



Bulletin No 10
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ATM BANKING

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The purpose of this information note is to provide a background of the types of Automated Teller Machine (ATM) scams that occur, guidance as to how they should be investigated and how the Ombudsman for Banking Services (OBS) evaluates complaints of this nature.

ATM complaints received generally relate to a certain category of incident. The instances mentioned below set out the most common types of complaint and how the incidents may have occurred.

ATM card reader jammed-card retained

The typical scenario is that the complainant proceeds to the ATM with the intention of making a withdrawal. Unknown to the complainant a thief has inserted a foreign object into the ATM card-reader: this causes the card to be stuck in the card-reader. After he has inserted his card the ATM does not respond in any way. This is due to the fact that the ATM does not register that a card has been inserted. The screen does not change or request the person to enter his Personal Identification Number (PIN). The victim then enters his PIN in the hope that the ATM responds. He often also presses the cancel button in an attempt to retrieve his card. The card is, however, not ejected. The complainant, thinking the ATM has legitimately retained his card, then leaves. The thief, who had been standing nearby, has seen the complainant enter his PIN and is now aware of what his PIN is. After the complainant leaves, the thief removes the object that he placed in the card reader and retrieves the card. He then rushes to the nearest ATM and draws as much money from the complainant's account as the system permits.

Card reader jammed-card swapped

Another variation on the abovementioned scam is the card-reader jam and swap. Here the thief jams the card reader with a foreign object. As soon as the victim unsuccessfully tries to insert his card into the ATM, the thief approaches offering to help. The thief then puts his hand over the victim's card as it is inserted into the card reader and by means of sleight-of-hand he then substitutes an old card he had in his hand with the victim's card. He then inserts this old card into the ATM and requests the victim to enter his PIN. The victim, thinking his card has been inserted, enters his PIN. The thief, now having seen the PIN and being in possession of the card, disappears to another ATM nearby to withdraw. In the meantime the ATM indicates to the victim that the card is invalid and has been retained. Alternatively the ATM does not recognise the card that has been inserted and does not respond at all. The victim then leaves, thinking he will contact the bank later to get his card back. When he does contact the bank, he is then informed that withdrawals have been made from his account. The thief might use accomplices to observe the PIN if the victim insists on the thief leaving the area while he enters his PIN. It is also possible that the thief can approach the victim before the card has even been inserted making it unnecessary for the thief to tamper with the card reader in advance.

Thin plastic sleeve

This scam involves the thieves putting a thin, clear, rigid plastic 'sleeve' into the ATM card slot. When the victim inserts his card, the ATM cannot read the strip, so it repeatedly asks him to enter his PIN number. Meanwhile, someone behind him watches as he taps in his PIN.

Eventually the victim leaves, thinking the ATM has swallowed his card. The thieves then remove both the plastic sleeve and the card, and withdraw from the victim's account

Assistance in phoning the bank to cancel the card

Many people are still being tricked by this old scam. It involves the card being swapped by various means as described above. The thief then offers to call the bank's lost card division on the victim's behalf using his cell phone. The victim, after speaking to the supposed lost card division, is brought under the impression that his card has been cancelled. In fact it was a member of the syndicate he spoke to and the card is not reported as stolen. The method may either be used to obtain the victim's PIN (the syndicate member asks the victim for his PIN under the guise of it being necessary to cancel the card) or it can be used to delay the reporting of the card.

There are various other ways in which the ATM scams can be perpetrated. They all however involve a similar theme of observing the complainant's PIN and obtaining the card in such a way that the complainant does not realise what happened. The crime can also be committed by a team of thieves simply distracting the complainant as the money is ejected or a deposit is made and then stealing the cash or deposit envelope.

The Code of Banking Practice

All our decisions on ATM complaints are generally based on the law, the Code of Banking Practice (the Code) and fairness. The bank often refers us to the terms and conditions document sent to card holders. This document essentially holds the complainant liable for any transaction on the account whether fraudulent or not. The terms and conditions must however be evaluated in conjunction with the Code. To a large extent all the relevant terms and conditions are in any event reflected in the Code. The following clauses of the Code are specifically applicable to any ATM related complaint:

- 3.9 “[The bank will].....provide reliable banking and payment systems services and take reasonable care to make these services safe and secure;
- 5.8 *Cards, PINS, passwords, and other unique means of personal identification*
- ◆ We may issue you a *card*, or replace one that has already been issued, and may charge fees for this.
 - ◆ Your *PIN* (Personal Identification Number), *password* and other *unique means of identification* are strictly confidential. Where a *bank* supplies these, they will be issued only to you, separately from your *card* where applicable. You should never disclose your *PIN*, *password*, or other *unique means of personal identification* to anyone, and specifically not any employee of the *bank*.
 - ◆ We will tell you if you can select your own *PIN*, *password* or other *unique means of personal identification*. We will encourage you to avoid birth dates and simple sequences numbers such as 1111; 12345 and so on.
 - ◆ We will inform you of the procedures to change your *PIN*, *password* or other *unique means of personal identification* when the need arises.
 - ◆ We will publish the contact details you should use to report lost or stolen *cards* or chequebooks in statements, at *ATM*'s or through other means of communication to you.

5.9 Responsibility for losses

- 5.9.1 After you inform us that a chequebook, savings account book, *card* or electronic purse has been lost or stolen or that someone else knows your *PIN*, *password* or other *unique means of personal identification*, we will take immediate steps to prevent these from being used to access your account.
- 5.9.2 Subject to sections 5.9.3 and 5.9.4, we will refund you the amount of any transaction together with any interest and charges associated with the disputed transaction:
- ◆ where you have not received your *card* and it is misused by someone else;
 - ◆ for all transactions not authorised or effected by you after you have informed us (and we have given you a reference number) of the information listed in 5.9.1 (except “e-cash” transactions which we cannot audit).
 - ◆ if additional money is transferred from your account to your electronic purse after you have informed us of its loss or theft (and we have given you a reference number) and you have informed us that someone else knows your *PIN*, *password* or *unique means of personal identification*; or
 - ◆ where system malfunctions have occurred in *ATMs*, or associated systems, which were not obvious or subject to a warning message or notice at the time of use.
- 5.9.3 If you act fraudulently you will be liable for all losses. If you act negligently or without reasonable care and this has caused or contributed to losses, you may be liable. This may also apply if you fail to follow the safeguards set out in sections 5.11, 5.13 and 5.14.
- 5.9.4 Where a credit *card* transaction is disputed, we accept the burden of proving fraud or negligence or that you have received your *card*. In such cases we expect you to co-operate with us and with the police in any investigation.”

Information needed when dealing with ATM complaints

The main problem associated with ATM complaints is to determine what in fact happened at the scene. The complainant will often only provide us with a very short overview of what happened. He may only state that his card was retained at the ATM when he wanted to make a withdrawal and he later discovered that withdrawals had been made from his account. It is expected of the banks to commence the investigation of any complaint relating to ATMs as soon as it is reported, in terms of the principles detailed below, irrespective of whether the complaint is finally reported to the OBS or not.

It is essential that the bank obtains a clear and detailed, step-by-step version of what happened at the ATM from the complainant right at the outset. In addition to this, relevant background information should be obtained from the appropriate sources.

The lists of questions below serve as a guideline for gathering the information from the respective sources (some of the questions will only be applicable to certain banks depending on their individual systems and processes).

Information to be obtained from bank sources

1. Were the recommended site standards complied with at the ATM where the incident occurred? Furnish an ATM incident monitoring report / risk profile for the ATM concerned, to indicate whether the ATM was tampered with or not? (if applicable and relevant)
2. Did the ATM have a video camera on site? If so, preserve the video footage for viewing.
3. Did the ATM have a telephone on site in good working order?
4. Can it be confirmed that the ATM had no malfunction or problem at the time of the incident?
5. Provide an accurate record of the transactions concerned, with times and places etc, together with the relevant Audit trail + Tally roll.
6. When was the call to cancel the card received?
7. Provide an account statement showing which transactions are in dispute.
8. Did the client make any statement to the bank regarding the incident? If so, provide us with a copy thereof.
9. Can the bank provide any evidence as to the identity of the person that withdrew the money from the ATM.?
10. What are the complainant's daily withdrawal limits for his ATM card?
11. Were the limits increased or decreased by the card holder? If so when?
12. Were funds transferred from the complainant's account to another account?
 - When was the account to which the funds were transferred opened?
 - What happened to the funds in that account?
 - Were the proper procedures followed in opening the account?
13. Does the complainant have any secondary cards linked to his account? When was the card and PIN issued? Were new cards and/or PINs requested and when? When was the card cancelled?

Information to be obtained from the Complainant

1. Kindly advise what transpired at the ATM step by step.
 - What the ATM prompted you to do at what stage?
 - Did you receive the money requested from the ATM?
 - Was anyone near you or in your vicinity at the ATM?
2. Indicate on your statement which transactions you are disputing.
3. Where did you keep your card - how did you keep a record of your PIN?
4. Were you alone at the ATM? Was any other person within the vicinity of the ATM? Were there any people near you at the ATM? Was anyone present when you tried to withdraw money? Did you speak to anyone while at the ATM?
5. Did you ask anyone for assistance? Did anyone assist you? Did they possibly see your PIN?
6. When you inserted your card did the screen change in any way?
7. Did you enter your PIN at any stage while you were at the ATM? If so, at what stage?
8. Did the screen prompt you to enter your PIN? If not, why did you enter your PIN?
9. Did you phone the bank's lost card reporting number after the card was retained?
10. On precisely what date and at precisely what time did you report your retained card to the bank?
11. Why did you not report the card as lost when it was not ejected by the ATM?
12. Kindly advise whether any third party had access to your card and PIN?
13. Have you had any secondary cards linked to your account?

Once we have all the relevant information referred to above we may be able to make a finding on what had happened at the ATM. This involves an objective evaluation of the facts available and drawing a conclusion on what most likely happened based on the given facts. It is often very difficult to make a finding which is consistent with the version of both parties. If we are unable to reconcile the complainant's version with known or likely scenarios (as referred to above) we would generally be unable to make a finding on what happened and would thus be unable to make any finding as to liability.

Once we have made a finding on what must have happened we would be in a position to do an evaluation of the merits of the matter and make a finding as to liability.

Evaluating an ATM crime related complaint

The evaluation of an ATM related complaint involves a weighing up of the various factors that contributed to the loss being incurred by the complainant. These factors can include (but are not limited to) the finding we make on the following factors:

- How the thief obtained the PIN.
- Whether the ATM was tampered with in some way.
- Whether the bank took reasonable precautions to prevent ATM crime occurring at that ATM.
- Whether the ATM in question had a history of ATM related crime.
- Whether the ATM had cameras or any other form of additional security installed to prevent ATM crime.
- Whether the thieves used physical force against the complainant to obtain the card.
- Whether the complainant reported the loss of the card to the bank within a reasonable time.

Approach to ATM crime related complaints

The bank has a duty, in terms of the Code, to provide reliable banking and payment systems services and take reasonable care to make these services safe and secure. The bank therefore has a duty to take reasonable precautions to prevent ATMs from being tampered with or being used as a means of stealing money from card holders.

The card holder also has a duty to take reasonable precautions at an ATM to prevent his card or PIN from being stolen or observed.

In card swapping scenarios the victim often allows a person to assist them when they are struggling to insert their ATM card into the ATM card reader. It is at this time that the thief, using sleight-of-hand techniques, swaps the victim's card for another and creates the impression that the victim's card has been inserted into the ATM. The complainant is therefore tricked into believing that the card has not been stolen. The victim is expected to report the loss of the card to the bank. Any unreasonable delay in doing so is can be regarded as negligent. The question however arises as to whether or not the victim had sufficient reason to believe that his card had been lost or stolen. When the card is retained by the ATM under circumstances as described above, the victim is often under the impression that his card has legitimately been retained by the ATM and is not lost or stolen. He therefore does not report the card as lost or stolen to the bank.

An assessment will be done of whether or not the card-holder was adequately warned in this regard or he reasonably should have known based on the circumstances of the incident. Each case would have to be assessed on its merits to determine whether or not the victim's belief in this regard was reasonable or not. All these factors and evidence is taken into account when evaluating the complaint.

The approach taken above is in accordance with international standards but allows for the uniqueness of the South African situation. Countries such as North America, United Kingdom and Australia have codes of conduct limiting the loss to a negligible amount. These countries do not however appear to experience the same type of ATM crime that is perpetrated in South Africa and therefore a more general policy, which looks at all the surrounding circumstances, is more appropriate here.

In deciding on a fair outcome we are generally guided by the two key elements of the crime – the ATM tampering and the observing of the PIN. Both factors, irrespective of the way in which they were done, contribute to the eventual loss suffered. In appropriate circumstances we will recommend that the bank bear a certain percentage (i.e.50%) of the total loss suffered by the complainant. Each case will however be assessed on its merits to determine an appropriate award (if any).

Debiting of account to which stolen funds have been transferred

A bank may generally not unilaterally debit an account, to which a suspected fraudulent transfer has been made. However it is commonly found that accounts are opened with the single intention of receiving fraudulent transfers. Where a transfer has been made resulting from an ATM related incident as described above, it would be reasonably expected of the bank to “freeze” the account to which the transfer has been made pending investigation. The bank could give notice to the account holder that his account had been used for the purposes of an illegal transfer and that the funds will be returned to the victim. We have had instances where the bank was able to recover some of the funds transferred under these circumstances without objection. Each case would be evaluated on its own merits.

Time of call to stop the card

A common dispute which arises in many complaints is the time of the call to cancel the card. As clients become more aware of the need to report the card quickly, the time taken to actually get through to an operator and provide the correct information becomes critical. The thieves also act immediately once they have obtained the card and the PIN. We have dealt with numerous cases where the call to cancel the card was made before the time of the fraudulent withdrawal but the card was only cancelled seconds or minutes afterwards. The bank then denies responsibility for the withdrawal. In these circumstances it can be said that the complainant has done all he can to report the card in time, he cannot be held responsible for the time it takes to actually cancel the card on the system. While the logistics and necessity of verifying the card holder’s account details before the card can be cancelled is noted, there is nothing more the complainant can do to ensure the process is immediate.

In the interests of fairness and the spirit of the Code the time at which the card was reported as lost or stolen will be taken as the time the call is made to the call centre, not when the call is actually answered or the card is actually stopped on the system. Therefore, should the call to stop the card have been made before the withdrawals had taken place, the bank will be expected to reimburse the complainant for those fraudulent withdrawals. Should the call have been made after the fraudulent withdrawals, all the factors mentioned in this bulletin would then still be applied and evaluated to determine an appropriate award (if any).

In this regard we endorse the actions of at least one bank that reimburses clients for losses in certain circumstances even if the call was made after the fraudulent withdrawals had taken place. The bank in question evaluates ATM claims based on all the principles set out in this bulletin.

Phantom withdrawals

So called Phantom withdrawal complaints involve the account holder reporting unauthorised ATM withdrawals from his account. The account holder will deny ever losing possession of his ATM card or that anyone had access to his PIN. The complainant will then hold the bank responsible for the withdrawals.

To investigate these types of complaints we would need the following information from the bank and complainant:

- A bank statement from the complainant in which he clearly identifies the withdrawals he disputes and when he noticed the withdrawals the first time.
- Confirmation from the bank that only one card was allocated and issued to the complainant.
- The tally rolls for each disputed transaction which will indicate whether the card and PIN were used to make the withdrawal.
- The location of every ATM from which a disputed withdrawal was made and whether the complainant had made withdrawals from those same ATMs previously.
- Confirmation whether the complainant's card could have been duplicated (cloned).
- Information as to where the card is ordinarily kept and whether anyone else has access to it.
- Information as to whether the PIN was recorded or divulged in any way

Taking into account all the relevant information we may then make a finding on a balance of probabilities as to whether or not the bank was in any way responsible for the fraudulent withdrawals.

Disputed withdrawals

The complainant will allege that the ATM did not eject the cash after he had requested a withdrawal or that the actual cash dispensed was less than what he requested.

We will need the following information from the bank:

- The tally roll for the transaction concerned
- The electronic journal showing the number of notes and denominations dispensed.
- Proof that the physical cash in the ATM was reconciled and balanced. We would need the actual document signed by the ATM custodian showing the actual amounts which were counted and compared.

Once we have this information we may make a finding as to whether or not the money was dispensed or not.

Disputed deposits

The complainant will state that he deposited a certain amount of money at an ATM. When receiving his account statement it then reflects a deposit of a lesser amount or that the deposit envelope was empty.

To investigate complaints of this nature we would need the following from the bank:

- The ATM audit trail listing the deposits made for the relevant ATM
- Statements from the ATM custodian staff who removed the envelope
- The documents signed by the staff noting the disputed deposit
- Extracts from the relevant manual noting the procedure followed in removing ATM deposit envelopes
- Any video footage of the removal and opening of the envelope

Once we have this evidence we may be able to make a finding on liability.

Conclusion

ATMs are used by the majority of bank customers for cash withdrawals and general banking transactions. While we acknowledge that losses due to ATM crime forms a small percentage of the total number of transactions performed daily, it is very important that bank clients are satisfied that ATM banking is safe. If ATM banking is not perceived to be safe it could have dire consequences for the banks.

The various steps in preventing losses to customers due to ATM crime include the following:

- Informing customers of ATM related crime and methods to prevent it
- The banks taking reasonable physical precautions in making ATMs safe and secure from crime on an ongoing basis
- The banks settling reasonable claims for losses incurred due to ATM crime

Any complaint received regarding ATM crime will be evaluated on its own merits and in accordance with this information note.

Adv Neville Melville
Ombudsman for Banking Service