

The complaint

Mr C, the sole director for L, a limited company, complains that New Wave Capital Limited ("Capital") won't refund a transaction it didn't make.

What happened

Mr C received a call from someone pretending to be from Capital's fraud team. He recalled they told him there was some suspicious transactions on L's account and they requested onetime passcodes to stop them. Mr C said he didn't share any information.

That day, Mr C saw a payment had been made from L's account for £4,975.00. He contacted Capital to dispute the payment. It declined to refund Mr C – it said it couldn't see how the transaction was made unless Mr C shared the onetime passcode.

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, I've reached the same outcome as our investigator for these reasons:

- Capital's concern is that Mr C hasn't provided evidence to suggest this transaction was completed fraudulently nor has he stated he shared the onetime passcode with an unauthorised third party.
- Where it's not clear how things unfolded, I need to make a decision based on the balance of probabilities. In other words, I must decide what's *more likely than not* to have happened – I don't need to be sure.
- Here, I'm persuaded it's more likely than not that L didn't make this transaction and it was the victim of fraud. In reaching this, I've reflected on how:
 - The payment is out of character with L's spending – it's more in value and its nature, jewellery, is very different to L's typical business spending.
 - The payment coincided with a call from someone pretending to be from Capital's fraud team who asked for information that would've allowed them to complete it.
 - Other payments were attempted in quick succession with some declined. This fits the pattern we'd typically expect to see with unauthorised spending.
- I also consider it's more likely than not that Mr C did share a onetime passcode. Like Capital, I've considered there's no other likely explanation for how this could've happened. That's not to say it's impossible that something else happened but rather, I think it's more likely that Mr C simply shared the information.

- I recognise Capital's concern that Mr C remains adamant he didn't share anything. But his stance doesn't mean it couldn't have happened. Our experience dealing with these scams shows how often people are cleverly coached and tricked into sharing sensitive information – often acting in the heat of the moment without fully appreciating what they're doing. I'm also mindful of the reasons why people aren't forthcoming about their own involvement – for example, out of embarrassment or fear they won't get refunded.
- And I don't think this conclusion means that L will get something that it wouldn't have otherwise been entitled to. Afterall, I've not given Mr C the benefit of the doubt here. My judgement is that he did share the information and it's that which forms the basis of my assessment under the Payment Services Regulations 2017 (PSRs).
- The PSRs say L isn't liable for a payment it didn't authorise, unless it failed with gross negligence or intent to comply with the terms of the account or keep its personalised security details safe.
- I've already explained why I don't think L made this transaction. Instead I think it was the fraudster that went through the steps on the merchant's website to make the payment. So, in line with the PSRs, I'm satisfied it was unauthorised.
- And I don't think Mr C failed with intent. While the circumstances aren't all clear, I think it's likely any actions he took were in response to the fraudster's explanation that someone else was trying to use L's account. I don't think he deliberately shared sensitive information.
- I'm also not persuaded L has shown Mr C failed with *gross* negligence – in other words, that he was *significantly* careless; acted *so far below* what a reasonable person would've done; or *seriously* disregarded an *obvious* risk.
- Mr C received a call from Capital's fraud team, who knew information about L, including some of their card details. So I can see how they gained Mr C's trust.
- I've also noted that L had recently reported other fraud on its account. So I can see how the context of the call – that someone was trying to make transactions - made sense and likely concerned Mr C at the time.
- Mr C recalled he was asked for codes to stop the attempted transactions. In the heat of the moment, when he trusted the caller, I can understand why Mr C would've shared this information. I've noted Mr C's comments when he reported the fraud that he was told to expect the codes and these then genuinely came through from Capital. I can see how this would've added weight to his trust in the caller.
- So in all, I think it's likely that Mr C was convinced into sharing information by a clever, well-timed scam. And I don't think Capital has shown Mr C's actions meant L failed with *gross* negligence. So I conclude Capital need to put things right – by restoring L's account to how it would've been had this unauthorised payment not been taken. I've set out how Capital must do that below.
- I've also noted Capital paid L £50 for it's delays in its investigation, which I think is a fair reflection of L's inconvenience. I've not made a further award.

My final decision

For the reasons I've explained, I uphold L's complaint. New Wave Capital Limited must:

- Refund L the total of the unauthorised transaction, less any amount recovered or refunded – I understand this to be £4,975.00.
- Rework L's account and refund any interest and charges, along with amending L's credit report to remove any negative reporting, that were caused by the transaction. If L repaid the borrowing created by the transaction, Capital should also add 8% simple interest per year from the date it repaid the borrowing to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 27 January 2023.

Emma Szkolar
Ombudsman