

The complaint

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

What happened

Mr C attempted to withdraw cash from an Automated Teller Machine (ATM), his card was retained in the ATM and he explained he saw that there was glue in the card slot. Mr C couldn't speak with the ATM owner as they weren't open at that point and after failing to get his card back, he left the machine to return home and call Contis about the problem.

Soon after leaving the ATM, unrecognised transactions took place a short distance away at another ATM and several withdrawals were made. In total, £250 was withdrawn from the ATM after a balance enquiry was made.

The card was blocked by Contis, and they recorded that a further (unsuccessful) attempt was made to use it the following day. Mr C was asked about the transaction and he told Contis that he kept his Personal Identification Number (PIN) in his wallet, but that hadn't been lost. Mr C didn't think that anyone was near him when he used the ATM.

Contis declined to refund Mr C and referred to their terms and conditions about card security. Mr C 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 issue.

Mr C repeated his story and thought that there may have been a camera on the ATM which is how his PIN was captured. Contis supplied some details about the transactions and they believed it cast doubt on the timings of the disputed transactions and whether anyone else could have been involved. Contis believed that Mr C was still in breach of his terms and they shouldn't be held liable as they had a different status to a bank. Contis didn't make any enquiries with the owners of the ATM and believed this was a matter for the police to deal with.

After considering the evidence, Mr C's complaint was upheld and our investigator recommended they make a refund for the money lost at the ATM, add interest and make a £100 payment for the impact on Mr C by Contis's approach to his complaint.

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 relevant law surrounding authorisations are the Payment Service Regulations 2017 (PSRs). The basic position is that Contis can hold Mr C 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 C 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 C's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for some of the disputed transactions. It shows the transactions were authenticated using the payment tools issued to Mr C. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr C responsible for the disputed transactions or not.

I'd note here that Contis haven't provided authentication evidence for all the disputed transactions, but the issue here is related to whether it was Mr C who was responsible for authorising them or not. I don't think the missing authentication data affects the complaint.

Mr C's version of events is that he tried to use an ATM, it retained his card and he noticed it had been tampered with. The bank at the ATM was closed at the time so Mr C was unable to ask them to deal with the problem. He eventually stepped away from the ATM without his card and returned home before calling Contis. Contis declined this claim almost immediately and told Mr C it was a police matter.

The PSRs require the card user to keep their card details and security information (PIN) secure and use it in accordance with the terms of their account. It appears that Contis's first response was to deny Mr C a refund based on a breach of their terms concerning card security.

Here Contis believe that because Mr C told them he wrote the PIN down and kept in his wallet, that's a breach of their terms. I don't think that's a fair interpretation of what happened. Mr C's testimony is that he didn't lose the PIN from his wallet, but that he used his card in a damaged machine and input his PIN into it – after which he couldn't retrieve his card. There's no evidence that indicates he lost the PIN or had it taken from him with his card. Mr C believes a camera may have recorded his PIN. So, I don't think that Contis can rely on their terms here to deny Mr C a refund because the evidence shows he didn't lose the PIN that he had written down.

Contis later provided an assessment of the timings of the withdrawals and the location of the ATMs and didn't think they were realistically able to be carried out by an unknown third party. I've considered those timings and the locations involved in this and I think it's plausible that third parties could well have been involved in the theft of Mr C's card and carried them out at the different nearby locations.

Contis's decision not to approach the operator of the ATM prevented a thorough investigation into what happened. I don't think that Contis can rely on their terms to deny him a refund and they haven't been able to show what happened at the ATM. Mr C's testimony has been consistent throughout, so I don't think it's fair to hold him liable for the disputed transactions.

Putting things right

Overall, I think it more likely than not that Mr C wasn't responsible for making the withdrawals he's disputed and Contis should now refund them to him, adding simple interest at 8% from the date of the loss till the date they're repaid. In addition to the substantive repayment, I think that the unnecessary stress they caused Mr C because of how they handled this complaint warrants a payment of £100.

My final decision

My final decision is that I uphold this complaint against Contis Financial Services Limited and they're instructed to settle this complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 December 2022.

David Perry
Ombudsman