

The complaint

Mrs M complains that Bank of Scotland plc (BoS) hasn't refunded a payment of £49.99 which she says she didn't make.

What happened

Both parties are aware of the details of what has happened, so I won't go into too much detail here. In summary, Mrs M gave her debit card to her partner, Mr M, so that he could purchase a game on a games console. A few weeks later, an additional payment of £49.99 was taken by the games console company (GC) which Mrs M says she didn't authorise.

Our adjudicator said the payment was for a subscription service in Mr M's name and was therefore a genuine transaction, so he did not uphold the complaint. Because Mrs M disagreed with this, the complaint was then passed to me.

I considered all the evidence available to me and came to a different outcome to that of the adjudicator. I wrote a provisional decision which read as follows:

Firstly, I've considered whether the payments themselves were authorised by Mrs M. Generally, the starting point is that BoS can hold Mrs M liable for the disputed transaction if the evidence suggests it's more likely than not that she made or authorised it herself. This position is confirmed in the Payment Service Regulations 2017 (PSRs) and the terms and conditions of her account.

In this case, the genuine card details were used to make the transaction, and so the payment was correctly authenticated. But this alone doesn't mean that Mrs M is liable. She also needs to have consented to the payment – either by making it herself or allowing someone else to act on her behalf. So, I need to consider whether BoS has acted fairly in concluding that she did.

Mrs M has confirmed that she gave her authority for Mr M to use her debit card to make a one-off purchase on the game console for around £7 on 4 May. She has confirmed that she was unaware her card would be saved onto the console and that it was possible for it to be used for further purchases. She has confirmed the console is not hers and she has never saved a payment card onto it before. Looking at Mrs M's statements, I can't see any payments made to GC prior to 4 May 2021. Mr M has also said he was unaware that the card had been saved onto the console and he's never saved a card to the console previously. This ties in with evidence Mr and Mrs M have submitted showing previous payments for Mr M's subscription service was provided by a third-party company and paid for via Paypal.

I've considered Mrs M's comments and I find them plausible. On balance, I think it's more likely than not that Mrs M was unaware her card details had been saved onto the console and could therefore be used to make further purchases on it. It therefore follows that I do not think Mrs M gave her authority for the card to be added to the console and used to make the purchase on 24 May 2021. Instead, I think it's more likely she gave her authority for a one-off purchase to be made and then she took her card, and therefore authority, back. So, based

on what I've seen so far, I currently do not think BoS has acted fairly in holding Mrs M liable for the transaction of £49.99 made on the account.

It should also be noted that following the dispute being raised with BoS and them contacting GC, Mr M's subscription was then cancelled meaning he had to buy another one. So there has been no benefit from the unauthorised £49.99 that was charged.

I've gone on to consider the relevant regulations related to this complaint including section 77(4)(d) of the Payment Service Regulations (PSRs). This sets out that, except where a payer has acted fraudulently, they aren't liable for unauthorised transactions where the payment instrument has been used in connection with a distance contract (other than an excepted contract).

A distance contract is a transaction that is completed without the merchant or consumer being physically present. Here, the transaction was made via a games console. So, I'm persuaded that Mrs M's debit card was used in connection with a distance contract – and I've not seen anything to suggest that it's an excepted contract.

As I've explained, section 77(4) establishes that Mrs M is only liable for unauthorised transactions in connection with a distance contract where she's acted fraudulently. Based on what I've seen, there's no indication that Mrs M has acted fraudulently here. So, taking everything into account, my current thinking is that I'm satisfied this was an unauthorised transaction, where Mrs M's debit card was used in connection with a distance contract (that wasn't an excepted contract).

It follows that she's not liable and I'm intending to instruct BoS to put things right – by refunding Mrs M the £49.99 alongside simple interest at 8% per annum to compensate her for the time she's been out of pocket.

I appreciate Mr and Mrs M's comments about thinking GC has fraudulently created documents to hold them Mrs M liable for the transaction. I've seen nothing to suggest this is the case and regardless, I've focused on the actions of BoS and not GC.

BoS responded to my provisional accepting my findings in light of the points I had raised.

Mrs M responded and accepted my outcome but felt that compensation for the distress and inconvenience the issue had caused was warranted. She said that considering the stress, amount of telephone calls, cost of fuel and general time spent trying to fix the issue, she felt £500 compensation was acceptable.

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.

As both parties agree with my findings in relation to the refund of the £49.99, I see no reason to deviate from the findings set out in my provisional decision.

I have considered Mrs M's comments about compensation for the distress and inconvenience the matter has caused her.

This is something that I had previously considered when reaching an outcome that I thought was fair. While I can understand that this has been stressful to deal with, I have to consider

the impact alongside what I've recommended to put the complaint right, the actual loss that Mrs M incurred and the actual error made by BoS.

Mrs M reported the disputed payment on 24 May and BoS gave her a temporary credit of the funds the following day. I can see they contacted the merchant soon afterwards to find out more about the payment and were active in responding to them. They were then in regular contact with Mr and Mrs M to ask them questions about the payment. So, I don't think they caused unnecessary delays in the investigation of the disputed transaction.

While I do agree that BoS came to the wrong outcome on this case and should not have held Mrs M liable for the transaction, I do think they reached this outcome in good time. And I note BoS paid Mrs M £24.20 on 1 July 2021 to cover any petrol and call costs she incurred when dealing with the claim, so they have covered the related costs that Mrs M incurred. This was paid into her BoS current account in two payments of £17 and £7.20. I've also considered the fact that the amount in question is £49.99, which is a relatively low amount and wasn't higher than some regular transactions Mrs M was making at the time.

Considering all of this, I think the refund of the £49.99, plus 8% simple interest and the £24.20 already paid to Mrs M is fair in the circumstances.

My final decision

I uphold this complaint and instruct Bank of Scotland plc to refund Mrs M the £49.99.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 22 November 2022.

Rebecca Norris

Ombudsman