

complaint

Mr S and Mrs T say Banco Bilbao Vizcaya Argentaria SA ("the bank") is wrong to hold them responsible for a number of transactions made using their credit card account. The account is in Mr S's name and Mrs T is an additional cardholder on the account. The disputed transactions were made using Mrs T's card.

background

Mr S and Mrs T say the card was stolen from them and misused to make a number of cash withdrawals. They say the bank should have detected the unusual activity and prevented it. They also say the bank misdirected or failed to send account statements, so they were late in identifying the disputed transactions.

The bank has refused to refund the disputed transactions. It says the withdrawals were all made using Mrs T's genuine card and the PIN (Personal Identification Number). It has considered the various possibilities of how the PIN could have become known to a thief, given that Mr S and Mrs T say no record of the PIN was kept with or near the card. Having considered these possibilities, the bank thinks the only plausible one is that Mr S and Mrs T either carried out the transactions themselves or authorised someone else to make them.

The bank has referred to circumstantial evidence which it thinks supports its conclusions, including the fact that the disputed transactions stopped when there was no balance left in Mr S and Mrs T's current account to pay the credit card bill and the bank had to cancel one of their joint deposits so that the bill could be paid in that way.

Our adjudicator did not uphold the complaint. She did not see, in the circumstances, how a thief could obtain the PIN.

Mr S and Mrs T asked for this review of their complaint by an ombudsman. They say it is always possible for criminals to obtain PINs, if they are determined to do so.

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 note the bank originally rejected Mr S and Mrs T's claim by using the incorrect argument that they had been careless with their PIN. But since the credit card is a 'credit token', carelessness with a PIN was not a valid reason for refusing the claim.

The only valid reason for refusing the claim is the reason which the bank ultimately used, as did the adjudicator, which is – effectively - that Mr S and Mrs T must have made or facilitated the transactions themselves.

I realise this is not an easy thing for the bank or adjudicator to say, or for Mr S and Mrs T to hear. But I would like to stress that this sort of decision is based on the available evidence. It does not involve calling Mr S and Mrs T's honesty into question.

I am sorry to disappoint Mr S and Mrs T but I too have been irresistibly drawn to the same conclusion as the bank and the adjudicator. Mr S and Mrs T are absolutely adamant that there was no record of the PIN which a thief might have found and misused. I did ask myself

if Mr S and Mrs T were so insistent on this point because the bank had (mistakenly) said this would defeat their claim. But there is also the circumstantial evidence to which the bank has referred, including the fact that the features of the transactions do not clearly point to third party fraud.

For completeness, I should make the point that if either cardholder makes transactions without the knowledge of the other cardholder, the transactions are still valid from the bank's point of view.

my final decision

I do not think Banco Bilbao Vizcaya Argentaria SA has ultimately acted wrongly in this case. I see there is a reference in earlier correspondence to an offer by the bank to pay Mr S and Mrs T £25 over a service issue. The bank should still make this payment, if it has not yet done so and Mr S and Mrs T ask for it.

Roger Yeomans
ombudsman