

complaint

Miss G complains that Vanquis Bank limited has refused to refund disputed transactions on her credit card account. She says she lost her credit card and is the victim of fraud. Miss G wants Vanquis to refund the money.

background

Dates are an important consideration in this complaint.

Miss G's diary was stolen. It contained her Vanquis credit card and other (bank) cards. She contacted Vanquis on 30 October 2013 to report the theft (she also contacted the other card providers). Miss G told Vanquis her diary contained a record of her PIN so she would have them to hand. The last time she could be certain she had seen her diary and cards was about one month before. There were some transactions on Miss G's Vanquis credit card account that she said she did not make or authorise. Only her Vanquis card had been used.

Vanquis rejected Miss G's claim for the disputed transactions to be refunded. It said Miss G had been negligent with her account details by keeping her card and PIN together. Miss G was not happy with the bank's response so referred the matter to this service.

Our adjudicator told Vanquis that (under the Consumer Credit Act) it could not hold Miss G responsible for the disputed transactions on the grounds of negligence – so she was minded to uphold Miss G's complaint. Miss G had also told our adjudicator the PIN number was disguised as an 11 digit telephone number but she was aware from her studies and research that any code could be cracked.

Vanquis agreed that it could not hold Miss G responsible for the money on the grounds of negligence. But it pointed out Miss G had not mentioned that her PIN was disguised in any way when she originally contacted the bank. Miss G's PIN had been entered correctly at the first attempt each time it was used so it was not clear how a fraudster would have been able to work out the PIN.

The bank also pointed out withdrawals had been made at a cash machine very close to Miss G's home address and it seemed strange that the card had been used over a few days, rather than immediately – this was not the normal pattern of usage by a fraudster.

The adjudicator was persuaded by Vanquis' concerns and did not recommend Miss G's complaint should be upheld. She accepted that things like cracking of codes to gain access to bank cards was possible – in theory – but the consideration here was what was most likely to have happened, not what might be possible.

Miss G was very unhappy with the adjudicator's revised view so the matter has been referred to an ombudsman for a final decision.

She said the adjudicator had accepted her version of events and thought her complaint had not been properly investigated. Miss G considered Vanquis and our adjudicator were accusing her of stealing her own money and trying to claim it back from the bank. She said she had told Vanquis her PIN was disguised and did not believe it was entered correctly for all the transactions – she said other credit card companies had told her failed PIN attempts were not kept for more than a week.

Miss G also thought that Vanquis should have stopped the disputed transactions happening as they were not consistent with her previous account usage. She referred to their responsibilities under two pieces of legislation.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I cannot say who made the disputed transactions. The key issue I have to consider is whether Vanquis can hold Miss G responsible for them. I believe it can.

I do not doubt the strength of Miss G's feelings on this matter. She feels she is being accused of fraud herself. But I have to put that to one side and consider the evidence available to me to determine whether the bank should refund the money. I think that the circumstances here are such that I cannot fairly direct Vanquis to do so. I consider both the bank's and the adjudicator's (revised) assessment of this case are right. There are several factors that lead me to this conclusion.

I do not know when Miss G's diary and cards went missing. Miss G is not certain. But it appears it could have been anytime up to one month before her Vanquis credit card was used. Given that Miss G kept her diary and other cards in her bag, I find it strange she did not notice anything was missing until just after the disputed transactions took place.

The adjudicator is right to say that what we must consider is what is most likely to have happened, rather than what is theoretically possible. Miss G believes that codes enabling bank cards to be used can be cracked easily. I do not agree.

It also seems strange that it was only Miss G's Vanquis credit card that was used. Miss G told Vanquis she kept a record of (all of) her PIN numbers with her cards (on her declaration to the bank on 9 November 2013). So it is quite likely that – if the fraudster had been able to work out one disguised PIN – they would have been able to do so for others and use her other cards. But only Miss G's Vanquis card was used.

I have looked at Vanquis' records and am satisfied the correct PIN was entered correctly at the first attempt. I do not agree with Miss G's view that (other) credit card companies dispose of failed PIN attempt information after one week. I have reviewed many cases of disputed transactions and not heard – or seen evidence – of this approach.

But I do have some sympathy for Miss G's view that Vanquis might have noticed the disputed transactions earlier. I can understand why she might think this. But the reality is that thousands of transactions are being processed through the banking system at any one time. And I do not consider the ones Miss G is now disputing are so wildly different from what the bank might expect her to use her card for – bearing in mind they were within the amounts permitted on her account.

Lastly, I have not seen any evidence of an attempt to use Miss G's card after it was reported stolen to Vanquis. I am not clear how an unknown third party would have known that any block had been placed on the card.

When I combine all of the above, I do not believe I can fairly direct Vanquis to refund the disputed transactions. Miss G is adamant she did not make them. But I cannot rule out this

possibility. If Miss G did not carry them out, then I am satisfied they were made by somebody with her knowledge or authority. I am sorry to disappoint Miss G.

my final decision

For the reasons I have given, my final decision is that I do not uphold Miss G's complaint.

Andrew Davies
ombudsman