

## **The complaint**

Ms E complains that AIB Group (UK) Plc, trading as First Trust Bank (“First Trust”) hasn’t refunded transactions that she didn’t make during 2021 and 2022. She said she’s lost over £6,000.

## **What happened**

The details of this complaint are well known to both parties, so I won’t repeat them again in full here. Instead, I’ll summarise what happened and focus on giving the reasons for my decision.

Ms E told us she noticed in February 2022 that money had been going missing from her account during 2021 and 2022, though she believes it may have also been happening before this. She thinks someone ‘skimmed’ her card and was using it for everyday spending like food and fuel. The disputed payments all appear to be for the same merchant.

Having raised this with First Trust, it refunded around £800. Ms E was unsure why it only refunded this amount when she believes the losses to be much more. She also raised dissatisfaction with the adviser that she spoke with about the matter.

First Trust said it refunded a total of 23 transactions which were all to the one merchant. The refund was for every transaction made to that merchant from 1 November 2021 to 3 December 2021. It also offered £100 which it said was because it hadn’t investigated the disputes as requested by Ms E and because of the situation surrounding a charge for duplicate statements.

First Trust told our Service that it gave the refund of around £800 without investigating the matter. It said all of the disputed transactions were made via Chip and Pin and that the card was physically present, providing evidence to support this – including those it provided a refund for. So, it indicated that, on reflection, it wouldn’t have given a refund. But it said it wouldn’t be looking to recoup this amount.

Our investigator considered this complaint. He concluded that the remaining disputed payments raised, with that same merchant, had been authorised – and that it was Ms E who had authorised them. He didn’t think there was a plausible explanation as to how someone could have carried out the transactions. And he noted details such as how the payments continued to be made even after Ms E’s card was replaced. He also noted that later payments, which weren’t disputed, continued in a similar pattern.

Ms E disagreed. She said she doesn’t use her card in the pattern that the statements show, visiting the merchant multiple times in a day would be impractical, and the card has been on her at all times – so believes it must have been copied. So, the complaint has been passed to me to decide.

## **What I’ve decided – and why**

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 agree with the outcome reached by our investigator – I'll explain why.

As the investigator outlined, the relevant regulations here are the Payment Services Regulations 2017 (the PSRs) which explain that a payment out of someone's account can only be considered authorised if the payer has consented to it. While First Trust has been able to evidence that Ms E's physical card and PIN were used, meaning the payments were properly authenticated, this doesn't necessarily mean that Ms E consented to the payments. Someone else could have used her card, for example, which is what she's alleged has happened here. So, I've had to carefully consider whether I think Ms E authorised the payments.

Looking at all the evidence provided, I'm not persuaded that it would be plausible for someone else to have been using the card in the way in which Ms E has suggested. This would involve someone accessing Ms E's physical card, using it, and then returning it on multiple occasions without her realising. In addition to this, Ms E has explained how the card was in her possession at all times, her details weren't written down, and she'd never given her card or PIN to anyone else to use on her behalf.

I also note that, while Ms E doesn't recall using the card multiple times a day with the same merchant, she hasn't ultimately disputed that she did use that merchant. So to dispute all the payments made to that merchant when some of them are likely to have been genuine, seems unfair to First Trust. I do recognise that with the passage of time and the number of payments involved, it would be hard to recall which payments she made and which she didn't. But I then return to my above point which is that I can't see how it would be plausible for the card to have been used and returned repeatedly by someone else, unbeknownst to Ms E.

I note, as the investigator also has, that having reported this issue to First Trust, Ms E's card was replaced. Following Ms E reporting the matter to First Trust, the card was again used with the same merchant and sometimes with multiple transactions in a day. So, the pattern of spending continued in much the same way as it had done before – yet it doesn't appear that these later payments were disputed. Given everything I've seen, I'm not satisfied that it's plausible for anyone other than Ms E to have carried out these transactions.

Ms E, at her request, was given an opportunity to provide evidence that she didn't make these payments, but this wasn't ultimately provided. On that basis, I don't think it would be fair to ask First Trust to refund *any* of the disputed payments in 2021 and 2022. It has said it isn't looking to recoup the funds and it has also offered £100 for service errors. It would seem reasonable for it to pay the £100 compensation, if it hasn't already, given that it said it would. But I won't be asking it to do anything further – even if I had sufficient evidence of additional poor service, I'm satisfied she's been compensated beyond what I would have asked of First Trust.

### **My final decision**

For the reasons given above, I don't uphold this complaint against AIB Group (UK) Plc trading as First Trust Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 31 August 2023.

Melanie Roberts

**Ombudsman**