

## **The complaint**

Mr M has complained Vanquis Bank Limited is asking him to repay cash withdrawals on his credit card which he says he didn't make.

## **What happened**

Mr M got an alert from Vanquis for his credit card. He called to see what had gone on. He was told there'd been two cash withdrawals made at a cash machine overseas. He says that couldn't be him as he was at home. He confirmed that he had his credit card in his possession and nobody knew his PIN.

Vanquis emailed a claim form to Mr M which he didn't immediately return. Vanquis closed his complaint until Mr M got back in touch a couple of months later. Mr M then completed and returned his form claiming fraudulent cash withdrawals.

Vanquis wouldn't refund Mr M. They couldn't see how someone could have used Mr M's credit card and then return it to Mr M's possession.

Unhappy with this response, Mr M brought his complaint to the ombudsman service. Our investigator believed – in the absence of further evidence from Mr M – it was most likely Mr M had authorised these cash withdrawals.

Mr M disagreed with this outcome. He stated he'd not been abroad at this time and couldn't see how he could have been using his debit card (with another bank) at home whilst his Vanquis card was being used abroad. He's asked an ombudsman to consider his complaint.

I completed a provisional decision on 25 August 2023 outlining why I wasn't going to ask Vanquis to refund Mr M.

I received nothing further from Mr M or Vanquis.

I now have all I need to complete my 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 outcome as I did in my provisional decision. What follows explains my thinking.

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 regulations which are relevant to Mr M's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves.

The PSRs also say that someone acting as an agent on behalf of Mr M can be treated as acting with apparent authority when making transactions on their account.

Authority consists of two elements. The transactions must be authenticated, and Mr M needs to have consented to the payments being made.

I'm satisfied the two cash withdrawals were authenticated from the information provided to us by Vanquis. I'm in no doubt the genuine card and PIN were used.

This is relevant as Mr M confirmed in discussions with Vanquis that he had the card in his possession when he disputed these withdrawals.

This on its own isn't enough to suggest Mr M allowed someone else to use his card so I have taken the following into consideration:

- This was a credit card Mr M had had for some time and last used in August 2020. No use of his Vanquis account had been made since August 2020 until the two cash machine withdrawals on 15 September 2022.
- The PIN on Mr M's credit card was re-set twice during the five-minute period seven different transactions were attempted. The first four transactions were declined because the withdrawals would mean – along with the foreign exchange costs – that Mr M's credit limit would be exceeded.
- Mr M has told us no-one else knew his PIN. So I have to wonder how an unknown third party could access Mr M's Vanquis credit card and know the PIN to attempt withdrawals.

Mr M has insisted these transactions couldn't have been him as he remained in his home city. However he hasn't provided any evidence to substantiate this, despite saying he was using his bank debit card at the same time. I find it strange that he's not shared this information with us.

Overall and based on the evidence, I think it's most likely Mr M authorised the transactions either by allowing someone else to use his card or by making the transactions himself. I won't be asking Vanquis to do anything further.

### **My final decision**

For the reasons given, my final decision is not to uphold Mr M's complaint against Vanquis Bank Limited.

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

Sandra Quinn  
**Ombudsman**