

complaint

Mr M complains that Vanquis Bank Limited (“the bank”) won’t refund him for disputed ATM withdrawals made using his credit card.

background

On 19 April 2014 Mr M realised that his credit card was missing from his wallet. He reported this to the bank, and on doing so became aware of a number of ATM withdrawals that had taken place between 14 and 18 April, just before he’d realised his card was missing.

Mr M said that he hadn’t made these withdrawals, and neither had he authorised anyone else to. He wanted a full refund from the bank, as he’d been a victim of fraud.

As the withdrawals were all made using the genuine card chip and PIN, the bank queried how this could have happened. Mr M explained that his PIN wasn’t written down, that was a memorable date, and that he used it for more than one card. He also said that he’d give one of his cards to his wife to use. Mr M is a teacher, who shares a room at school with three other colleagues, but he’s unable to say how his card went missing from his wallet.

The bank responded to Mr M’s complaint saying that it was holding him liable for the withdrawals. This was on the basis that the PIN was entered correctly each time, and there was no obvious point of compromise for his PIN and card to explain how a third party had been able to take the card and use it in this manner.

Mr M complained to this service, and after consideration of all the submissions our adjudicator concluded that the bank’s decision not to refund Mr M wasn’t unreasonable, and that she couldn’t uphold the complaint.

Mr M didn’t agree with this opinion, and sought referral to an ombudsman. He didn’t think it was fair that simply because his correct PIN had been used with his card that this was sufficient evidence of his involvement in the withdrawals, or of gross negligence. He still wasn’t able to say how somebody had managed to obtain his PIN number, other than perhaps via shoulder-surfing, but felt that his whole complaint shouldn’t turn purely on the lack of a clear point of compromise of the PIN.

my findings

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

Having done so, I’m afraid I must advise Mr M that I’m in agreement with our adjudicator that the bank is entitled to hold him liable for the withdrawals.

I say this on the basis that there is no other explanation as to how somebody obtained Mr M’s card, and his PIN (which was known only to him, and probably also his wife by virtue of the fact she had another of Mr M’s cards which he’d given her his authority to use, and which is likely to have had the same PIN), without him realising it. The card itself might have been stolen, but without the PIN the withdrawals in question couldn’t have been made.

I agree with our adjudicator's conclusion that the card was unlikely to have been taken by one of Mr M's work colleagues, due to the timing of events and the fact that the withdrawals took place during the school holidays, which meant that the card would have to have been taken around ten days before the first withdrawal was made.

I think that in the absence of any other explanation as to how the card and PIN became available to anyone other than Mr M or his wife, the bank is entitled to take the view that Mr M must have authorised, or known about, the transactions.

I note that Mr M is concerned that his point that gross negligence can't be proved simply by the use of a card with the correct PIN, and that the bank has to provide evidence of this gross negligence, hasn't been addressed. I shall therefore respond to this point now. In this case, the bank hasn't reached its decision on the basis of Mr M's gross negligence, albeit we know that he gave another of his cards (presumably with the same PIN, due to facts I've already considered) to his wife, which in itself is in contravention of the terms and conditions of his account. In this case the bank's decision was based on what, given all of the available evidence, it thought was the most likely explanation for how the withdrawals had come to be made, and this was that Mr M was had either made or otherwise authorised them.

For all of these reasons it wouldn't be fair to find the bank liable for the disputed withdrawals, and I can't uphold the complaint.

my final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 19 March 2015.

Ashley L B More
ombudsman