

The complaint

Mr G complains that Madison CF UK Limited trading as 118 118 Money ('118 118 Money') is holding him liable for a transaction he didn't authorise.

What happened

Mr G managed various credit and debit cards through a third-party app, I'll refer to as "C". Mr G had uploaded his 118 118 Money credit card on to the C app. On 20 October 2021 he received a notification through the C app that £345 had debited his 118 118 Money account by a telecommunications provider, I'll refer to as "V". As Mr G didn't have an account with V and hadn't authorised the transaction, he contacted C for help. C didn't reply immediately and so Mr G disputed the transaction with 118 118 Money.

118 118 Money initially provided Mr G with a temporary refund and agreed to raise a chargeback claim with C. 118 118 Money later re-debited Mr G's account as it said C had defended the chargeback claim, having provided evidence that Mr G had an existing relationship with V. Mr G challenged this decision with both C and 118 118 Money. He provided evidence from V that it had no record of the £345 transaction, and that it had advised him to contact his bank. Mr G explained that while he had previously paid V, on behalf of his mother who did hold an account with it, the £345 transaction was not connected to her account.

Mr G sent 118 118 Money evidence that C had accepted the chargeback and that he should receive a refund. Despite this 118 118 Money maintained that it could not provide Mr G with a refund as the chargeback had been unsuccessful. It also explained that it could not consider a fraud claim, as Mr G had said he had given his mother access to his C account, and as a result he was in breach of the terms of the account by failing to protect his credit card from unauthorised use.

Mr G remained unhappy and referred his complaint to the Financial Ombudsman Service. Our Investigator upheld the complaint and recommended that 118 118 Money refund Mr G £345 plus any interest accrued because of the transaction. He explained 118 118 Money had not evidenced Mr G authorised the payment and there was evidence from C that it was no longer challenging the chargeback, so in either event Mr G should not be held liable for the transaction.

Mr G accepted our Investigator's recommendations but 118 118 did not. It said it had 'extensive evidence' to demonstrate that Mr G had negligently allowed a third-party access to his C account, and so did not protect his 118 118 Money credit card from unauthorised use. Our Investigator asked 118 118 Money to provide the evidence it had referred to, but he received no response.

Before reaching a decision on this case, I reached out to 118 118 Money to ask again for the evidence it sought to rely on that this transaction had been authorised by Mr G, or someone acting on his behalf, as this was something Mr G denied. I also asked it to explain why it felt the chargeback would still be unsuccessful despite us receiving clear evidence from C that it had accepted it. I asked 118 118 Money to reply by no later than 2 August 2023.

Having received no response from 118 118 Money, I issued my provisional decision on 24 August 2023, explaining why I was minded to uphold Mr G's complaint. I have set out my provisional findings below, but in summary I explained that in the absence of any evidence to show Mr G had authorised the payments I was unable to conclude 118 118 Money was acting fairly in holding him liable for it.

What I've provisionally 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'm upholding this complaint.

The Payment Services Regulations 2017 set out that "it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service's account and not affected by a technical breakdown or some other deficiency in the service provided by the payment service provider".

While 118 118 Money hasn't confirmed either way, I have inferred from its reference to Mr G acting 'negligently' that it has accepted the payment in dispute wasn't in fact authorised by him. Which matches what Mr G has asserted – and I've seen no persuasive evidence to suggest he did authorise the payment.

Under the Payment Services Regulations 2017, the starting position is Mr G is liable for transactions he authorised, but 118 118 Money would be liable for transactions he didn't make or authorise. The exception is if it can demonstrate that Mr G failed with intent or gross negligence to comply with his obligations as a payment service user, and that gross negligence enabled the transaction to take place.

118 118 Money appears to believe Mr G allowed his mother access to his C app, in breach of the terms and conditions of his account.

Having carefully considered the evidence available, I'm not persuaded this is the case. Mr G said in a call to 118 118 Money when he reported the unauthorised transaction that he had, in the past, made payments to V on his mother's behalf. He did not say he had allowed his mother access to his account in order to make the payments herself. So, in the absence of any evidence to indicate something different, I'm not persuaded that Mr G breached the terms and conditions of his account.

But even if Mr G had allowed his mother to use his C app in the past to make payments, I don't think this would meet the high bar to say he'd acted with intent or gross negligence or that the gross negligence had resulted in the disputed transaction.

Ultimately, V has confirmed that the transaction in dispute did not relate to Mr G's mother's account and the money had not credited her account. So even if Mr G had previously allowed his mother to make payments from his account, there is nothing to suggest this links in any way to the payment now in dispute.

As 118 118 Money has been unable to demonstrate that Mr G either authorised the payment or acted with gross negligence, I cannot conclude 118 118 Money has acted fairly in holding him liable for the transaction.

I'm also mindful that evidence received from C suggests that it had accepted the chargeback claim, and so I would have expected Mr G's account to have already been recredited. Again, despite being afforded an opportunity to explain why Mr G's account

had not been recredited 118 118 Money has not responded.

My provisional decision

For the reasons given above, I currently intend to uphold this complaint and direct Madison CF UK Limited trading as 118 118 Money to:

- Refund Mr G £345*
- reconstruct the account to remove interest and charges relating to this transaction, and*
- pay Mr G 8% simple interest (less any tax properly deductible) on any repayments he has made in relation to this payment from the date each payment was made to the date of settlement.*

Mr G accepted my provisional decision. 118 118 Money responded setting out why it considered a chargeback claim would have failed, as the payment to V was not made direct from 118 118 Money, but rather it was made to C. It made no comment in relation to the authorisation of the payment.

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.

While I've noted 118 118 Money's comments in relation to the likely success of a chargeback claim, as set out above, my reason for upholding the complaint was due to the lack of evidence from 118 118 Money that Mr G had authorised the payment.

As 118 118 Money has made no comment in relation to these findings and as I've seen no evidence to show the payment was authorised, I see no reason to change my findings as set out in my provisional decision.

My final decision

For the reasons set out above, I uphold this complaint and direct to:

- Refund Mr G £345
- reconstruct the account to remove interest and charges relating to this transaction, and
- pay Mr G 8% simple interest (less any tax properly deductible) on any repayments he has made in relation to this payment from the date each payment was made to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 October 2023.

Lisa De Noronha
Ombudsman