

## **The complaint**

Mr Q has complained AIB Group (UK) plc won't refund him for cash withdrawals that he didn't make.

## **What happened**

In 2019 AIB noticed consistent cash withdrawals of £100 being made from Mr Q's account. They queried these with Mr Q who confirmed these withdrawals weren't being made by him. When his card was renewed in 2019, it'd been sent to his old address. He'd not lived there consistently since 2012.

Mr Q asked AIB to refund him. AIB didn't believe Mr Q had met the terms and conditions of his account. He'd not updated AIB with information about his revised address nor did they think he'd kept his card secure.

Mr Q was aware who'd used his card without his authorisation and had tried to get that individual to repay him £5,500 that had been taken from July to September 2019. That individual had tried to repay £1,000 to Mr Q's account but AIB wouldn't accept the funds. As Mr Q was unable to get any further with the local police and AIB, he brought his complaint to the ombudsman service.

Initially our investigator felt that Mr Q had allowed someone else to use his card. However after further discussion with Mr Q who confirmed he'd left his card and PIN in his former room, along with other legal papers, he thought Mr Q had acted with intent which meant he wouldn't be asking AIB to repay him.

Mr Q has asked an ombudsman to consider his complaint.

I completed a provisional decision on 16 November 2022. AIB promptly accepted the outcome. Mr Q did not. He wanted AIB to present CCTV about the attempted payment.

I now have all I need to complete 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.

Having done so, I've reached the same conclusion I made in my provisional decision. I'll explain why.

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. I mention below those aspects that have an impact on the decision I'm making here. These refer to customers acting with intent (that is, deliberately) under Regulation 77 of the PSRs.

To help me reach a decision, I've considered evidence provided to us by AIB and Mr Q as well as the views completed by our investigator on 29 September and 14 October 2022.

Firstly I'm in no doubt Mr Q didn't authorise these cash withdrawals made from July to September 2019. A replacement card for this account had been sent to Mr Q's former address in 2019. Mr Q didn't live where the transactions took place.

He was obviously shocked when AIB told him what was going on. He was upset they'd not noticed this earlier. I can see why he may think this as he'd hardly used this account for three years.

Mr Q confirmed to our investigator that he'd left his former card and PIN in an envelope in the room he used to rent. He stayed there on occasions when he went to visit family. I imagine he felt – as the card was with other personal papers he'd left there – this was safe particularly as it's already been there for a few years by this stage.

It seems clear to me that Mr Q's former landlord and friend had found the replacement card – which had been sent to this address in early 2019 – and the PIN which Mr Q had left together. These were then used without Mr Q's authority to withdraw more than £5,000 from his account.

However the card and PIN were kept together. This is contrary to regulation 77 of the PSRs which means banks don't need to refund customers if they are found to have acted in a deliberate manner (referred in the PSRs as "*with intent*"). This must seem very harsh to Mr Q and I completely sympathise. But I have no option other than to say Mr Q has kept his card and PIN together as a deliberate act. That means there is no obligation on AIB to repay him despite these withdrawals not being authorised by him.

I have also noted that AIB's direct action – despite them being very aware of what had been going on – stopped Mr Q being refunded £1,000 by the person using his account without authority. Unfortunately the original error was Mr Q's. I have considered whether it would be fair and reasonable for AIB to refund this amount to Mr Q. I don't think so overall but I do think they should pay him for the additional distress caused to him.

I'm aware Mr Q would like AIB to present CCTV so he can identify the individual trying to repay him. I can confirm as this happened some time ago, no CCTV will now exist.

### **Putting things right**

After considering the impact on Mr Q, I believe it would be fair and reasonable for them to pay Mr Q £500 because of their actions in not allowing money to be refunded to his account.

I accept Mr Q believes this is inadequate and that he's been treated unfairly. However I hope I've laid out here why I believe this outcome is fair and reasonable.

### **My final decision**

For the reasons given here, my final decision is to instruct AIB Group (UK) plc to pay £500 to Mr Q.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 19 December 2022.

Sandra Quinn  
**Ombudsman**