

The complaint

Mr A complained because American Express Services Europe Ltd (Amex) refused to refund him for transactions he said he didn't make.

What happened

On Monday 22 January 2024, Mr A contacted Amex. He said he'd just realised he'd lost his wallet, driving licence, Amex card and another card, after being away for the weekend from the previous Friday.

There had been four transactions which Mr A said he hadn't authorised. Three of these had taken place on 19 January, and were for £9,790, £10,946, and £1,010. The fourth had taken place on 22 January and was for £4,950. Amex gave a temporary refund for the two smaller transactions, while it investigated.

After investigating, Amex told Mr A that it had decided to reverse the temporary credits, and that the charges for the larger two transactions would also remain on Mr A's account. Mr A complained.

In Amex's final response letter, it explained that it had taken this decision because:

- The genuine card and correct PIN had been used to make the transactions;
- No PIN had been requested or sent before the transactions;
- The card chip - which can't be duplicated - had been read and validated for each transaction;
- The terms and conditions, which Mr A had accepted when taking out the card, said that cardholders had to tell Amex straightaway if they suspected a card had been lost or stolen;
- The pattern of transactions wasn't indicative of fraud.

Mr A wasn't satisfied and contacted this service. He wanted a refund, and said his credit file was being affected.

Our investigator didn't uphold Mr A's complaint. She noted that Mr A had said he'd been away for the weekend. When he went to hire a car when he arrived at his destination, he'd noticed that his Amex card, another card, and his driving licence were missing. He said he thought he'd left them in another jacket, and used a mobile payment service to make transactions while away. When he got home, the 22 January disputed transaction had brought his attention to the payments, so he'd raised this with Amex.

The investigator said that the genuine card and PIN had been used. And there had been a login from Mr A's registered device on the morning of the first disputed transaction. Mr A had said he'd used a passcode to access his mobile banking app, which was then used to view the PIN. The investigator said she thought it would have been reasonable to expect Mr A to have blocked the cards if he wasn't sure where they were.

She also pointed out that Mr A had told Amex that he'd checked his wallet was with him before leaving for the airport – but he'd told this service that on arrival he'd thought it was in

another jacket. And Mr A hadn't said that the other stolen bank card had been used fraudulently. So she said she thought it was reasonable for Amex to have concluded that it was more likely than not that Mr A had authorised the transactions himself.

Mr A didn't accept this. He said he'd never given anyone his PIN. He said it wasn't uncommon for him to view his PIN on his mobile banking app. And in reply to having given different versions about what happened, Mr A said that he'd told Amex he'd only taken with him the cards he needed, and his driving licence – and he didn't remember having told Amex anything about his wallet.

Mr A also asked why Amex had initially refunded two of the payments if they'd thought the payments weren't fraudulent. And he repeated that his credit rating had reduced, and also said this was affecting his mental health.

Mr A asked for an ombudsman's 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.

I'm sorry to hear that Mr A said he's suffering mental health issues because of the dispute. My role is to reach my decision based on the relevant evidence, which I'll set out below.

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. 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. If a customer provides their card and security information to someone else, this counts as the customer authorising the transactions himself.

So I've considered whether it's more likely than not that the four disputed transactions totalling £26,696 were carried out by a third party fraudster, or by Mr A or someone to whom he gave his card and security information including PIN.

First, the genuine card was used for the four disputed transactions. 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. In terms of what happened to the genuine card, Mr A gave a different explanation about his card to Amex, and to this service. He told Amex that he'd checked he had his wallet before leaving for the airport on 19th, and only realised he'd lost his wallet, driving licence, Amex card and another card, when he reported the dispute on 22 January. But he told this service that he'd missed the two cards and his driving licence when away on 19th, but had thought he'd left them in another jacket. So it's not clear when or in what circumstances Mr A missed his card.

I agree with the investigator that it would have been reasonable to expect Mr A to have blocked his Amex card and his other bank card straightaway, if he didn't know where they were. The terms and conditions of his account meant that Mr A had a responsibility to report this immediately.

And Mr A's correct PIN was used with the genuine card. Mr A said that no-one else would have known his PIN. But a four-digit PIN has 10,000 possible combinations. So it wouldn't be possible for a fraudster to have guessed this correctly. I can't see any explanation for how a fraudster unknown to Mr A could have known the correct PIN.

I can also see that the first three disputed transactions were carried out on 19 January, but there was then a gap before the fourth disputed transaction on 22 January. This isn't a normal pattern for a fraud. Usually, a fraudster will carry out multiple transactions as quickly as possible, to maximise their gain before the fraud can be spotted and the account blocked. Amex has also provided this service with other, restricted, information.

Taking all the relevant factors into account, I consider it's more likely than not that Mr A authorised the disputed transactions. I appreciate that he made some mobile payment transactions while away, but I consider he could still have given someone his genuine card and access to his PIN. As I've explained above, this counts as Mr A having authorised the transactions himself.

Finally, Mr A also asked why Amex had initially refunded two of the payments if they'd thought the payments weren't fraudulent. Amex did refund the two smaller payments initially – but this was only while it investigated. It was a business decision for it to have decided to give Mr A this temporary credit. Doing this didn't guarantee he'd keep this temporary credit after the investigation. I find that Amex didn't do anything wrong either by giving a temporary credit, or by taking it back when it had reached the conclusion that Mr A carried out the disputed transactions himself.

As I've found that it's more likely than not that Mr A authorised the disputed transactions. Amex does not have to refund him.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 October 2024.

Belinda Knight
Ombudsman