

complaint

Mr C complains that the State Bank of India (UK) Limited (SBI) won't refund payments made using his debit card that he says he didn't make or authorise.

background

Mr C disputed 16 transactions totalling over £18,000, which took place over three weeks starting at the end of August 2018. He says that his debit card was in his possession, he hadn't kept a written record of his PIN and nobody else knew it. He had told the bank that he was having problems with his debit card and wasn't able to use it.

SBI investigated and refunded almost £5,000 but has declined to refund the rest. It said that it had sent transaction alerts to both Mr C's registered mobile phone and email address. It didn't think Mr C had carried out the transactions but was holding him liable for the payments because it thought he had been negligent by not complying with the account terms and conditions and reporting the transactions sooner than he did.

Our investigator didn't think that this complaint should be upheld. She thought that whilst Mr C might not have carried out the transactions himself it was more likely than not that he had consented to them.

Mr C didn't agree.

my findings

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

Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

Mr C says that he tried to use his card to make an online payment on 26 August 2018, but he had problems. He told SBI about this and it told him to register for MasterCard SecureCode. He says he had difficulties in trying to register his card so gave up.

He then says that on 20 September 2018 he withdrew £100 from a cash machine and noticed that his account balance had gone down. He contacted SBI the following day. Mr C disputed 16 transactions totalling over £18,000. He says that he didn't make the payments or authorise them.

SBI raised a chargeback with MasterCard for all the disputed transactions. It says that most were successfully defended by the merchants, but some didn't respond within the MasterCard chargeback scheme time limit. Because of this it refunded almost £5,000 to Mr C's account. It carried out an investigation into the other transactions.

The disputed transactions took place in August and September 2018. The regulations relevant to these are the Payment Service Regulations 2017. In short, the basic position is that SBI can hold Mr C liable for the disputed payments if the evidence suggests it's more likely than not that he made them or authorised them. So, my primary concern is to come to a view about whether or not I think Mr C authorised these payments. But for me to be

satisfied that these payments were authorised, I first need to determine how they were authenticated.

Authentication is the use of any procedure by which a bank can verify the use of a specific payment instrument, including its personalised security features. SBI has provided evidence to show that the disputed transactions were online, telephone or mail order payments, for which the correct card number was entered. And, although Mr C says that he didn't complete the registration of MasterCard SecureCode, I find that some of the payments were subjected to this extra layer of security and authenticated by the SecureCode. So, I consider it more likely than not that Mr C's genuine card details were used.

The regulations relevant to this case say that it is not, on its own, enough for SBI to hold Mr C liable, just because his genuine card information was used. So, I also need to consider whether the evidence suggests it's more likely than not that he made the payments himself or consented to the disputed transactions being made.

Mr C had the card in his possession during the time the disputed transactions were happening. As he used it himself for genuine payments, balance enquiries and cash withdrawals I think it unlikely that the card was compromised or stolen.

For an unauthorised person to carry out these transactions they would have needed Mr C's card details. As Mr C had the card, I can't see how someone unknown to him could have got hold of these details without Mr C knowing. He says the only people that have copied his card are the staff in his SBI branch.

I find that the 16 payments that Mr C disputed were made all made either online or by phone. Not only was Mr C's card number used, but other security information, such as its expiry date and the CV2 details (the digits on the reverse of the card) were correctly given. And some of the payments were also authenticated by the MasterCard SecureCode.

One of the merchants has provided information to show that when its services were booked Mr C's correct mobile phone number was used along with the correct card details and the SecureCode. And it confirms that there were several other bookings made between January 2016 and January 2018 using the same details. Mr C hasn't disputed any of these. And if, as Mr C says, he didn't make the booking in September 2018 then I consider it more likely than not that Mr C had given his card details to the third party. I also think that, if the third party hadn't been authorised by Mr C to make the booking, then they wouldn't have provided Mr C's own mobile number as the main contact.

Mr C has told us that he has evidence from another merchant that the purchases made weren't delivered to his address. We have asked Mr C to provide a copy of this information, but he hasn't done so. But even if the items weren't delivered to Mr C's address, I think it is still possible for Mr C to have authorised or consented to the payments. I say this because this merchant has shown that the correct card details were provided and some of the payments were made using the MasterCard SecureCode.

SBI has shown that it sent confirmation of each transaction to Mr C's genuine email address and text messages to his mobile number and these were successfully delivered. Mr C has said he didn't receive any of these. But the email address that SBI sent the alerts to matches the one this service has used for him, so I think it more than likely that he did receive them. Mr C didn't raise anything with the bank during this time which is why I think on balance he was aware of and consented to the activity.

I have also seen evidence which shows that Mr C carried out balance enquiries during the time the disputed activity was taking place. If Mr C hadn't consented to the payments I think he'd have seen that his account balance was lower than it should have been and raised the matter straight away with SBI. Although Mr C says that he did contact SBI after the balance enquiries, I don't think he did because SBI hasn't any record of his calls and Mr C hasn't been able to show he called the bank.

I also find that there were no failed attempts to use Mr C's card after he had reported the disputed activity. If Mr C hadn't authorised or consented to the payments, then I would have expected the third party to continue to try to make payments until payment was refused.

Having carefully considered all the evidence, if Mr C didn't make the payments himself then I consider the person who carried out these transactions knew Mr C's debit card details and other personal information. They could only have this information if Mr C had shared it with them.

So, from all that I've seen, whilst I accept I can't know exactly what happened, I think it more likely than not that Mr C either made the payments himself or consented to them by allowing someone else, known to him, to use his card. I say this because:

- There's no convincing explanation for how the third party could have got hold of Mr C's card and security details.
- An unknown third party wouldn't have access to Mr C's MasterCard SecureCode password to complete the additional security required to make some of the payments.
- The card details were used over a 25-day period. I think an unknown third party would have tried to use the card details as much and as quickly as possible, rather than risk Mr C noticing the payments and giving him a chance to stop the card.
- There were no more attempts to use the card after Mr C had disputed the payments with SBI.
- SBI sent text messages and emails to Mr C each time a payment was made but he didn't contact the bank about them.

I'm sorry to disappoint Mr C and I do understand that this must be upsetting for him, but I can't ask SBI to refund him. I hope the reasons for my decision are clear.

my final decision

My final response is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 November 2020.

Karen Wharton
ombudsman