

complaint

Miss C complains that Vanquis Bank Limited is holding her responsible for a cash machine withdrawal from her credit card account that she didn't make herself or authorise someone else to make.

background

On 4 January 2015 £300 was withdrawn from a cash machine using Miss C's Vanquis credit card. Miss C says she found out about this when she got her credit card statement. She reported the withdrawal to the police and Vanquis. She first thought she still had the card, but when she checked it was missing from her purse.

Vanquis said Miss C was responsible for the withdrawal, which was made in a town fairly near to her home. Her actual card had been used and her personal identification number (PIN) had been put in correctly the first time. Miss C had kept Vanquis' letter telling her the PIN. This was against the account terms and conditions, which told her to memorise and destroy the PIN. And it wasn't clear how the card with the correct PIN came to be used by a third party.

Our adjudicator didn't think Miss C had withdrawn the £300 or authorised someone else to do this for her. She asked Vanquis to refund the money and linked charges and interest. Vanquis didn't agree and asked for a review.

Miss C has told us she's worried Vanquis has left her credit card account open, even though it told her it would close the account. And she's concerned that the same thing might happen 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.

I agree with the adjudicator that Vanquis should refund the £300 cash machine withdrawal. I'll explain why.

Miss C's genuine card was used for the withdrawal with the correct PIN. She says she kept the PIN letter at home. So this leads to only two possible conclusions: either Miss C made or authorised the withdrawal. Or the withdrawal was made by someone who had access to Miss C's card and home.

Miss C says she thought she had the credit card in her purse, which she keeps in her handbag. But when she checked the card was missing. She's not sure when or how this happened. But she has two very young children. They sometimes play with her purse and might have dropped her card. And she did keep the PIN letter at home but can't find that now. She doesn't go to the town where the withdrawal was made, which is about 15 minutes away, as it's very busy with only one road in. She reported the withdrawal to the police and the bank as soon as she found out about it.

On balance, I don't think Miss C did make the withdrawal or authorise someone else to do it for her. I've found her evidence credible and plausible.

The other explanation is that the withdrawal was made by someone else with access to Miss C's card and home. The withdrawal took place near her home, so it's a possibility. I don't think Vanquis properly considered whether that might have happened here. Instead it said she was in breach of its credit card account conditions by not destroying her PIN letter.

Under consumer credit legislation, Vanquis can only hold Miss C responsible for the withdrawal from her credit card account if she made the withdrawal herself or authorised someone else to do it for her. It is not relevant that she didn't destroy the letter it sent her telling her the PIN. If she didn't make or authorise the transaction it can't hold her 'grossly negligent' for keeping a record of the PIN at home. And in any case, it's not clear to me that keeping a PIN letter at home would, of itself, be grossly negligent.

On balance, I think it is more likely that the withdrawal was made by someone who had access to Miss C's home and card, but without her knowledge or consent. So Vanquis can't hold her responsible for it. So Vanquis should refund the withdrawal, with charges and interest. It should close her account, as it said it would do. If it has registered any information against Miss C's credit file Vanquis should remove it.

my final decision

My decision is that I uphold this complaint. I order Vanquis Bank Limited to:

- refund Miss C's credit card account with the £300 cash machine withdrawal made on 4 January 2015. It should also refund any interest or charges on that amount. If this results in a credit balance, Vanquis Bank Limited must refund that money to Miss C with simple interest at 8% from the date the account would have gone into credit to the date of settlement. If it deducts tax it should give Miss C the appropriate tax deduction certification.
- remove any adverse information it has registered against Miss C's credit file since the 4 January 2015 withdrawal and to close her account as it said it would do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 1 October 2015.

Amanda Maycock
ombudsman