

The complaint

Mr M has complained Contis Financial Services Limited, trading as Engage, won't refund £250 for two cash withdrawals he didn't make.

What happened

On 17 August 2023 Mr M attempted to use his Engage debit card at a cash machine at 06:47 to withdraw £10. This was unsuccessful and his card was retained by the cash machine.

Mr M noticed there'd been two cash withdrawals made after this using his card of £200 and £50. He asked Engage for his money to be refunded. Engage wouldn't do so as they felt there was no explanation how Mr M's PIN could have been known.

Mr M brought his complaint to the ombudsman service. Our investigator reviewed the evidence of the transactions that took place after Mr M first attempted to use a cash machine. He felt these indicated Mr M's card had been intercepted at the first cash machine and used fraudulently to make withdrawals. He asked Engage to refund Mr M in full and add 8% simple interest.

Engage disagreed and continued to feel there was no adequate explanation of how the PIN could have been known.

Mr M's complaint has been referred to an ombudsman.

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 our investigator. 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 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.

To help me come to a decision, I've reviewed the evidence Engage provided as well as what Mr M has told us.

I believe these transactions were carried out by an unknown third party without Mr M's

authorisation. I say this because:

- Mr M has told us his card was retained by the cash machine he tried to use that morning. This testimony is supported by Engage's technical information that a £10 withdrawal was attempted but was unsuccessful.
- I've seen nothing to contradict Mr M's testimony that his card was retained by the first cash machine. Therefore it wouldn't be that surprising that fraudulent technology was used to capture Mr M's PIN along with the card.
- Mr M's debit card and PIN was then used at another cash machine for two successful transactions. There was also a balance enquiry along with two unsuccessful attempts to withdraw £240 and then £100 before the second withdrawal of £50. This supports the idea that an unknown party was using Mr M's debit card.
- There were further attempts to use Mr M's card after Mr M cancelled his card. This would again suggest an unknown party had use of Mr M's card.

Putting things right

As I don't believe Mr M authorised these transactions, Engage will need to refund £250 along with 8% simple interest from the date of the withdrawals.

My final decision

For the reasons given, my final decision is to instruct Contis Financial Services Limited, trading as Engage, to:

- Reimburse £250 to Mr M; and
- Add 8% simple interest to that amount from 17 August 2023 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 March 2024.

Sandra Quinn
Ombudsman