

The complaint

Miss B complains that Contis Financial Services Limited failed to refund transactions she didn't recognise and misspelled contact details.

What happened

Miss B noticed that her card was missing and informed Contis about it. Miss B believed it was taken by a person (who I'll refer to as G) who was a close family member and had access to her house and knew the Personal Identification Number (PIN) of her card.

Miss B also reported the theft to the police resulting in an arrest of the individual. Miss B explained to Contis that G could have obtained the card and PIN because he used to accompany her when she used the card and observed her using the PIN. Miss B explained that a set of her house keys were missing, and she believed this was how G had obtained her card.

Contis looked into the transactions and declined to refund Miss B because the majority of the transactions were made using the genuine card and PIN. Miss B made a complaint to Contis about their handling of the situation who again looked into the matter but didn't change their position. Contis told Miss B that she'd breached the terms and conditions of her agreement because she hadn't kept her card and PIN secure.

Miss B remained unhappy with Contis and brought her complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who asked both parties for information about the complaint. Miss B repeated what she believed had happened and provided details of the police officers involved in the loss of her card. Miss B also explained that G had texted her on the day she noticed the card was missing. G said he had it and was bringing it back to her. Miss B also believed Contis hadn't updated her account with the correct contact details.

Contis provided information about their communications with Miss B. They continued to believe that Miss B had breached her agreement.

Our investigator didn't think that Miss B had authorised the payments or that she was in breach of her terms (grossly negligent) and upheld her complaint. He recommended that Contis repay the disputed transactions, including a payment for interest and £100 for the trouble and upset caused to Miss B.

Contis disagreed and asked for an Ombudsman to review the complaint and stated they would provide further commentary about their position. Contis accepted that they'd misspelled Miss B's email address.

The complaint has now been passed to me for a decision. I asked both parties for further information about the complaint. Miss B was unable to provide details of the texts she mentioned because she'd since changed her phone and they were no longer available. I asked Contis to provide details of the authentication data related to the disputed transactions which they've now provided. Contis didn't provide any further information.

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.

The Payment Service Regulations 2017 (PSRs) require an account holder to follow the terms of their account so long as they're reasonable. Here, Contis have relied on the section of the PSRs that allow them to deny Miss B a refund because she was "grossly negligent" when her card was taken. They believe that she was in breach of the agreement she signed regarding the following para (16) of the terms and conditions:

"...You must keep your card and security credentials safe and not let anyone else know or use them. Therefore, you must keep your card safe and not let anyone else use it. You must keep your PIN secret at all times; never disclose your PIN or security information to anyone."

Contis believe that because Miss B's card was taken by another person (G) who also obtained the PIN from their previous relationship – this meets the criteria of their agreement.

Gross negligence is a high bar and would require Miss B to have done something that fell far below the standard expected of a reasonable person. Miss B explained that G gained access to her home without permission, took the card without her authorisation and had opportunity to acquire the PIN because they'd accompanied Miss B on numerous trips when she'd used her card and PIN.

As far as I can see here, Miss B was the victim of a theft of her card by someone she previously trusted. There's no evidence that Miss B gave this person either the card or the PIN and Contis haven't been able to show Miss B acted in any way that can be considered grossly negligent. I don't think the approach they've taken here is either fair or reasonable. Just because Miss B had her card stolen by someone who was able to acquire the PIN through an earlier relationship - doesn't mean that Contis are entitled to deny her a refund based on section 16 of their agreement. I'm satisfied this doesn't meet the criteria for "gross negligence".

The PSR's define how a payment can be authorised and Contis can only hold Miss B liable if they have sufficient evidence to believe she gave her consent to the payments. As Contis believed Miss B was grossly negligent, it follows that they thought Miss B wasn't responsible for the transactions herself. I agree that the evidence shows Miss B wasn't responsible for giving her consent to the disputed transactions, so they're considered unauthorised. And because I don't think she was grossly negligent either – Miss B is due a refund.

There were a number of transactions that are classed as distance contracts and the PSRs specifically exclude the payment service provider – here Contis, from declining a refund unless they believe the account user was fraudulently involved in them. There's no suggestion that Contis thought Miss B was involved, so they should have refunded those distance contracts at the time Miss B made her claim to them.

Overall, I'm satisfied that Miss B wasn't grossly negligent, nor do I think she authorised these transactions, so Contis are required to refund her the disputed transactions. Contis accepted that there was an administrative error when they misspelt Miss B's email address and this prevented her from receiving communications by email from Contis. I haven't seen any evidence that this error led to further losses for Miss B.

Putting things right

To settle this complaint, Contis are required to refund the disputed transactions to Miss B, which were set out in the investigator's outcome totalling £959.26, pay 8% simple interest from the date of the transactions until the date they're repaid. Also to pay Miss B £100 for the additional stress and inconvenience of their handling of the complaint and the impact it had on her.

My final decision

My final decision is that I uphold this complaint and Contis Financial Services Limited are instructed to settle it as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 12 September 2022.

David Perry
Ombudsman