

The complaint

Mr S complains that Contis Financial Services Limited failed to refund transactions he didn't recognise.

What happened

Mr S became aware of a number of transactions to an online food delivery merchant I'll refer to as P. Mr S didn't recognise these transactions and notified Contis about them. During the conversation, Mr S told Contis that he'd been helped by his friend to set up an account with a different online merchant because he didn't know how to do it. His friend completed the new account which included adding the payment details from Mr S's debit card.

Contis declined to make a refund to Mr S and told him he'd breached his terms and conditions by allowing his card details to be known to another person. Contis also told Mr S that this prevented them from following up with a Chargeback request. Chargebacks are a system operated by the card operator and are subject to various rules.

Contis advised Mr S to approach P directly. P refused to provide Mr S with information about the account holder because of data protection provisions. P told Mr S that his bank (Contis) should contact them and gave Mr S a specific reference number related to his enquiry. They also told Mr S they would ask their account holder to contact him – but this never happened.

Mr S complained about how his issue had been dealt with but Contis refused to change their position. Mr S then brought his complaint to the Financial Ombudsman for an independent review. It was looked into by one of our investigators who asked for information from both parties. Mr S explained what had happened and speculated that it may have been his friend who could have copied the details or photographed them when helping him – but he couldn't be sure about this.

Contis supplied limited information about the complaint. Our investigator upheld Mr S's complaint.

Contis were then able to supply audit data about the transactions and made several points about the investigator's outcome:

- That Mr S breached his terms and conditions by not keeping his card details safe.
- That the matter should be for the police to investigate.

The complaint was passed to me and 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.

Mr S described being made aware of the payments to P because he noticed his account had less money than he thought it should have done. When he called Contis, they were able to

explain that several payments had been made over the previous few months to P. Mr S told Contis that he didn't have an account with P.

Contis discussed the situation with Mr S and he speculated that his card details had been acquired by a close friend when Mr S had asked them for help setting up an app. I asked Mr B about this app and he explained it was to allow him to book transport – rather than to order food.

Mr S doesn't know if it was his friend who was responsible for using his card details – although he suspected it was them when he first became aware of the disputed transactions. When Mr S tried to get the information from P, they wouldn't disclose anything to him – which seems to indicate that the account was set up in another person's name.

Having looked at the payment data supplied by Contis, it's apparent that these payments were set up using Mr S's card details to allow additional transactions (with P) to be carried out. I don't doubt Mr S's version of events that he wasn't responsible for these transactions and Contis's belief that Mr S let others obtain his card details supports this as well.

So, I'm satisfied that Mr S wasn't responsible for making these transactions – essentially they were unauthorised. I've gone on to consider the relevant regulations related to this complaint, including section 77(4)(d) of the Payment Service Regulations (PSRs), which explains that, except where a payer has acted fraudulently, Mr S isn'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 defined as per the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. In summary, it means a transaction that is completed without the merchant or consumer being physically present.

Here, the transactions made on Mr S's account was to a provider of online food delivery services. So, I'm persuaded that Mr S's payment instrument was used in connection with a distance contract – and I've not seen anything to suggest that it's an excepted contract.

Contis case is that Mr S is liable for these transactions because he breached his terms and conditions – essentially that he either acted fraudulently, failed with intent or was grossly negligent with the security of his card details. But, as I've explained, section 77(4) establishes that Mr S's only liable for transactions in connection with a distance contract where he's acted fraudulently. That means I don't need to consider gross negligence or intent here. And I note there's no suggestion by Contis that Mr S acted fraudulently.

So, taking everything into account, my current thinking is that I'm satisfied these were unauthorised transactions, where Mr S's payment instrument was used in connection with a distance contract (that wasn't an excepted contract). It follows that he's not liable and I'm intending to instruct Contis to put things right – by refunding Mr S's losses from these transactions alongside simple interest at 8% per annum to compensate him for the time he's been out of pocket and a payment of £100 for the stress and inconvenience caused to Mr S.

I invited Mr S and Contis to give me any more evidence and information they wanted me to consider before issuing my final decision. Contis accepted my provisional decision and Mr S didn't have anything further to add about his complaint.

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 Contis accepted my provisional decision and Mr S had nothing further to add, 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

I'm satisfied these were unauthorised transactions, where Mr S's payment instrument was used in connection with a distance contract (that wasn't an excepted contract). It follows that he's not liable and Contis are instructed to refund Mr S's losses from these disputed Transactions. This alongside simple interest to be paid at 8% per annum to compensate him for the time he's been out of pocket (interest is payable from the time of the reported loss to the date of repayment) and a payment of £100 for the stress and inconvenience caused to Mr S.

My final decision

My final decision is that I uphold this complaint and instruct Contis Financial Services Limited to settle the complaint as detailed above, accepting that some payments have already been made.

If Contis considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 August 2022.

David Perry
Ombudsman