

JUSTCARD -v- CYBERSAFE

1. Prepaid cards allow customers to make purchases and withdraw cash from a sum of money they have paid to the card provider. JustCard is a small pre-paid card processing business, with its own processing system called "ProcessSys".
2. On 1 February 2011 JustCard's Risk Manager, Glenda Avery, was informed that on 26, 27 and 28 January 2011 unauthorised ATM withdrawals totalling £15.8 million had been made. More than 10,000 individual withdrawals had been carried out using 50 counterfeit prepaid cards from over 2,100 ATMs in 30 countries.
3. Justcard was insured with Cybasafe pursuant to a Cyber Protection Policy for the period 1 January 2011 to 31 December 2011. The Risk Manager, Ms Avery, notified insurers of the unauthorised withdrawals on 2 February 2011 and this notification was accepted as valid.
4. ProcessSys was shut down immediately by Justcard. The sums which had been unlawfully withdrawn were all re-credited to cardholders' accounts by Justcard by 3 February 2011.
5. On 2 February 2011, Justcard instructed a law firm (Merrick & Brent LLP), a public relations consultant (Aterbury LLP) and an information systems specialist (Rolland Dean) to conduct a thorough investigation of their systems, infrastructure and processes. On advice from Merrick & Brent, it notified the police, the FSA, the Information Commissioner's Office and the Serious Organised Crime Agency of the fraud and, thereafter, gave all assistance that it could to the criminal investigation.
6. On advice from Merrick & Brent and Rolland Dean & Co, JustCard implemented the following remediation programme:
 - Containment steps: cancelling cards, contacting counterparties.
 - Enhanced security steps: significant work was carried out to enhance security, including applications, network, systems, databases, fraud management and IT staffing.
 - Future security model: rolling review plan and IT updates planned.
7. JustCard did not keep Cybasafe properly abreast of its remediation programme or the expenses that it was incurring in implementing it. In particular, it did not specifically advise or seek the express approval of Cybasafe before incurring any of the costs arising from its remediation programme. However, Justcard's swift and systematic response has avoided the risk of any further similar attack and has won plaudits from the relevant government agencies, reducing reputational damage.
8. Rolland Dean's investigations revealed that a cyber intruders gang, known as "SpookNet", had been able to exploit weaknesses in the security system. SpookNet had been able to obtain prepaid card data, manipulate card balances, and using

counterfeit cards withdraw the sums of money from ATMs. Whilst JustCard's systems were top of the range in 2009 when installed, better products had become available. The security system had been due to be upgraded in the autumn of 2010, but this had not been done for budgetary reasons. Had the upgrade been carried out, the attack could not have been made; however, the system would still have been vulnerable to attack and could still have been circumvented by SpookNet.

9. JustCard suffered losses of about £73m:

Initial fraud losses	£15m
Crisis management (PR)	£24m
Recall of pre-paid cards	£26m
Long-term remediation	£5m
Other potential liabilities	£3m

10. JustCard sought to be indemnified by Cybasafe to the full extent of its losses. Insurers declined cover for the following reasons:

10.1. In relation to the failure to upgrade the system in autumn 2010:

10.1.1. JustCard failed, at placement, to disclose the fact that it had not upgraded ProcessSys in line with the manufacturers' recommendations because it was too expensive. That was a non disclosure of a material fact which entitled Cybasafe to avoid cover.

10.1.2. Alternatively, the loss is excluded because it arises out of a failure on the part of JustCard to use best efforts to install commercially available software product updates and releases.

10.2. If there is cover, it does not extend to the initial fraud losses, because the customers themselves suffered no loss: monies had been re-credited to their accounts by Justcard without any claims being made.

10.3. If there is cover, it does not extend to the crisis management costs. The Cyber Safe Policy indemnifies against crisis management costs incurred with the prior approval of underwriters, but JustCard did not ask for approval before incurring costs.

11. JustCard have issued proceedings in the Commercial Court for a full indemnity under the Policy.