

complaint

Mr K and Mrs B complain that a number of withdrawals were made from Mr K's account when he was working and had the card with him. Mr K wants the State Bank of India (SBI) to refund the money to the account. Although the complaint is in both names, only Mr K is a cardholder. So I'll mainly refer to him in this decision.

background

Mr K complains that unusual transactions were made from his account on 20 November 2014. He didn't receive any mobile alerts from SBI to tell him about the transactions.

He told us he did get bank statements for this account, but he only checked them at the end of the tax year because he didn't use it very often. So he didn't notice them until he checked his bank statement in March 2015. He didn't recognise 5 transactions using his account card and personal identification number (PIN). And one withdrawal from the cash machine. The total taken was £1,709.94.

Mr K said the card was with him at all times. No-one else had access to the account. He says he lives with other family members, but he kept his PIN safe from everyone. He never wrote it down and probably changed it to his own memorable number. So Mr K suggests the card must have been cloned, or someone at the bank took the money.

Mr K thought his card had expired and he was issued with a new one in December. But it seems someone placed a block on his card –he doesn't know who requested that – and the bank never told him it was blocked at the time. So Mr K carried on using it and he says no-one stopped him.

SBI said Mr K reported his card as lost on 20 November, so it stopped the card and reactivated it when he called again on 1 December. The person calling passed the security requirements by giving Mr K's name, address and date of birth. The PIN on the new card was changed on 10 December.

SBI also said all the transactions were PIN based – so no-one apart from the card holder could make the transaction – unless the account holder had given the PIN to someone else. And as the genuine card and PIN were used, SBI said this couldn't be a case where the card had been cloned. It can't say why Mr K didn't receive any mobile alerts about the disputed transactions on his account. But it said sometimes there are delivery issues with different network providers.

It also said Mr K wouldn't have been able to use the blocked card. But he was issued with a new card which he could use from 1 December.

So SBI said Mr K probably didn't keep his PIN safe. As this was a breach of the terms of the account, SBI said it wasn't liable for the transactions and so didn't have to refund the money to his account.

Mr K and Mrs B complained to this Service. Our adjudicator thought the complaint shouldn't be upheld because the correct PIN had been used for all the transactions. She also said that whoever called the bank to block the lost card passed all the security checks. And the new card was sent to Mr K's home address – which you wouldn't expect if someone was trying to use Mr K's card fraudulently.

Mr K and Mrs B disagreed with the adjudicator's view and asked for the matter to be looked at again.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I've decided not to uphold this complaint. I know this will be a disappointing result for Mr K and Mrs B, so I'll explain my reasons.

In respect of this decision, I don't need to decide who actually made the disputed withdrawals. Instead, I need to decide whether SBI is right to hold Mr K responsible for them.

Mr K told us he had his card with him whilst he was at work. He kept his PIN safe from others – and probably changed it to a more memorable number. I've no reason to doubt he was at work on the days of the transactions. But the evidence suggests he either gave somebody his card and PIN to use or he didn't keep the details of it secure. I say this because SBI told us the genuine card and the correct PIN were used to complete all five transactions.

Mr K went on to say his card was copied and used by someone else. Or that someone at the bank had done it. I think SBI's records are enough to show the card wasn't copied because the genuine card and PIN were used. And I couldn't see any evidence to support Mr K's allegation that someone at the bank took his money.

I did think carefully about Mr K's suggestion that his card was cloned. But I'm afraid I don't agree with him. In fact – despite what is said in many media reports – there isn't any evidence (or agreement between academics and banking experts) that a chip embedded in a card can be copied. It's been suggested it's possible to 'trick' a card terminal that the chip has been read and the PIN entered correctly. But this has only ever been done in strict laboratory conditions and not, for example, at cash machines. So I don't think it likely that Mr K's card was cloned.

I also listened to a call recording from a man who gave Mr K's full name, date of birth, full address and postcode to SBI because his card had been swallowed by the cash machine. He asked for the card to be blocked and for a new one to be sent out. And Mr K confirmed he later received his new card in the post. Mr K says he didn't ask for his card to be blocked – so he thinks a fraudster did it. But I don't think it's likely that a fraudster would ask for the new card to be sent to the genuine account holder's address. I would've expected a fraudster to ask for the card to be delivered to another address so that he could continue to use it. So I think it's unlikely that someone else was using the card fraudulently as Mr K suggests.

I accept Mr K didn't get the mobile alerts he was expecting for certain transactions. But SBI says it often has problems with delivery depending on the network provider. Without any evidence to suggest otherwise, I think this seems the most likely reason at this stage.

Taking everything into account, I'm afraid I don't think the evidence supports Mr K's complaint. It's most likely the transactions were made by someone who had the card and

PIN with Mr K's knowledge. So I think SBI would be entitled to hold Mr K responsible for them. It follows that I don't uphold this complaint.

my final decision

My final decision is that I do not uphold this complaint and I make no award against State Bank of India.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs B to accept or reject my decision before 15 February 2016.

Amrit Mangra
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