used for activity which she didn't dispute;
- Lloyds' computer checks showed that there hadn't been any malware or remote access software on Mrs A's phone at the time of the transactions.

I can't see how any third party could have carried out the transactions in view of all this evidence.

But in addition, Mrs A didn't report the disputed transactions promptly. She said that she found there was a problem when she woke up on Saturday 5 August. She also said that around 2pm she could see her phone moving by itself as someone else was controlling the phone. Lloyds bank operates a 24 hour phone service, with the number clearly displayed on its website. So I don't accept that Mrs A couldn't get through to Lloyds on the Saturday because it was closed. I find it very unlikely that anyone who saw their phone operating by itself, controlled by a third party, showing it was accessing their bank account, would have decided not to ring the bank till another day.

There are other problems with Mrs A's version of events. If a hypothetical fraudster was controlling her phone remotely around 2pm on Saturday 5 August, why didn't they try to take out more money? The disputed transactions had been made some hours earlier, around 6am. I've seen nothing to indicate there were further attempts, successful or not, after that. And the disputed transactions didn't take the whole of Mrs A's overdraft facility, so there was still more money available which a hypothetical fraudster could have stolen.

Taking all this into account, I find that it's more likely than not that Mrs A carried out the transactions herself. As she authorised them, Lloyds doesn't have to refund her.

Looking at Mrs A's other points, I don't think it's relevant that Mrs A hadn't previously used her overdraft, or that other banks took a different decision about refunding Mrs A. Mrs A believes that FCA rules say she must be refunded, but as I've set out above, that isn't correct in all the circumstances of this case. Here, the technical evidence shows that it's most unlikely that any third party carried out the withdrawals for the reasons I've explained. The test is whether the customer authorised the withdrawals, and I find that it's most likely that Mrs A did authorise the disputed withdrawals herself. So Lloyds doesn't have to refund her.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 11 April 2024.

Belinda Knight
Ombudsman