

The complaint

Mrs G complains that John Lewis Financial Services (JLFS) did not refund a number of payments made on her credit card.

What happened

Both parties are aware of what happened, so I won't go into too much detail here. The crux of the issue is that a series of transactions were made to a gaming console company (GC) which Mrs G did not recognise. She later realised her son had made the payments but she did not authorise them and felt they should have flagged as suspicious.

Our investigator looked into the complaint and felt JLFS had not acted unreasonably when it didn't flag the payments as suspicious and that as Mrs G set up her credit card on the games console she effectively gave authority for the payments.

Mrs G disagreed and asked for the complaint to be reviewed by an ombudsman. She also provided some additional information; that she did not give her authority for the credit card to be added as a payment option to the console.

I issued a provisional decision on the complaint setting out that I intended to uphold it. My reasoning was as follows:

The first thing I've considered is whether the payments themselves were authorised by Mrs G. Generally, the starting point is that JLFS is able to hold Mrs G liable for the disputed transactions if the evidence suggests it's more likely than not that she made or authorised them 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 transactions, and so the payments were correctly authenticated, but this alone doesn't mean that Mrs G is liable. She also needs to have consented to the payments – either by making them herself or allowing someone else to act on her behalf. So I need to consider whether JLFS has acted fairly in concluding that she did. Looking at the bank's records, I can see that the card details were saved onto the 'digital wallet' of the games console. When asked about this, Mrs G has confirmed that whilst she had previously given her son her card information for specific payments on the console, she was unaware her credit card details had been saved to the console. So she likely gave permission for her card to be used to make a purchase on the console but did not give permission for it to be added to the console. She says she was unaware that purchases on the console could therefore be made using her credit card on further occasions without her permission. I've considered Mrs G's comments and I find them plausible

There were some sporadic payments to GC since Mrs G received her new credit card in November 2020, but these were only one or two a month prior to May 2021. Mrs G has said she did not notice these on her statements, which I think is understandable. On balance, I think it's more likely than not that Mrs G did not add her credit card details to the console or know that they had been added. Once Mrs G was questioned further around this, she has

been consistent with her testimony and I have no reason to doubt what she has said.

It therefore follows that I do not think Mrs G gave her authority for her credit card to be added to the console and for it to be used to make purchases. Instead, she likely gave authority for a specific purchase to be made and then took her credit card back. JLFS doesn't appear to have asked for the level of detail we now know, and I think if it had done so that it would have (or ought to have) concluded that Mrs G hadn't authorise the disputed payments. With this in mind, I do not think JLFS has acted fairly in holding Mrs G liable for the transactions made on the credit card account.

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 transactions were made via a games console. So, I'm persuaded that Mrs G's credit 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 G 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 G has acted fraudulently here. So, taking everything into account, my current thinking is that I'm satisfied these were unauthorised transactions, where Mrs G's credit 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 JLFS to put things right – by refunding Mrs G's losses from these transactions alongside simple interest at 8% per annum to compensate her for the time she's been out of pocket and a payment of £100 for the distress and inconvenience caused to Mrs G. This should be from the second payment on the games console on 1 December 2020 onwards as I think this is the fairest point.

Mrs G responded to my provisional decision agreeing with my recommendation.

JLFS responded and said that while they did not agree with my findings, they would accept 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.

As both parties have responded accepting my provisional decision, though I do note that JLFS did not agree with my actual findings, and neither party has provided any additional comments or evidence for me to consider, I see no reason to deviate from my provisional decision. So, for the reasons set out above, I uphold Mrs G's complaint.

Putting things right

John Lewis Financial Services should:

- Refund Mrs G the transactions from 1 December 2020 onwards

- Effectively rework the account so that any interest charged on the disputed transactions is also refunded.
- If this would have resulted in a credit balance, pay 8% interest on that balance.
- Pay Mrs G £100 compensation for the distress and inconvenience caused.

My final decision

I uphold Mrs G's complaint and I instruct John Lewis Financial Services to refund the transactions, rework the account and pay 8% simple interest if warranted, as outlined in more detail above. And it should pay her £100 compensation for the distress and inconvenience the matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 18 November 2022.

Rebecca Norris
Ombudsman