

## **complaint**

Mr R complains that Bank of Ireland (UK) Plc has held him liable for a number of credit card transactions that he said he did not make or authorise.

## **background**

In October 2013 Mr R complained to Bank of Ireland about a number of credit card transactions made in December 2011 and January 2012. They were 16 online payments to a gambling website and two cash machine withdrawals, totalling £6,050. He said he was working offshore when the gambling payments were made. He said his wife had admitted using the card and she had been hoping to pay off the debt before he discovered it. They are no longer living together. He reported the matter to the police in June 2013.

Bank of Ireland considered the complaint but decided to hold Mr R responsible for the transactions. Unhappy with the bank's response, Mr R referred his complaint to this service.

Our adjudicator recommended that the bank should return the balance of the account to zero and remove any adverse information from his credit file. Briefly, the adjudicator said:

- Information from Mr R's current account statements and from a letter sent direct from his employers confirms that he was working offshore during the time he said. His employer said that access to recreational websites would have been restricted by IT filters.
- Mr R's credit card had never been used before the disputed transactions. He said he kept the card and PIN in a spare room which he used for his home office, and forgot about it after it had been unused for a while.
- It was quite possible that Mr R's wife knew about the card and took the opportunity to use it. Mr R's current account statement does not suggest that he has a history of gambling.
- A letter was sent to Bank of Ireland in December 2011, just before the disputed transactions, changing the postal address and email address for the account. Mr R had not in fact moved and the new email address included a female name.
- Mr R explained that because his wife had accepted responsibility, he felt he had no reason to report the fraud to the bank. The adjudicator would have expected Mr R to report the matter as soon as he found out, but this was not enough to say that he had accepted liability for the debt.

Bank of Ireland did not agree with the adjudicator's conclusions. It made these points:

- In the bank's view, Mr R was negligent because he kept the card and PIN together in a drawer in his home office.
- Only two statements were sent to the changed address. Later, many statements were sent to Mr R's genuine address but he claims not to have seen any of them. The timings of his offshore work assignments suggest that he would have been living at home when some of the statements were sent.

- The terms and conditions say that if the card is lost or stolen, or the PIN or card number becomes known to an unauthorised person, the card holder must notify the bank immediately. Mr R did not do that.
- Mr R reported the matter after the 13-month limit set by the Payment Services Regulations. He tried to recoup the money from his wife and she initially took full responsibility. It seems that she did not repay him for the loss and it was only then that he reported the matter to the bank. This is a domestic issue, for which Mr R is now holding the bank responsible.

### **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, my decision is that Mr R should not be held liable for the disputed transactions.

I have looked at the copy of the letter changing the account address and I am satisfied that it was not written by Mr R. It therefore appears that someone tried to divert Mr R's statements to a different address at the time of the disputed transactions. His absences from home created an opportunity for the card to be found and misused. I note the absence of any other gambling transactions on his credit card and current account. Mr R says that he did not make or authorise the disputed transactions, and that his wife later admitted she had made them. Taking all the circumstances into account, I conclude that on the balance of probabilities – that is to say what is more likely than not to have happened – it is likely that Mr R's wife took the card and made the transactions without his knowledge or permission. I also think it is likely that she concealed account statements from him.

I have some sympathy with the bank because of the length of time that elapsed before Mr R complained about the disputed transactions. Mr R said he had never seen any credit card statements, but the bank clearly has doubts about that, pointing to the many statements sent to his correct address after the transactions. I agree that his wife would have found it difficult to conceal all of the statements from him. It may be that Mr R discovered his wife's deception at some point but then delayed notifying the bank longer than he should have, hoping that his wife would settle the debt.

However, the core question in this case is not whether Mr R handled the complaint wisely, but whether he authorised the disputed transactions – or later accepted responsibility for them. I have already said that I do not believe that Mr R made the transactions or authorised his wife to make them. Looking at his behaviour after the transactions, I do not see any reason to conclude that he accepted responsibility for the debt. He made no repayments and he eventually reported his wife's actions to the police.

Even if Mr R should have taken action sooner, I cannot see that the bank has suffered any loss as a result of the delay. There was no further abuse of the account, so I do not think the slowness of Mr R's reporting of the problem is material to the complaint. For the same reasons, I do not think Mr R's failure to comply with the account terms and conditions regarding prompt notification should mean that he is liable for the transactions.

The bank has pointed to the provisions of the Payment Services Regulations, which state that a payment services user is entitled to redress only if the provider is notified no later than 13 months after the debit date. I should say here that I am required to reach a decision by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

The relevant legislation is one factor that I take into account, but it is not the sole determinant of what is fair and reasonable. I find it difficult to see how an unauthorised transaction can be fairly regarded as authorised simply on the grounds that the complainant did not report it soon enough. I have concluded, from the evidence, that the disputed transactions were carried out fraudulently and without Mr R's knowledge, and again I do not think it would be fair to say that the lateness of his complaint made him liable for them.

As this is a credit facility, I have not considered whether or not Mr R was negligent in keeping his card and PIN in a drawer at home. The Consumer Credit Act states that a customer should not be held liable for any loss arising from misuse of a credit facility by someone else, unless it was a credit card acquired with the customer's consent. As I am satisfied that Mr R did not consent to anyone else using the card, I do not think he can be held liable for the debt.

### **my final decision**

My final decision is that I uphold this complaint and require Bank of Ireland (UK) Plc to reduce Mr R's account balance to zero. The bank should also remove from Mr R's credit file any adverse information registered as a result of the events in this case.

Colin Brown  
**ombudsman**