

The complaint

Mr R complains Creation Services Ltd will not refund some disputed transactions.

Creation say the transactions were authorised and so, Mr R is liable.

What happened

On 13th July 2019, Mr R complained to Creation about some transactions made on his card the previous day. He said he was in a bar in Spain, he thinks he his drink was spiked by the bar and consequently, he entered his PIN for transactions he had not made.

He had reported the matter to the police and had seen a doctor – but no evidence of any drug was discovered. Mr R says this was because he was told the traces only remained for a matter of days.

Creation rejected his complaint. It said the card was still in Mr R's possession and his correct PIN had been entered. In the circumstances, it was holding him liable. In its final response to Mr R, it offered £50 for the poor service it had provided.

When Mr R came to this service, our investigator thought Creation could have done more. She explained to Mr R that the payments would be treated as authorised – because intoxication (in the context of payments) did not invalidate consent. However, she (the investigator) thought Creation should have picked up on the unusual activity on Mr R's account that day and should have sought to question it. Had it attempted to make contact with Mr R to check he was genuinely making the payments, his level of intoxication may have come to light and he would have been prevented from making any more.

Our investigator did not think the first two transactions were out of character – but once the amounts had increased and spending had exceeded Mr R's usual spending, Creation should have been on notice that all was not well.

Mr R agreed to this view, but Creation did not. It asked for an ombudsman's decision.

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.

Its accepted that these payments were authorised. The Payment Services Regulations 2017 say so. But I am afraid the investigator is right – Creation should have been on notice that the activity on Mr R's account was not his usual.

I've considered the relevant regulations, codes of practice and good industry practice at the time and I think it would be fair and reasonable to expect Creation to have been monitoring accounts for any payments to counter various risks, to have systems in place to look out for unusual transactions or other signs indicating that Mr R may be at risk and in some

circumstances to decline a payment altogether to help protect customers from financial harm.

Creation has not been able to show this service comparable transactions on Mr R's account. There is no dispute over the authorisation of the transactions – but I am afraid on this occasion, Creation has failed to act in accordance with its duty to exercise reasonable skill and care.

For these reasons, I intend to uphold this complaint in part.

The offer of £50 from Creation, I understand, is still available for Mr R to accept.

Putting things right

Creation Services Ltd must refund the transactions made from when it should have been alerted that all was not well. This means the transaction for £723.61 onwards, totalling £1463.40.

It also needs to re-work Mr R's account and place it back into the position it would have been in had these transactions not been allowed to happen.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 March 2021.

Shazia Ahmed
Ombudsman