

The complaint

Mr B complains that Caxton FX Ltd failed to refund transactions he didn't recognise.

What happened

Mr B held an "e-money prepaid card" with Caxton. The card was used to hold funds to be able to pay for items in different currencies. These types of cards are generally used when travelling abroad.

Mr B says he was last abroad in Europe in 2019 when he used his card and checked the balance when he returned home. His next trip the following year was postponed due to the Covid pandemic and it wasn't until later in 2020 that he had occasion to check his card. He found that all the remaining funds had been removed and contacted Caxton about it.

Caxton confirmed that the remaining funds had been withdrawn from an Automated Teller Machine (ATM) that was based on a different continent and took place a week or so after Mr B's last trip in 2019. Caxton told Mr B that they couldn't raise a "Chargeback" because it was beyond the 120-day time limit imposed by the scheme operator, in this case Mastercard. A "Chargeback" is a way to challenge card payments and is a process that forms part of Mastercard's scheme.

Caxton advised Mr B to raise a fraud dispute but weren't confident they would be able to help. Mr B asked Caxton to again look into the situation and they declined to refund Mr B because he was beyond the "13-month" rule set out in the terms and conditions of the account that Mr B had agreed to. This set a time-limit for notifying Caxton about problems related to payments using the card.

Mr B remained unhappy with how Caxton had handled his situation and brought his complaint to the Financial Ombudsman for an independent review. It was looked at by one of our investigators who asked both parties for further information.

Mr B explained that he'd never been to the same continent where the withdrawal took place and still had possession of his card. He did say that he'd been asked to swipe his card twice whilst abroad in 2019, which he's since thought was unusual. Mr B was also unhappy with how Caxton had dealt with dormancy fees and he thought he should have been contacted by Caxton once his account was emptied.

Caxton's position remained unchanged in that they relied on the "13-month" exclusion. Our investigator thought that the circumstances of the situation meant that it was appropriate for Caxton to look into the disputed transactions, even though they were over 13 months after the date of the disputed transactions.

Caxton explained that since the transaction had taken place, they'd changed the processor of their cards. They were able to obtain some information from their old processor that showed two withdrawals from Mr B's account using an ATM. Caxton said this was proof that the genuine card was used with the correct Personal Identification Number (PIN). Caxton explained that Mr B's card had a Chip in it, which meant that when it was entered into the

ATM, the genuine card was read by the machine and once the PIN was entered, it delivered the remaining funds. Caxton maintained their position about the refund to Mr B. They removed the dormancy fees and said they'd tried to contact Mr B about his account.

Our investigator thought that it was reasonable for Caxton to hold Mr B liable because the genuine card and PIN had been used and didn't uphold Mr B's complaint.

Mr B disagreed with the investigator's outcome and sent in a photo of his Caxton card. He explained that he'd never been further than Europe and asked for a further review of his complaint.

I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

13 Month exclusion

The issue of whether it was reasonable for Caxton to rely on the "13-month" exclusion was discussed in some detail in the investigator's outcome. Essentially there's a clause in the Payment Service Regulations 2017 (PSRs) that puts a time limit (13 months) on reporting unauthorised or incorrectly executed transactions. This clause was also present in the terms and conditions that Mr B signed. But, in certain circumstances, the disputed transactions can be investigated after this date if it's fair and reasonable to do so.

Caxton themselves accept that their cards are often used for trips that tend to have gaps between them. In Mr B's case, he had a trip booked the following year and had checked his account when he came home from the 2019 trip. I'm not surprised he didn't check the card again for some time, as he knew the balance after the last trip. Once his following year's trip was cancelled he'd have no further reason to check the card again. By the time he looked at his balance, the "13-month" limit had already passed. Mr B did contact Caxton as soon as he was aware of the problem and I think it's both fair and reasonable for the "13-month" clause to be excluded here.

Authorisation

The relevant law surrounding authorisations are also contained in the Payment Service Regulations 2017. The basic position is that Caxton can hold Mr B liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Coming to the question of authorisation, this is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Caxton have supplied evidence that shows Mr B's card and PIN were used to make the transactions. Caxton have argued that the information they obtained from their old processor shows that Mr B's genuine card and PIN were used to make these transactions because the Chip was read on the card.

This is important because unless Caxton can show it was the genuine card that was used to make the withdrawal, the evidence already supplied by Mr B would seem to indicate it couldn't have been the genuine card used to withdraw his funds. Having examined the authentication evidence, I've not been able to confirm if the information shows Mr B's genuine card was used. That's because the information doesn't show if the Chip has been read. What that means is without this particular information, the card used to make the withdrawal can't be confirmed it was the actual card Mr B was issued with by Caxton or if it

was a “cloned” card.

Cards such as the one issued to Mr B can be “cloned”. That usually means the data held on the magnetic strip is copied on to another card. If the person who cloned it was also able to acquire the PIN, then the ATM would recognise the “cloned” card and release the funds. Mr B has provided photographic evidence that he has his genuine card and I find it unlikely that this card was used on a different continent and returned to him. Mr B explained that he’d had an unusual transaction the last time he used it when he was abroad, so it’s plausible that the details of his card and PIN were obtained at that point.

So, the current evidence provided by Caxton doesn’t satisfy the requirements that the two withdrawals were properly authenticated. Without that, the transactions were unauthorised, and I don’t think it’s fair or reasonable for Caxton to hold Mr B liable for them.

My current thinking is that because Caxton haven’t met the requirements to show the transactions were properly authenticated, and thus unauthorised, I’m intending to uphold Mr B’s complaint. I’ll be instructing Caxton to refund Mr B the two withdrawals, add simple interest at 8% from the date the transactions were first noted (not from the date they were made as Mr B had no intention of using the money at that point). Also, to award Mr B £75 for the inconvenience of losing access to his funds. I understand Mr B wasn’t seeking compensation, but I think it’s warranted here. Mr B also wanted his dormancy fees refunding which Caxton have already done, so I don’t need to address this point further.

I invited Mr B and Caxton to give me any more evidence and information they wanted me to consider before issuing my final decision. Both parties replied and accepted my provisional 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.

Having done so, and as both parties accepted my provisional decision, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Putting things right

In order to put Mr B back in the position he was prior to the loss of his funds and recognise the inconvenience caused to him, Caxton FX Ltd are instructed to refund the two disputed transactions, add simple interest at 8% simple from the date the loss was noted (reported to Caxton) to the date its repaid and pay Mr B £75.

My final decision

My final decision is to uphold this complaint against Caxton FX Ltd and they’re required to:

- Refund two disputed transactions to Mr B, recorded as totalling £187.25.
- Add 8% simple interest from the date they were noted (reported to Caxton) to the date they’re repaid.
- Pay Mr B £75 for the inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 April 2022.

David Perry
Ombudsman