

The complaint

Mr G complains Creation Financial Services Limited will not refund some disputed transactions. He also complains he was allowed to exceed the cash limit placed on the account.

What happened

In July 2019, Mr G contacted Creation about some transactions on his account. The transactions he complained of were to a gambling website – L - and were made between December 2018 and June 2019. Mr G held an account with L but said he hadn't made these transactions. It was a family member and he had not noticed earlier as he was not keeping an eye on the account.

He also complained that he was able to exceed the cash limit on his account. The cash limit was £2000 and Mr G said he was currently at a balance of over £7000. He said this should not have happened.

Mr G said he knew the person who had been making the transactions and told Creation that he didn't think this was a case of fraud and he didn't want to get the police involved. During one of his earlier calls with Creation, he said he wasn't disputing any of the transactions up to the £2000. He said anything over £2000 should have been declined. He also wanted to know why Creation's fraud team had not picked up on the transactions.

On a number of occasions, during the calls with Creation, Mr G repeated that he knew who had made the transactions, he was not pursuing the transactions as fraud and wanted to know why he was allowed to go over his credit limit to this extent.

Creation did not uphold Mr G's complaint. In its final response issued in August 2019, it told Mr G that the payments could be made because they were authorised against Mr G's overall credit limit – not just the cash limit of £2000. It also said it was no longer allowing gambling transactions to be made from September 2019 – although it wasn't clear whether this was a decision which affected just Mr G. Finally, it told Mr G that he could bring his complaint to this service.

When we considered Mr G's complaint, our investigator thought Creation could have done more. He thought Mr G had authorised the transactions – but having looked at the terms and conditions of Mr G's account, he (the investigator) said that gambling transactions were classed as cash transactions. On this basis, he thought Mr G should be able to assume that he would not be able to exceed the cash limit of £2000. Because Creation had allowed him to do this, it was fair and reasonable for it to refund all the fees it had charged Mr G for going over the cash limit of £2000 along with any interest charged on these fees.

However, our investigator thought Mr G to be liable for the balance on the account.

Neither Creation nor Mr G agreed.

Creation said it was wrong to suggest that gambling transactions would be authorised

against the cash limit only.

Mr G wanted Creation to write off the balance over £2000, to remove all handling fees, interest and late payment fees and to remove any negative entries against his credit file.

The matter was then passed to me for a final 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.

I've also considered the question of authorisation when looking at Mr G's complaint as I note from the calls with Creation, Mr G says on several occasions that a family member had made the transactions. I've then gone on to consider the issue of the balance of the account.

were the transactions authorised?

Generally speaking, if the evidence suggests that it's more than likely that Mr G authorised these transactions, Creation is entitled to hold him liable for them. The relevant rules - the Payment Services Regulations 2017 - say this.

But authorisation is a two-stage test which consists of the element of authentication and the element of consent.

Creation hasn't been able to show us evidence of authentication – that is evidence that Mr G's card was used to make these transactions – because it says too much time has passed and it has not retained this information. Neither can it provide us with information to show the IP address which was used to make the transactions.

I've thought about whether this affects my decision, but I don't think it does. Mr G says the person making the transactions was a family member who lived at the same address – so the IP address wouldn't be anything unusual. And I think I'm satisfied that it was Mr G's card which was used to make the transactions – because he told us that he had left his card stored with all his log in details for the account he held with L.

So, looking then at consent. For the following reasons, I think Mr G consented to these payments being made;

- the account which was being used with L was Mr G's account. I can't see how a third person would benefit from making these transactions where any winnings would simply be paid back into Mr G's account;
- Mr G says he was in hospital for some parts during the period of the disputed transactions. He hasn't provided us with evidence to show *when*, but I don't think this would take us any further as we have no record of the IP address used;
- the transactions had been taking place for approximately eight months before Mr G complained. I think it's likely Mr G would have noticed this balance increase sooner if he was not the one making them;
- Mr G had a previous relationship with L;

credit limit

I agree with the investigator here – the terms and conditions of the account clearly refer to

gambling transactions as an example of a “cash advance”. So, I think it is unfair and unreasonable for Creation to insist that the transactions were authorised against the total credit limit of Mr G’s account rather than just the cash limit – whilst at the same time treating the transactions as cash transactions.

That said, I must consider what is fair and reasonable in the circumstances of this complaint and I don’t think it would be fair to hold Creation liable for the balance over and above the cash limit.

I’ve considered my findings regarding authorisation and I’ve thought about what a fair resolution to Mr G’s complaint would be. I think it’s right that a customer holds some responsibility in exceeding the limit in the way that Mr G has and so I think the investigator’s proposal is a fair one.

Finally, having listened to the calls between Mr G and Creation, I think the customer service levels fell short of what would be expected. Mr G had reason to chase on several occasions when Creation failed to call him – and he was given conflicting information from advisers as to whether he should or should not have been able to exceed the cash limit on the account. For the poor service, I think Creation should pay Mr G £150.

Putting things right

For the reasons given above, Creation Financial Services Limited should:

- refund all the cash handling fees charged to the account after it exceeded the cash limit of £2000
- refund all interest charged of the cash handling fees
- pay Mr G £150 for the poor service he received during the telephone calls.

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 2 June 2021.

Shazia Ahmed
Ombudsman