

complaint

Mr M has complained Virgin Money plc won't refund numerous disputed transactions which he didn't authorise.

background

Mr M didn't bank online and only received paper statements for his account with Virgin on a quarterly basis. He went to a Virgin branch to withdraw money and found his account was practically empty. When he did receive his statement, he saw a number of transactions he hadn't made. These were over a period from June to August 2018. Some of these were gambling transactions and some were online transactions. Virgin noted that in a telephone conversation with Mr M on 11 July 2018 he'd confirmed he'd given his debit card to someone else to use. It seemed clear this third party had called Virgin pretending he was Mr M. He'd persuaded them to allow access to the funds. In their final response they confirmed they wouldn't be refunding him as Mr M had breached the terms and conditions of his account.

Mr M believed he'd taken care of his account. He'd never even shared details with his wife. He brought his complaint to the ombudsman service. He'd also reported what happened to his local police. He was extremely concerned as he'd been saving for a home and had lost out significantly. He was now in serious financial hardship.

Our investigator reviewed the evidence, including copies of calls between Virgin, Mr M and the third party. He also discussed what may have happened with Mr M. Mr M told him he used to live with his nephew and had once given him access to his debit card and PIN whilst on holiday. He didn't agree he'd allowed his nephew to use his card more frequently than that once.

However our investigator didn't believe Mr M had been completely truthful. Overall he believed Mr M had allowed a third party to use his card. Therefore he wouldn't be asking Virgin to do anything else.

Mr M disagreed and asked an ombudsman to consider his complaint.

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 reached the same conclusion as our investigator and for roughly similar reasons.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply – including whether a customer has acted in a grossly negligent manner. I've taken this into account here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what both Virgin and Mr M have told us. We've also been given copies of telephone calls between Mr M and Virgin, and between the third party and Virgin.

Firstly I can see the timeline of events and how the transactions were made with Mr M's debit card have been comprehensively covered in our investigator's view of 11 September 2019. I don't intend to repeat everything that's been said before. Except to say I'm satisfied I've reviewed the complaint thoroughly. I've also more recently been in touch with both Virgin and Mr M. I confirmed to Mr M I needed more information from him about what could have happened for me to consider whether there was enough evidence to support changing the investigator's outcome.

I think the following issues are relevant to how I've considered this complaint:

- Mr M has confirmed he didn't use his account online and his debit card had never gone missing.
- It's clear from the phone call between Mr M and Virgin that he admitted he'd given his banking details to a third party.
- There are also other calls between a third party – who also happens to have an account with Virgin. These were done twice after Virgin had blocked certain types of transactions from Mr M's account. This third party provided sufficient details about Mr M's account – including recent transactions about a cancelled direct debit and a large pension credit – to allow the block to be released. This enabled further transactions that Mr M now disputes to be carried out.
- Mr M's own testimony to us hasn't been consistent. Firstly he admitted giving someone else his details but has since said he's got no idea how these transactions were made. I have considered whether something more may have been going on here. So for example was Mr M a victim of financial abuse? But Mr M has given us little information to help me make that judgement.
- All the evidence shows the disputed transactions – which amount to well over £5,000 – were made using the debit card. Things were bought online (often food deliveries) and transactions made (for gambling).
- Some of Mr M's reasoning for disputing some transactions is that Virgin's narrative on Mr M's account statements suggest these are made in locations that Mr M hasn't been in. Actually these locations often relate to the business's head office or similar as that's where the card transactions are processed. But I'm satisfied that all transactions were carried out in locations close to Mr M.
- It's hard to believe the third party didn't get the level of information they held about Mr M's finances direct from Mr M. By providing this information – and by allowing someone to use his card – Mr M was authorising these transactions even if he didn't make the transactions himself.
- I also can't be completely clear that Mr M didn't make some of these himself. He'd recently got a large payment into his account which allowed him a larger amount of money to spend than normal. So there is a scenario which says he spent the money himself but very quickly regretted doing so.
- If Mr M hadn't authorised these transactions himself, I'd have to consider whether he'd acted with gross negligence or intent. Since Mr M had willingly shared his banking details with a third party, I think it would be fair to say he acted with intent, or a serious disregard of the consequences.

Overall I believe the evidence points to Mr M having authorised these disputed transactions. I accept that he feels he may not have known the extent of his potential losses and is distraught about what has now happened. But taking everything into account I don't think it would be fair or reasonable to ask Virgin to do anything further.

my final decision

For the reasons I've given, my final decision is not to uphold Mr M's complaint against Virgin Money plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 March 2020.

Sandra Quinn
ombudsman