

The complaint

Mr F complains that Contis Financial Services Limited failed to refund transactions he didn't recognise.

What happened

Mr F was using an Automated Teller Machine (ATM) to withdraw cash and experienced difficulties with the machine. He explained that at the time he was using it, a person was near him and told him the machine wasn't working properly. Mr F had entered his Personal Identification Number (PIN) to withdraw cash but the machine appeared to have retained his card. Mr F was concerned about his card and entered the branch to ask about the ATM. When Mr F returned to the ATM, his card wasn't present and within a few minutes there were three transactions that had taken place at another merchant some distance away. Mr F told Contis about the problem and they looked into what had happened.

Contis were able to say that the ATM dispensed £250 and declined to make any refund to Mr F. He complained to Contis about their handling of the matter but Contis declined to change their position.

Mr F then brought his 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. Mr F explained what had happened and that he had mobility issues and couldn't have visited the merchants in the time the three other disputed transactions were used due to the distance away from the ATM. He believed his card and PIN were obtained by the person who was near him when he used the ATM and they took the cash when he went into the bank.

Contis provided some information about the ATM withdrawal, but no further evidence was provided about the three other transactions. Contis referred to their terms and conditions concerning security of the card and PIN for the three additional transactions.

After looking into the situation, our investigator partially upheld the complaint. She thought that because Mr F had entered his PIN into the ATM, it wasn't reasonable to hold Contis liable for the loss of those funds. But, the complaint concerning the three other transactions

was upheld.

Contis disagreed with the investigator's outcome and asked for a further review, stating that they were going to provide details of why they disagreed with the investigator's outcome. The complaint was passed to me and I asked both parties for further information. Contis were asked to provide further details of the ATM transaction and authentication data concerning the three additional disputed transactions.

Mr F sent in his response to my questions but Contis didn't provide anything further. I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first matter I need to satisfy myself about is whether any of the disputed transactions were authorised by Mr F, or not.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 (PSRs). The basic position is that Contis can hold Mr F liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them. Contis can only refuse to refund unauthorised payments if it can prove Mr F authorised the transactions, but Contis cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless Contis can show that consent has been given, it has no authority to make the payment or to debit Mr F's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transaction concerning the ATM withdrawal. It shows that that transaction was authenticated using the payment tools issued to Mr F. Also, Mr F confirmed he'd entered his PIN into the ATM, but for a different amount.

What that means here is that Mr F authorised a withdrawal from the ATM and whilst I appreciate he then had difficulties with it which caused him a lot of worry, he still used his card and PIN at the ATM. I don't think it would be fair to ask Contis to refund the withdrawal made at the ATM, as the machine dispensed funds after Mr F used his personal security credentials at the machine.

Regarding the additional disputed transactions, I haven't seen the appropriate authentication

data which Contis are required to provide. The PSRs (S75) are clear when it comes to proving authentication of a transaction and the lack of this data would, on its own, mean that Mr F would likely get a refund. I've asked Contis for this data and explained the consequences of not providing it – that being a refund on this basis alone.

I've also looked more specifically at what happened, how Mr F described a person being near him at the ATM telling him it wasn't working properly. Mr F believes it was that person who saw his PIN and took the card and cash when he entered the bank to ask about the problem at the ATM. Mr F's story is plausible and taking into account his mobility issues, it's unlikely that he could have gotten to the other merchants in time to make these transactions.

Contis believed that Mr F breached his terms and conditions by not keeping his card and PIN secure, which then led to the other three disputed transactions. In order to support their assertion (that Mr F was grossly negligent), Contis are required to provide evidence (to Mr F). As far as I'm aware, Contis didn't provide Mr F with any supporting evidence. What that means here is that Contis haven't been able to demonstrate that Mr F was grossly negligent when he experienced problems with the ATM and his card was taken.

Overall, I think Mr F was the victim here and his card and PIN were taken from the ATM. That in itself isn't enough for Contis to show Mr F was in breach of his terms and conditions, nor satisfy the requirements of the PSRs. So, taking the lack of authentication data and what happened at the ATM into account, I don't think it's reasonable for Contis to hold Mr F liable for the three additional disputed transactions. Currently, I think it's more likely than not that persons unknown to Mr F took his card and used it without his permission which makes these three transactions unauthorised.

So, because Contis didn't provide the necessary evidence about the authentication of the three disputed transactions, Mr F would be due a refund on that basis alone because without the authentication data, the transactions can't be treated as authorised. But, even if Contis were able to supply that data, I'm still of the opinion that the three transactions were the result of persons unknown taking the card, after having observed Mr F enter his PIN into the machine.

I'd still be of the opinion that they would be unauthorised as I've explained above. I'm in agreement with our investigator about the redress required, which is a refund of the three transactions and interest adding at 8% simple from the date the loss was reported to the date of repayment. But, I also think the way that Contis dealt with his complaint led to unnecessary stress and inconvenience to Mr F. I'm intending to instruct Contis to pay Mr F £100 to recognise the impact this had on him.

I invited Mr F and Contis to give me any more evidence and information they wanted me to consider before issuing my final decision. Mr F accepted my provisional decision and Contis replied with electronic documents that were unreadable. Contis were asked on several occasions to provide a response. Contis finally responded with a copy of their original file that I'd already considered. Contis were given additional time to provide their information but nothing further has been received.

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, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Putting things right

Contis are required to refund the three disputed transactions to Mr F and add simple interest at 8% from the date of the loss to the date they're repaid. Also, to pay £100 to Mr F for the unnecessary stress and inconvenience caused to him.

My final decision

My final decision is that I uphold this complaint in part. Contis Financial Services Limited are instructed to settle this complaint as outlined above.

For the avoidance of doubt, I do not uphold the complaint regarding the withdrawal made at the ATM.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 October 2022.

David Perry
Ombudsman