

The complaint

Ms W complains NewDay Ltd trading as Marbles won't refund her for transactions she didn't make.

What happened

Ms W allowed her grandson to buy some in game currency for an online game using her Marbles card on two occasions, each for £7.99. When Ms W received her statement, she saw there was over £800 of further purchases a few days after the second, agreed one.

Ms W explained to Marbles she hadn't authorised the payments, and Marbles asked her to contact a disputes team. It doesn't seem Ms W did this for a while, and when she did Marbles started a section 75 claim. Marbles declined this claim.

Marbles explained the transactions were less than £100 each, so it couldn't refund any under section 75. Marbles refunded two months interest on Ms W's credit card, as a gesture of goodwill, and advised her to take things up with the online retailer.

Unhappy with this response, Ms W brought her complaint to this service. An investigator looked into things and thought Ms W's complaint should be upheld.

The investigator thought Ms W hadn't made or authorised the payments, so it was unfair for Marbles to hold her liable. The investigator thought Marbles should refund all the disputed payments and refund any associated interest.

Marbles responded to say there were no section 75 rights, no breach of contract as Ms W's grandson made the purchases, Ms W could attempt a fraud claim but Marbles thought this was a civil matter between her and the online retailer.

Marbles asked for an ombudsman to decide things.

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 a general rule, it's fair for Marbles to hold Ms W liable for payments where the evidence suggests she made or authorised them. And it's generally unfair for Marbles to hold Ms W liable for payments where the evidence suggests she didn't make or authorise them.

Ms W has told this service she let her grandson, who's quite young, purchase a small amount of virtual currency for an online game, using her credit card. Ms W hasn't disputed these two £7.99 purchases.

A few days after her last, agreed purchase, lots of purchases to the same retailer came out. It's likely Ms W's credit card had been stored at the retailer, but I don't think Ms W knew this.

Ms W's grandson doesn't live with her, and the games console the online retailer is attached to is registered to her grandson's stepfather. Ms W doesn't have an account with the online retailer and email confirmations after each purchase weren't going to Ms W.

In the circumstances, I don't think Ms W would have agreed to have her card details stored.

I've considered the previous, authorised payments to the same retailer. But previous use of the same retailer doesn't mean Ms W must have authorised all the future purchases. I have to determine whether Ms W made or authorised these further transactions, after the two she did authorise.

Ms W has been consistent in her testimony and has tried to sort things out with her grandson's guardians and the online retailer. I don't believe Ms W would have gone to these lengths if she'd authorised the payments.

It's much more likely Ms W's grandson clicked on purchases, and these were immediately debited from Ms W's stored credit card details. This means I don't think Ms W made or authorised the payments, so it would be unfair for Marbles to hold Ms W liable for them.

Marbles agrees Ms W's grandson made the payments, but says this is a civil matter between Ms W and the online retailer. But Ms W can also dispute the payments with Marbles, which she has, and I don't believe Marbles can hold her liable for them.

My final decision

My final decision is I uphold this complaint and NewDay Ltd trading as Marbles must:

- refund all the transactions on Ms W's credit card that debited on 2 July 2020
- refund all the associated interest on these purchases
- if these refunds place Ms W's credit card in a credit balance, pay 8% interest on this credit balance from the date the credit arose to the date of settlement*

*if NewDay Ltd trading as Marbles deducts tax from any interest payment it must supply Ms W with a tax certificate if she requests one

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 1 February 2023.

Chris Russ
Ombudsman