

Misuse of a bank card - interpretation of cardholder's due diligence

Topic: **Abuse and fraud** Case number: **2017/08**

During a burglary of his home, the client had his bank card stolen along with a plain piece of paper with his PIN number written on it. Before the client became aware of the incident, the perpetrators of the offence had made two withdrawals amounting to 10,000 CHF in total at a cash point. As the bank refused to entertain his request for compensation, the client contacted the Ombudsman. The Ombudsman then intervened with the bank and asked it to reconsider its position. In spite of a second intervention by the Ombudsman with the bank, the latter maintained its initial position but offered to pay the client the sum of 2500 CHF as a gesture of goodwill. Having tried in vain to convince the bank to change its position, the Ombudsman presented the bank's proposal to the client who felt it was unsatisfactory. Eventually the client accepted the aforementioned proposal, thanking the Ombudsman for his help.

The client was on holiday abroad when his home was burgled. In addition to the resulting material damage, items worth more than 60,000 CHF were stolen from him. The burglars also stole the client's bank card along with a plain piece of paper on which he had written a combination of numbers, which the burglars clearly recognised as a PIN number. Before the burglary was discovered and while the client was unable to block his bank card, the unknown perpetrators had used the stolen card and PIN number found to make withdrawals amounting to 10,000 CHF in total at a cash point.

Upon the client's request, the bank refused, several times, to enter into any discussion on the matter. Essentially, the bank maintained that in addition to having written his PIN number on a piece of paper, the client had also kept that number and his bank card in the same room and had, therefore, made them easily accessible. By so doing, the client violated his contractual due diligence obligations under the card usage terms and conditions. The bank was also of the opinion that the client should have taken additional precautions to safeguard his bank card and PIN number given the high daily withdrawal limits agreed upon.

The client contacted the Ombudsman as he did not consider the bank's argument that he had breached his contractual due diligence obligations to be well founded. The client referred to the explanations he gave the police during his interview in connection with the burglary and the wrongful cash withdrawals. He disputed the bank's reasoning in particular and pointed out that, even though the bank card and PIN number were in the same room, they were hidden in two separate pieces of furniture in his bedroom: the bank card in his desk drawer and the piece of paper with the PIN number on in his bedside table drawer, concealed under a large quantity of medications.

Initially, the Ombudsman asked the bank to reconsider the case in light of these arguments from the client and the particular circumstances of the case in question. In an initial statement of position, and without commenting on the various arguments put forward by the client, the bank confirmed the opinion already sent to the client directly and offered to pay him compensation of 2500 CHF as a gesture of goodwill. Since the Ombudsman felt that the main issue in this case had not yet been resolved, he intervened with the bank again. He then asked the bank to explain why it felt that the contractually stipulated due diligence obligations had been violated given the circumstances of this specific case.

In a second, more detailed, statement of position, the bank stated that there was no contractual provision or circumstance in this case which would lead to the conclusion that the bank was obliged to bear the loss suffered by the client. It felt that only the cardholder should have to bear such a loss. The bank also pointed out that the facts alleged by the client are based solely on his own testimony and that a PIN number should be kept strictly confidential. If, in spite of everything, the client wished to write down his number, he should have done so while exercising particular care. The bank further maintained that it is well known that a burglar will search for items of value in the bedroom in particular, so to find desk and bedside table drawers open and rifled through is to be expected. After all, the perpetrators found the bank card and PIN number there relatively quickly and easily. Both were therefore very much "easily accessible" to their eyes. Armed with these arguments, the bank refused to increase its offer of compensation.

The Ombudsman agreed with the bank that the contractual provisions were the starting point for determining whether or not the bank is obliged to indemnify the client for the loss suffered as a result of the misuse of his bank card. Under the terms of these provisions, the banks generally only cover such losses where the client has complied with the terms and conditions for use of the card as a whole and is not at fault in any way, having fulfilled his due diligence obligations in full. The matter of whether or not the conditions required for compensation have been met or not in a particular case is open to interpretation.

In this case, the Ombudsman did not interpret the due diligence obligations in the same way as the bank and found the latter's proposal to be unsatisfactory. The contractual terms and conditions did not in fact prohibit writing down and keeping the PIN number. Nor did they require the client to keep the card and associated PIN number in separate rooms or to take specific precautions in the case of high withdrawal limits. Finally, the bank's offer did not take adequate consideration of the fact that the bank card and PIN number were kept in a locked home to which the perpetrators gained access by force. Having tried in vain to convince the bank to change its position, the Ombudsman presented its offer to the client along with his own assessment of the case. He explained to the client that in light of his repeated interventions, it seemed unlikely to expect the bank to make any additional gesture during mediation. Eventually, the client accepted the bank's offer and thanked the Ombudsman for his efforts.