

The complaint

Mr S complained because Vanquis Bank Limited refused to refund him for withdrawals on his credit card, which he said he didn't make.

What happened

Late on 29 June 2022, Mr S went onto his app to pay part of his Vanquis account, and saw transactions which he didn't recognise. He rang Vanquis, and the adviser blocked his card, and told him he'd need to ring again the next day.

The next day, Mr S rang Vanquis and said that there were transactions on his card which he didn't recognise. The adviser said that two transactions for £400 and £100 had been declined anyway. This was before she'd asked Mr S which transactions he disputed. Mr S said no, it was more than that, but he could no longer get into the app to see them.

The adviser then suggested that Mr S should go paperless, and talked about helping banking to become a more environmentally friendly business. Mr S said he wasn't worried about that at the moment, he was worried about all the transactions on his card.

The adviser told Mr S that the reason he couldn't access the app was because he'd reported his card lost or stolen. Mr S said he hadn't reported his card lost or stolen and he still had the card. The adviser again repeated that the two transactions had been blocked anyway.

As Mr S couldn't get into the app, he didn't have access to what he'd seen on the app the night before. He said from what he remembered seeing the night before, there was over £1,000, not just two transactions. He asked if he should come back when he was able to get into the app, but the adviser repeated that he'd reported his card lost, which was why he couldn't get into the app.

At that point, the adviser then started to go through the individual transactions with Mr S. The list eventually recorded as disputed was for nine transactions:

- On 17 June, three cash withdrawals for £10, £200 and £200;
- On 19 June, a payment to a sports retailer for £73.50;
- On 27 June, three cash withdrawals for £100, £200 and £100;
- On 28 June, a cash withdrawal for £100 and a payment to the same sports retailer for £136.50.

With fees for cash advances, the total was £1,150.

The adviser asked for Mr S's password saying she'd then transfer him to the fraud department to raise as a claim. Mr S struggled to provide the password, but the adviser got Mr S through security using other questions. She said Mr S had reported the card lost, but he said no, he hadn't and he still had the card. The card had been marked as lost because he'd phoned the night before, even though he still had the card. After passing security another way, the adviser changed Mr S's password, and she told him to write it down. This is not good practice.

Mr S was then put through to customer services. The first adviser passed him through, telling the second adviser he'd reported his card lost. The second adviser asked if anyone else had access to the card, and when Mr S said no, said that the disputed transactions had been made using Mr S's card and PIN. But Mr S said it wasn't him.

The customer services adviser said that a £10 genuine transaction on 15 June had used exactly the same cash machine as some of the disputed ones. Mr S said £10 was about the amount he took out, and he never took out large amounts of cash. This adviser told Mr S that the town on the list of 27 June transactions was where a head office was. The adviser also explained that there had been some declined as well as the ones which had gone through, and that they had all been done by chip and PIN.

The adviser went through a number of questions, including whether Mr S could have used his Vanquis card in error instead of a bank card. She asked how many people lived in his household. Mr S said he lived alone, and no-one else had access to the card, and he hadn't let anyone else use it. He said he hadn't written down or stored the PIN number, or told anyone. Mr S asked how much had been taken, and asked for a statement so he could see the transactions, as his app no longer worked. The adviser said that interest on the disputed transactions would be frozen during the claim assessment. She said she'd send him a statement, and the amount Mr S had disputed was £636.50. Mr S said it was very stressful and asked when he'd be able to get into the app again so he could pay. The adviser said this would be when the new card arrived.

The amount in dispute from the transactions was in fact £1,150, not £636.50.

On 18 August, Vanquis wrote to Mr S. It said that it couldn't see how the disputed transactions could have been made by a third party, on the balance of probabilities. It said the transactions followed the usual pattern of spend on the account, and there had been previous transactions at one of the supermarkets where cash had been withdrawn. It pointed out that Mr S's card with its chip, and the correct PIN, had been used to verify the transactions. And Mr S had said that he still had the card, and he didn't think it would have been possible for anyone to have taken the card and returned it to him.

In Vanquis' final response to Mr S on 16 September, it apologised for having got the amount wrong in one of the phone calls. But it didn't change its decision about the outcome.

Mr S wasn't satisfied and contacted this service. He said he believed his card had been cloned, with someone inserting a skimming device into the cash machine he'd used on 15 June. He'd been to an advice service, which had told him it was harder to do this with cards with chips, but not impossible. The advice service had shown him videos of how this was done. Mr S said it wasn't the pattern of spend on his account to withdraw three transactions in a day, and some of the locations were over 60 miles away. He said that previously, Vanquis had sent him a text when he'd spent £8 at a shop he hadn't used before, so he thought Vanquis should have done that when there had been three large withdrawals in a day.

Our investigator didn't uphold Mr S's complaint. He said that the transactions were authenticated using chip and PIN, and the chip was unique and couldn't be cloned. So whoever did the transactions had the genuine card and knew the PIN. So it was likely to have been Mr S who made the transactions.

Mr S didn't agree. He said he still didn't know when the card had been used, including times and dates, and when it had been declined. Mr S was offended by the investigator thinking he'd had something to do with it. He said Vanquis should have flagged the transactions on 17 June, when they were done in a completely different fashion from what he normally did.

He said that if Vanquis had sent security alerts on the first transaction, he'd only have lost £410. He believed Vanquis should pay him the other £740 because of its security lapses in not sending him warnings.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator in relation to customer service, but the same conclusion about the disputed transactions. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

Regulations

In the provisional decision, I explained that there are regulations which govern disputed transactions, and the relevant regulations here are the Payment Services Regulations 2017. These say that the payment service provider (here, Vanquis) must show the transaction was authenticated. That's the technical part, and here, Vanquis has sent the evidence which shows that Mr S's genuine card was used. Eight of the nine withdrawals were made using the genuine card, with its chip, and Mr S's correct PIN. The other, the £73.50 payment, was made using Mr S's card contactless.

The regulations also say that it's necessary to look at whether the card holder authorised the payments. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

Who authorised the disputed transactions?

Mr S told us that the advice service said that cards with a chip in them can be cloned. Cloning only takes a sort of photo of the card, and cloned cards have been used for things like telephone or online transactions where the actual card isn't presented. But cloned cards won't work where a card is physically presented – for example in a cash machine – because the chip is read. Chip technology is complex and sophisticated and there have been no known instances when the chip in the card has been successfully copied. So, if a cash machine reads the chip in the card and it's a cloned card, the transaction will be rejected. It's not generally thought possible to copy the Chip on a card, and our service hasn't come across any cases where we felt this was a likely explanation of what happened.

The computer evidence showed that the genuine card was used for the transactions, and also that the correct PIN was used for the eight chip and PIN transactions.

I looked at the spacing between the disputed transactions. On 17 June, the first £10 transaction took place at 15:25, and the next two at 17:53 and 17:54. There were then no further transactions until 19 June, when there was the contactless payment to the sports retailer at 16:45. Over a week later on 27 June, the other disputed transactions started. The location where these other transactions took place was listed as a different town, both on Mr S's statements and on the authentication evidence which Vanquis supplied to us. So I wasn't persuaded that it was correct, as one of Vanquis's advisers told Mr S, that this was just a head office address. On 27 June, there were three more cash withdrawals in quick succession: 18:19, 18:20 and 18:21. Finally on 28 June there was the £100 case withdrawal at 12:35 and the £136.50 to the sports retailer at 12:55. All of these 27 and 28 June payments were made using Mr S's genuine card and correct PIN.

Typically, a fraudster would make withdrawals as quickly as possible. The transactions here were close together on the days when they happened, but then there were time gaps before the next day on which there are disputed transactions. This isn't typical of a normal fraudster pattern. It might well be that someone close to Mr S had occasional opportunities to access to his card, and knew his PIN. But that wasn't what Mr S had said. On Vanquis's forms, he said he'd shredded the original PIN notification, had never written down his PIN, and it wasn't stored with his card. Mr S told Vanquis that he lived alone, and no-one else had access to his card. He also still had his card.

The pattern of transactions isn't that of a fraudster unknown to Mr S, because of the days when no money was taken. There were also some genuine transactions between the two batches of transactions. I don't think any fraudster unknown to Mr S could have made the first set of transactions, somehow returned his card to him, then stolen it again before the second set. Nor could I see why any third party fraudster unknown to Mr S would try to return the card in between.

I did, however, think it's quite likely that this pattern might indicate someone who had regular access to Mr S, such as a family member, friend or helper. They could have seized an opportunity and would have had access to return the card then steal it again, which would mean it was longer until Mr S found out. If that's what happened here, the person would still have had to have known Mr S's PIN, as well as having access to the card. That could mean that Mr S had written it down, or mentioned it to the person, or by it being a number which a third party close to Mr S could easily have guessed. I recognise this is distressing for Mr S, but in any of these circumstances, Mr S would still be liable for the payments, because cards and security details need to be kept secure in line with the terms and conditions of the account. The only other option, given the use of the genuine card and correct PIN, is that Mr S did carry out the transactions himself.

Mr S believes that Vanquis should have sent him warning messages after the transactions on 17 June. I looked at Mr S's account to see whether the transactions were out of character. They were unusual in amount, as Mr S's statement for the previous month didn't show any payments for more than £30. So £410 cash in a day was definitely unusual. However, the majority of Mr S's payments were at the same supermarket, usually at a few branches within reach of his address. And apart from the sports retailer, where the amount was lower, the cash withdrawals at the other town, a significant distance from his home, were also at the same supermarket.

But although the payments were unusual for Mr S, the payments didn't match fraud patterns (for example in relation to the gaps between transactions) as I've set out. A fraud system is one that's used for an entire customer base. It can take into account broad principles to create an algorithm, but won't be able to consider many things – such as factoring in that an individual customer might not travel as much and wouldn't normally transact outside a particular area. So I couldn't say that the bank's fraud system should have been triggered here.

Customer service

Vanquis wasn't able to provide us with the call when Mr S first reported the dispute, but I listened to the call recordings for 30 June. There were two advisers on this call, with the first one passing Mr S over to the second one in the customer service team.

I considered that the customer service in the call between Mr S and the first adviser was poor. Mr S was clearly worried. But the adviser didn't respond to this anxiety kindly, and although she did much later say "*calm down*" this was said as an instruction, and not with

any sympathy. Importantly, she also didn't deal with the content efficiently. She didn't start by asking which transactions he disputed, but by saying that two transactions had been declined, which she repeated several times.

I found it was very poor service at this point then to focus on trying to get Mr S to go paperless in the interests of the bank's sustainability. That really wasn't Mr S's priority at that point.

The adviser also gave Mr S incorrect information. Mr S found it very difficult to identify which transactions weren't his, because he could no longer get into the app to see them. The adviser wasn't patient with this, and it was a while before she went through the transactions individually. Instead, she gave him incorrect information that his app had been blocked because the previous day he'd reported his card as lost or stolen. In fact Mr S still had his card, as he tried to point out. I asked Vanquis why his app had been blocked, because although a card used fraudulently should be blocked, I didn't think the app should also have been blocked for reporting disputed transactions. Vanquis said that it hadn't been blocked because he'd reported disputed transactions, but it might have happened either because a new card had been ordered, or because of occasional problems which all users were experiencing at that time. Whichever of these it was, the adviser's explanation wasn't correct.

Finally, after Mr S had struggled to pass security, the adviser asked him what he wanted his new password to be. He gave her a password, and the adviser said *"Write it down please so you don't forget"* and Mr S said yes, he would. Passwords should not be written down, and I find it very surprising that she instructed him to do so.

The second adviser was more competent than the first, but as I've set out above, she incorrectly told him that the location for the 27 and 28 June transactions was a head office. She also incorrectly recorded the dispute as £636.50, when it was for £1,150.

So I found that Vanquis' customer service towards Mr S was poor. I therefore considered that Vanquis should pay Mr S £150 for the distress and inconvenience it caused him.

Responses to my provisional decision

Vanquis accepted the provisional decision. It said it had no further comment to make, and it agreed that compensation of £150.00 would be fair, given the shortcomings evident from the calls on 30 June 2022.

Mr S sent a very long and detailed submission disagreeing with the provisional decision. In summary, Mr S said that:

- I appeared not to have read or considered his submissions. He said that on proper application of the relevant law, regulations, and guidance, I was required to uphold his complaint in full because there was no other credible interpretation of the law and regulations;
- if someone such as a family member, friend or helped had carried out the transactions, he wouldn't be liable because the card was a credit card;
- I'd claimed that the transactions were completed using chip and PIN, but the bank's evidence on this hadn't been provided to him. He said that chip and PIN wasn't sufficient evidence to show he'd completed the transactions so I must uphold his complaint;
- he didn't agree with my statements that there were no known cases where the chip in the card had been successfully copied. He said he'd provided links to articles about cloning, and re-sent links to these;

- he didn't agree that the gap between the transactions meant it wasn't likely to be third party fraudsters. He said that just because the pattern didn't fit with "your cut and paste pattern.. from previous case decisions of FOS," it didn't mean that fraudsters hadn't completed them. He said it wasn't for him to prove that criminals completed the transactions but for the bank to prove he'd completed them;
- he didn't agree that Vanquis' systems weren't at fault for not picking up the transactions and notifying Mr S immediately they were attempted;
- he sent a list of points where he said Vanquis was "a total shambles and lacks any credibility." So he said I couldn't rely on any information provided by Vanquis.
- Mr S concluded by saying that the role of the Financial Ombudsman is to apply the relevant laws, regulations, and guidance. He said it wasn't for me to decide what I personally consider fair and reasonable in the circumstances, irrespective of the laws of England and Wales.

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.

Mr S has raised multiple points in his submissions to the service. I've understood all of those and considered all he's said and sent us, but in reaching my decision here I've focused on what I think is vital to my conclusions. I'd also point out that this service is a quick and informal alternative to the legal process in terms of disputes with financial businesses. We can decide what information is enough to carry out an investigation and get to the right answer. So I have not pursued all the matters which Mr S raises here, where I don't think that's necessary in order to reach a balanced and impartial decision on the crux of the complaint here.

The remit of this service is to be an informal and free alternative to the courts. We have a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case. Taking an approach which is based on what's fair and reasonable involves considering all relevant circumstances, and on the evidence available, reaching a decision about what's more likely than not to have happened. If Mr S rejects this service's decision, he is free to pursue his dispute in other ways, such as through the courts.

A bank isn't required to provide a customer with its technical computer evidence which shows how payments were carried out. And here, there were other factors as well as the technical evidence of the genuine card having been used, and the correct PIN input. Mr S said that he'd shredded the original PIN notification, had never written down the PIN, and it wasn't stored with his card. He said no-one else had access to his card, which he still had. This, and the pattern of transactions, including some undisputed transactions between the disputed transactions, makes it very unlikely that the disputed transactions were carried out by anyone other than Mr S himself. In my provisional decision, for completeness I considered the three possibilities for what might have happened – that a third party fraudster unknown to Mr S carried out the transactions; that someone known to Mr S, with frequent but irregular access to his card and security details carried out the transactions; or that he did so himself. I've re-considered the evidence and I still find that the most likely explanation is that Mr S carried out the transactions himself. So Vanquis doesn't have to refund him.

I have carefully considered Mr S's objections to the provisional decision, but I am not persuaded by them. So I see no reason to change my provisional decision.

My final decision

My final decision is that I uphold this complaint in part:

- I do not uphold Mr S's request for a refund for the disputed transactions;
- I order Vanquis Bank Limited to pay Mr S £150 compensation for the distress and inconvenience it caused him by its poor customer service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 August 2023.

Belinda Knight
Ombudsman