

The complaint

The estate of Mrs M says The Royal Bank of Scotland PLC (“RBS”) refuses to refund it for transactions on the late Mrs M’s account which were unauthorised.

This complaint has been brought by the late Mrs M’s son, for ease I will refer to him as ‘Mr M’. I will also refer to the late Mrs M simply as ‘Mrs M’, in the hope that none of the parties will mind.

What happened

Mr M complains that upon checking his late mother’s statements he found transactions on her account which he thinks were unauthorised. The transactions in question took place from May 2015 to June 2017. Mr M says his mother wouldn’t have visited the shops listed on her statements and she was in care home far away from where the ATM withdrawals were made. So, Mr M says these transactions were not authorised by her and would like RBS to refund them.

RBS says the ATM withdrawals would’ve been completed using Mrs M’s genuine card and PIN. Although it doesn’t have any more information about how the card payments were made, the rest of the transaction are point-of-sale payments which would’ve also required Mrs M’s genuine card to be present. RBS says it has no record Mrs M disputed these transactions while she was still alive, and there is nothing persuasive to suggest she hadn’t authorised them.

Our investigator considered this complaint and felt it was more likely that Mrs M authorised these transactions. Mr M didn’t agree so the complaint has been 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.

A consumer should only be responsible for transactions made from their account that they’ve authorised themselves. Unfortunately, Mrs M is no longer with us, so we don’t have the benefit of her evidence. Mr M says he doesn’t think Mrs M gave permission for the transactions in dispute to be made but RBS believes she did. My role then is to give a view on whether I think Mrs M more likely than not authorised the transactions, based on the evidence I have available.

The transactions in dispute are a mix of ATM withdrawals and point-of-sale payments. This means Mrs M’s debit card would’ve been needed, and for the ATM withdrawals the PIN would’ve been needed also. The transactions disputed began in 2015, and from the evidence I’ve seen Mrs M went into the nursing home in November 2016. The transactions continued past this date until June 2017.

I have thought about what Mr M has said, and I appreciate this must be difficult to deal with now that his mother has sadly passed. However, as she is not here to give evidence herself, I have to consider what evidence we do have to reach the most likely outcome. And having done so I am not persuaded these transactions were not authorised, I'll explain why.

As I've said above, Mrs M's genuine card and PIN were used for most of the transactions in dispute. Mr M says his mum wouldn't have shared her PIN with anyone and her card was not reported as lost or stolen throughout the two years the transactions took place. So, I haven't seen any persuasive evidence that her card and PIN had been compromised at any time.

Mr M says his mother would've never visited the shops listed on her statements. He also said she wouldn't have been able to visit ATM machines so far from the nursing home where she was staying. While I have listened to what Mr M has said, the merchants in question appear to supply food and usual household services. I think it is possible that Mrs M visited these places even if she had never done so in the years before, and the evidence I've received suggests Mrs M did leave the nursing home with her partner on occasion. It is also possible that Mrs M gave authority to her partner or another third party to use her card, and therefore the transactions would still be authorised.

RBS have provided evidence that Mrs M had signed up for online banking in November 2007, long before the disputed transactions commenced. And it has provided evidence that this was last logged into on 7 April 2017, around the time the disputed transactions ended. So, I think she had sight of her account activity throughout the whole time the disputed transactions were made, and I think she would've complained to RBS herself had she not made these.

I appreciate this decision will be very upsetting for Mr M. It's a lot of money, and I understand he must be feeling the loss of his mother. So, I do have sympathy for his situation. However, for the reasons outlined above I think it's more likely these transactions were authorised by Mrs M herself so I will not be asking RBS to do anything further.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 24 October 2024.

Sienna Mahboobani
Ombudsman