

The complaint

Mr C, represented by his Power of Attorney Mrs C, complained because Clydesdale Bank Plc, trading as Virgin Money, refused to refund him for withdrawals which they said they hadn't made.

What happened

Mrs C has a Power of Attorney for her brother-in-law Mr C. This is registered on Mr C's account with Virgin, and Mrs C is representing him in this complaint.

Mrs C went to a Virgin branch on 2 July 2024, as she hadn't received a statement for the previous month. When Mrs C saw the statement, she disputed 26 cash withdrawals which had taken place between 21 May and 1 July. These totalled £4,700.

Virgin rang Mrs C on 4 July, and Mrs C said that her son had raised a dispute on her behalf. Mrs C told Virgin that her brother-in-law Mr C was housebound so he couldn't have made the transactions with his own card. The adviser went through the transactions, and Mrs C explained that she used her card as Power of Attorney for supermarket transactions, occasionally at a chemist, and for transport to get to Mr C's house to take him his shopping.

Virgin's adviser told Mrs C that on 18 June, there had been a genuine £13 supermarket transaction at 9.49 am – and at 10.08 am there had then been one of the disputed cash withdrawals for £250, at a nearby machine. Mrs C said she hadn't made the cash withdrawals, and had no idea how it could have happened. The adviser said that there hadn't been any transactions which had failed because of an incorrect PIN, so whoever made them knew the PIN. She also said that all the disputed transactions had been made using Mrs C's card, not Mr C's card.

Mrs C asked how that could happen when the card had never left her, and she'd never told anyone the PIN. Virgin's adviser suggested that she should contact the police to see whether there was CCTV at the cash machines. Mrs C was distressed, and said there was something seriously wrong. She asked whether someone could have cloned the card, and the adviser said cloning didn't really happen in the UK. The adviser said someone was getting access to the card, and it needed finding out who that was. She said this was important for Mrs C's safety as well. She suggested Mrs C should contact the police because of fraud on her account and ask if the police could look at CCTV.

On 9 August, Virgin wrote to tell Mrs C that it was unable to uphold her claim and wouldn't refund the disputed transactions. It said that her card had been used for genuine spending between the disputed ones, and it couldn't see how the card could have been compromised. It suggested she should contact the police.

Mrs C complained, saying she strongly refuted Virgin's conclusion that she might have been complicit in the fraudulent activity because of other authorised transactions. She said Virgin hadn't adequately considered the suspicious nature of the withdrawals, with £4,700 of withdrawals taking place in a short period. She said this was different from the normal spending patterns on the account, which were typically £300 per quarter, and this should

have raised red flags. She said Virgin couldn't say that the use of her card or PIN proved that she'd authorised the withdrawals, and she hadn't failed to protect her details.

Virgin's final response didn't uphold Mrs C's complaint, and said it was unable to comment further.

Mrs C wasn't satisfied and contacted this service. She said Virgin had concluded she might have been complicit in the withdrawals, which she said was unfounded and unfair. She said the significant increase in cash machine withdrawals should have raised red flags and prompted Virgin to make a more thorough investigation. She said she expected a higher level of care and protection of funds.

In reply to our investigator's questions, Mrs C said she had never given anyone access to the card or told them the PIN. She said she didn't have the PIN written down, said it wasn't easy to guess, and had destroyed the PIN notification when she'd received it. She'd been to the branch three times during the initial investigation, incurring parking costs each time. She said she really had no idea how this had happened, and after a lengthy investigation she didn't think the police did either, as they'd closed the case.

Our investigator didn't uphold Mrs C's complaint on behalf of Mr C's account. She explained that Virgin had evidenced that the withdrawals had all been processed using the card chip, and authenticated using the PIN. As Mrs C had confirmed the card had never been out of her possession, and no-one else knew her PIN, it wasn't possible for the withdrawals to have been authorised by anyone else. She also said that there was genuine account activity between the disputed transactions, sometimes only minutes apart. So it wasn't probable that a fraudster could keep making these transactions and returning the card to Mrs C.

In reply to Mrs C's argument that Virgin failed to protect the account and the withdrawals were unusual, the investigator said that the statements showed that the disputed withdrawals took place at machines that had previously been used for genuine activity, and the amounts weren't irregular in comparison. So the investigator said she could only reasonably conclude that the disputed withdrawals had been authorised.

Mrs C strongly disagreed with the investigator's findings. In summary, she said:

- it was completely out of character for multiple cash machine withdrawals to have been made over a short period of time. She wanted a detailed analysis of Mr C's transaction history to illustrate this;
- she had Power of Attorney, which gave her the authority to dispute the transactions, and the investigator had failed to consider the implications of this;
- it was illogical for the investigator to say that as Mrs C had the card and hadn't shared the PIN, the withdrawals must have been authorised. Mrs C said that the investigator had completely disregarded the possibility of sophisticated fraud techniques such as skimming, cloning or other methods of PIN compromise without physical possession of the card;
- Virgin had a duty to protect customers from fraud and should have flagged the withdrawals as suspicious.

Mrs C said she demanded a thorough reinvestigation of the case, taking into account the fundamental errors and her appeal points. She said there could have been sophisticated fraud techniques that could have compromised the account without physical card loss or PIN disclosure.

Our investigator replied, saying, in summary:

- The role of this service isn't to provide a detailed analysis of transaction history. We look into concerns to determine what's a fair outcome in the circumstances, and having done so, she'd considered the transactions had been authorised;
- To address Mrs C's point about transaction patterns, the investigator gave a few examples of undisputed cash withdrawals on the account – for example £260 and £200 on 7 May; £300 on 8 May; and £100 and £200 on 14 May;
- The investigator hadn't disputed that Mrs C held the Power of Attorney. She'd acknowledged this in the second line of her view, and if the Power of Attorney had been in dispute, she couldn't have considered the complaint at all;
- She assured Mrs C that she'd considered a range of potential and sophisticated fraud techniques;
- She said there were several factors which meant the transactions hadn't been made by an opportunistic fraudster. These included the fact that such a fraudster would be likely significantly to deplete the account, which hadn't happened and there were some days without withdrawals; that the transactions were carried out with Mrs C's genuine card; and for someone else to have made them, they'd have had to obtain the card and return it to Mrs C without her knowledge on multiple occasions. This wasn't likely.

Mrs C replied. She said that she now wanted to dispute the cash withdrawals which the investigator had given as examples of genuine withdrawals for similar amounts and at similar cash machines. She wanted to add these to the complaint.

The investigator explained that it wasn't possible to add extra transactions at this stage, because our service must allow a bank the opportunity to look into issues. So if Mrs C wanted to dispute these extra transactions, she'd need to raise them with Virgin.

Mrs C said she'd raise these extra disputed transactions with Virgin. She sent a further long email saying, in summary, that:

- it was a flawed assumption that a fraudster would have significantly depleted the account;
- Direct cloning of a card might be difficult but there were numerous other methods including skimming, data theft and other sophisticated techniques; She said it wasn't acceptable that the investigator had said it couldn't happen because she hadn't seen any evidence. She wanted us to look at a number of internet articles;
- She said the bank statements clearly showed that cash machine withdrawals were extremely rare on Mr C's account.

Mrs C, for Mr C, wanted 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.

What this decision does and doesn't cover

As I've set out above, when our investigator gave several examples of similar transactions which had been genuine, Mrs C said she wanted to dispute those transactions too. This service can only consider complaints when the financial organisation has had the opportunity to consider them first. So I don't have the legal jurisdiction to consider the additional transactions which Mrs C wants to add to the dispute. If Mrs C wishes to dispute these, she'll need to raise them with Virgin as a separate complaint.

Mrs C also said she wanted a detailed analysis of Mr C's transaction history to demonstrate the abnormal nature of the disputed withdrawals. This isn't something which this service provides. We consider what we think is fair and reasonable in all the circumstances of a case. This is based on what we consider is more likely than not to have happened.

Similarly, I won't be commenting on the various internet sources quoted by Mrs C, in relation to various organisations' views of fraud methods and cybersecurity.

What the Regulations say

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.

The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*."

So what determines the outcome here is whether I consider it's more likely than not that a third party fraudster unknown to Mrs C, or Mrs C herself, carried out the disputed transactions.

Technical evidence

I've looked at the technical computer evidence provided by Virgin. This shows that the disputed transactions were all carried out using the card in Mrs C's name. The withdrawals didn't use the card which was in Mr C's name. This tallies with what Mrs C said about Mr C being housebound. I also note that she told Virgin that Mr C doesn't have carers. This rules out possible compromise of a card / PIN by carers, but in any case it was definitely Mrs C's card, not Mr C's, which was used.

The technical evidence also shows the dates and times for the withdrawals, and that they were all completed with the correct PIN. There were no failed PIN attempts. Mrs C said she hadn't written down or disclosed the PIN, and it wasn't an obvious number which could have been easily guessed. There are 10,000 possible combinations of a four digit number, so it wouldn't have been possible for a third-party fraudster to have guessed it. So whoever carried out the disputed transactions knew the correct PIN.

Mrs C suggests that her card was cloned or skimmed, or other more sophisticated techniques were used to bypass her genuine card and correct PIN. The technical computer information also shows that the withdrawals were carried out using Mrs C's genuine card, with the unique chip embedded into it. I've considered her comment that the card could have been cloned. But I find it unlikely in this situation. It's not generally thought possible to copy the chip on a card. I haven't seen any evidence Mrs C's card was cloned, and I accept that the payments were made using her original card, the same one she was using for genuine payments around the same time.

Although there is often talk about cards being cloned, cloning only takes a sort of photo of the card and its magnetic stripe. Skimming is similar. Cloned or skimmed cards have been used for things like telephone or online transactions where the actual card isn't presented. But such 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 I accept that the card used for the disputed transactions was Mrs C's genuine card, as shown by the technical evidence.

Transaction patterns

Mrs C has focused on the transaction patterns, saying they weren't typical, and that Virgin's systems should have flagged this and actioned it. As I've set out above, it's not for me to carry out the detailed analysis of all Mr C's transactions.

It is however clear from what I've said above that there were other cash machine withdrawals for similar or greater amounts around this same time – which Mrs C hadn't disputed (although she now disputes them). Mrs C said there was a missing period on the statements she received. However, I think it likely that anyone who found out that there had been fraudulent payments would have been very careful to look at all the statements around that time to make sure there weren't others. If Mrs C didn't have all the statements, it's very surprising that she didn't ask Virgin for them at the time.

The withdrawals were also at machines in the local area, and at machines which had been used for undisputed withdrawals in the past.

So I'm not persuaded that Virgin should have intervened in relation to these disputed payments.

Who is most likely to have carried out the disputed transactions?

As the disputed transactions were carried out with the genuine card with its unique chip, and the correct PIN, there are limited options for who made the transactions. It was someone in possession of the genuine card at the times of the withdrawals, and someone who knew Mrs C's PIN.

There were also genuine transactions in between the disputed ones. I've given an example above, which Virgin mentioned to Mrs C, where there was a genuine payment at a supermarket, then a disputed withdrawal nearby less than 20 minutes later. If someone other than Mrs C made this, and the other, transactions, they'd have had to obtain the card without Mrs C's knowledge, carry out the withdrawal, and return it to her also without her knowledge. This would have had to have happened on multiple occasions, which is unlikely.

Although Mrs C has disagreed, I also consider that a fraudster would have taken far more money out of the account than was taken. Mrs C didn't have internet or mobile banking registered on the account, but there were days when no cash withdrawals were made, and days when the maximum daily withdrawal wasn't taken. This just isn't likely to be what a fraudster would do, when there were thousands of pounds remaining in the account at the time.

For all these reasons, I find that it's most likely that it was Mrs C herself who carried out the disputed withdrawals.

There is another possibility. The only other option which fits the circumstances is that the withdrawals were made by someone close to Mrs C – for example someone in her household or someone she trusted. Any such person would have potentially been able to remove and return her card without suspicion. They might also have been more likely to have known her PIN. Mrs C also said that she hadn't received bank statements for the period in question, and although this might have been the result of postal problems, it might also have been that a trusted person removed the statements so that the withdrawals could continue for longer without being found out and stopped. If, however, this is what happened, Virgin still wouldn't have to refund Mr C, because it wasn't a third party fraudster unknown to Mrs C herself.

In either case, however, Virgin doesn't have to refund Mr C for the disputed withdrawals, because it's not likely that it was a third party fraudster unknown to Mrs C who carried out the disputed withdrawals using her genuine unique card and PIN.

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 C, represented by Mrs C, to accept or reject my decision before 1 July 2025.

Belinda Knight
Ombudsman