

The complaint

Mr M has complained Vanquis Bank Limited won't refund money for transactions he didn't make.

What happened

On the evening of 2 March 2019, Mr M was out with friends. He drank and spent a fair bit. He can't remember much of what happened but knows his friends took him home. He spent most of the following day feeling a bit rough. He realised he wasn't sure what had happened to his Vanquis credit card. In the evening he checked the status of his Vanquis account and found transactions he didn't recognise.

Vanquis didn't sympathise with Mr M's story of what had happened. They continued to hold him liable for two disputed transactions of £1,998 and £270. They felt it was unlikely a fraudster had got hold of his card the night (or morning) before and had held onto it for so long before attempting to use it.

Mr M brought his complaint to the ombudsman service.

Our investigator reviewed the evidence. It was clear Mr M had used his PIN for his Vanquis card the night before the fraudulent transactions had taken place. She felt there was a clear point of compromise and there was no evidence which showed Mr M had made the transactions. She asked Vanquis to refund the money to Mr M's account and pay him £100 for the trouble caused.

Mr M accepted this outcome. Vanquis didn't. They pointed out that on previous occasions Mr M had mislaid his card, he'd not checked his app to see whether there were any suspicious transactions so thought it was surprising he'd done this this time. They also felt Mr M could have travelled back to where the disputed transactions had taken place and made them himself.

Mr M's complaint has been passed to an ombudsman for 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.

Having done so I'll now explain why I've made the decision I have.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing that's had an impact on the decision I'm making here.

So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

To help me reach a decision, I've considered detailed evidence provided to us by Vanquis which includes records of Mr M's mobile banking use throughout this period. I've also noted the detail in our investigator's view of 13 January 2021 and feel no need to rerun some of the arguments made there.

I've considered the following issues:

- Mr M was on a night out. He's been upfront about being unable to recall exactly what happened. Vanquis' evidence shows how and when his card was used, including him using his PIN at 23:15 on 2 March for a transaction of £242.
- There were a couple of contactless transactions after this. Overall I think it's most likely these were transactions Mr M made as they took place in the same bar. He's told us he was there for some time.
- Mr M logged onto his mobile app and checked for any transactions after he realised he no longer had his card. Vanquis has questioned this action but as he'd had pushback previously from Vanquis about not checking his account, I don't think it's surprising Mr M wanted to arm himself before contacting Vanquis.
- Vanquis has said Mr M could have travelled back across the Pennines to make these disputed transactions. I've considered this possibility but seen no evidence why this would be the case.
- I've reviewed Mr M's use of his Vanquis credit card. This had a reasonably high credit limit and Mr M used it frequently. I've seen nothing to show he'd attempted transactions in excess of his credit limit previously. Whereas there were three further attempts at transactions which were all declined because whoever had Mr M's card was exceeding the credit limit. This points to me that the card was probably being used by someone who didn't know how much credit was available. That suggests someone other than Mr M.
- I agree it's unusual for a fraudster to get hold of someone's card and not use it immediately. But we don't know exactly when or where Mr M lost his card.

The test under the PSRs isn't whether there was an opportunity for the card and PIN to be compromised; rather whether the payment services user (Mr M in this case) authorised these transactions. It's not my role to decide how someone else could have got hold of Mr M's PIN, made these transactions or to investigate who that potential fraudster may be.

However I do need to believe there are scenarios which explain how someone could have used Mr M's card and PIN. I see no reason to doubt Mr M's testimony his card went missing on a night out.

Taking all the evidence into consideration, I don't believe Mr M made or authorised the two disputed transactions.

Putting things right

As I don't believe Mr M authorised the transactions, Vanquis will need to refund the transactions. I can see from Mr M's subsequent statements that he paid off the debt in full by 26 March 2019. On this basis they'll need to add 8% simple interest to the disputed transactions from that date onwards until the date of settlement. It's clear Mr M used money to settle his credit card bill to avoid any impact on his credit record.

Like our investigator I believe Vanquis need to pay Mr M £100 in compensation for the inconvenience caused. It seems to me they had all they need to make a decision that it was most likely Mr M had not made these transactions rather than the other way around.

My final decision

For the reasons I've given, my final decision is to instruct Vanquis Bank Limited to:

- Refund £2,268 for the two disputed transactions made on 3 March 2019;
- Add 8% simple interest a year to that amount from 26 March 2019 until the date of settlement; and
- Pay Mr M £100 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 June 2021.

Sandra Quinn
Ombudsman