

The complaint

Miss L complains that Creation Financial Services Limited won't refund all the credit card payments she didn't make.

What happened

Miss L says she told Creation that she didn't recognise some payments on her credit card account. It made a refund to her. But she says she hadn't been receiving statements and her account was blocked. When she was able to see the information she noticed that there were more payments and reported these too. She is unhappy that no action was taken, and her credit file was affected.

Creation said that in error it hadn't refunded one of the original payments for £7.60. It refunded this. But it said that it hadn't received a response to its request for information about the further payments and hadn't been able to consider these. It said it could look at these but referred to the timescale for making a chargeback and couldn't guarantee the outcome. It said it wouldn't be amending her credit file as she hadn't been making payments. Even during a dispute Miss L would be required to make the minimum payments and taking into account that there had been undisputed payments on her account.

Our investigator recommended that the complaint be upheld in part. Miss L had provided evidence that she had sent details of the further disputed payments to Creation. And had followed this up until she raised the complaint. Our investigator noted that the further payments included some for which Miss L's card would have needed to be present. Miss L had no explanation of how someone could have obtained her card at those times. So, our investigator said that only the further 'card not present' transactions should be refunded. The total amount of those card not present transactions was £665.57. Creation should refund the further ones of £322.40 which she detailed in a schedule plus eight percent simple interest until the refund date. She noted that Miss L said she didn't have online access to her account. But she could have made payments over the phone. And so, there was no basis to alter her credit record. Miss L accepted the resolution.

Creation asked for a copy of the email evidence from Miss L about the further payments as it said it didn't have a record of this. Our investigator sent this. Creation maintained that by the date of contact from Miss L it wouldn't have been able to raise a chargeback because this was outside the 120-day time limit. It said Miss L had received all the statements and there was a note on the statements saying any dispute needed to be raised within 60 days.

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.

I need to take account of the Payment Services Regulations 2017. And to think about whether Miss L authorised the payments from her account. That's more than the payments

being authenticated but would require her to consent to them. So, it's not enough for it just to be authenticated, say with the card details. Where credit is involved, as is the case here on credit cards, the Consumer Credit Act 1974 applies and it states that a consumer wouldn't be liable for an unauthorised payment *unless* they consented to someone else having possession of that card.

I don't have any audit information about these payments other than what is shown on Miss L's credit card statement. So, I'm unable to say that they were authenticated other than with the card details for the card not present payments and the presence of her card for the other ones.

I also need to consider if she consented to them.

I note that all of the original payments she disputed and that were charged back appear to have been permanently refunded. Creation hasn't provided further evidence about what any response to the charge back was. But they were accepted as not made by Miss L.

It has provided internal information which would seem to confirm that as Miss L says when payments are missed statements are 'supressed' and online access removed. So, I can see why Miss L would most likely have difficulty accessing her statements. She says that when she did have access she raised a dispute about further payments. Creation asked her to provide the details of these. And she has provided evidence that she did so. I've seen the statement schedules that she marked and that these were sent more than once. Creation hasn't given any explanation of why it wouldn't have received these.

As our investigator says there are some disputed card present transactions. From what I can see these relate to three specific dates. And on each of those there were card not present transactions disputed too. But Miss L hasn't been able to explain how someone would have been able to have her physical card without her knowing. She didn't report losing this and she was making genuine card payments during the period.

I take into account that Creation undertook no investigation into her further claim. I understand that the way it would have obtained evidence is through the industry chargeback scheme which has deadlines. Miss L has given a plausible and reasonable explanation for not raising the further disputed payments earlier. And I also need to say that my finding on whether there was fraud on the account isn't fairly limited to the outcome of any chargeback process but is about whether I think the payments were authorised.

None of the original card not present transaction refunds were disputed by the merchants on the information I have. So, I agree that it's most likely that these further payments weren't authorised taking into account that there is very limited information about how these were made and nothing further from Creation to show that these were authorised.

Miss L has already received a refund of £343.13 of the card not present payments. The total of card not present payments disputed was as our investigator says £665.57. So, the further refund is a net £322.44. This should be refunded to Miss L with simple interest.

I agree with our investigator that while Miss L was clearly unhappy that no action was taken it was reasonable to expect her to make minimum payments to the account. And that there was a means for her to do so. So, I won't be requiring Creation to make any alteration to her credit record.

My final decision

My decision is that I uphold this complaint in part and require Creation Financial Services

Limited to refund to Miss L the further payments of £322.44 plus simple interest of eight per cent per annum from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 11 September 2023.

Michael Crewe
Ombudsman