

The complaint

Mr K is unhappy that Equals Money UK Limited trading as Card One Money ("COM") won't refund money he lost to a scam.

What happened

Mr K used his COM card to make a series of deposits with an online casino over six months totalling around £34,000. That casino wasn't licensed in the U.K. He amassed £20,027 in his casino account, but when he tried to withdraw the funds he was met with delays and excuses.

Mr K says he was the victim of a scam and should be reimbursed by COM – either under the Lending Standards Board Contingent Reimbursement Model (CRM Code) or by way of the chargeback scheme. He reported the casino to the relevant authorities but they said they couldn't look into the specifics of his complaint or help him recover his money.

COM refused to provide a refund. It said that it was satisfied Mr K had authorised the activity and it didn't have grounds to challenge the payments through the chargeback scheme. An Investigator also didn't recommend Mr K be reimbursed. They thought that a dispute raised through the chargeback scheme wouldn't have been successful. And, though they accepted that COM should have monitored Mr K's account for unusual activity, they also thought that had it intervened and questioned the payments it wouldn't have prevented Mr K's loss.

Mr K didn't agree. He said that the payments were not marked as gambling transactions, he hadn't received a call from COM to confirm any of the activity and, if he had, he would have said that he didn't recognise the names of the recipients.

As no agreement could be reached, the case was passed to me for a final decision.

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'm sorry to learn about what's happened to Mr K but I don't think COM is responsible for his loss. I'll explain why.

There's no general obligation on a firm to refund transactions which have taken place as a result of a scam. And, in law, the starting position is that the account holder is responsible for transactions they've carried out themselves (and there's no dispute that Mr K carried out these transactions).

As our Investigator has set out, COM aren't a signatory of the CRM Code and it, in any case, does not cover payments made by card. But I consider it to be a matter of good industry practice for COM to be on the lookout for unusual and out of character transactions to (among other things) help protect its customers from financial harm from fraud.

The activity I've seen on Mr K's statement appears, unsurprisingly, to be consistent with gambling. That said, the payments were very frequent and amounted to a significant sum over several months. I think that by late August 2021, the frequency and rapidity of the payments ought to have prompted COM to make enquiries of Mr K. But, had it done that, I'm not persuaded his loss would have been prevented.

I can't be sure whether the casino is operating as a scam. It's clearly unlicensed and, I understand, shouldn't be offering its services to customers in the U.K. I also note that other users have reported being unable to withdraw funds and, of course, Mr K was not able to withdraw his own winnings either. Though I note COM's comments about the withdrawal restrictions in the terms and conditions, it doesn't appear that Mr K has even been able to withdraw the limited sums permitted by those terms. On the balance of probabilities, I think it's likely that the casino is a scam, despite the fact it appears to be still operating.

But that doesn't necessarily mean that COM would have been able to identify the casino was operating fraudulently. Had it intervened and questioned the payments in August 2021, Mr K wouldn't yet have had any issues withdrawing funds. I also can't see that there was much in the public domain to suggest the casino was operating fraudulently at that time. There are negative reviews of the casino on a well-known review website, but they weren't posted until after August 2021. And, a number of other (very dubious) websites appear to be promoting the casino.

It's also important to note that, in my experience, scams involving fraudulent casinos aren't at all common. That's likely to be because there are huge numbers of legitimate casinos online, correctly licensed in the U.K., many of which are household names, which offer the same services (or very similar services) without the risk of fraud.

So, I wouldn't necessarily expect COM to be alive to this specific risk. It would have (for many of the transactions) simply seen payments going to gambling related merchants. And, it doesn't appear that Mr K had asked COM to block any gambling related transactions (as many of the recipients had this merchant category code) – so I don't think it would have found this concerning.

I wouldn't have expected COM's enquiries to go beyond establishing the nature of the payments and that Mr K was willingly making them. It should have also given a warning broadly covering various scam risks. But, given the unusual nature of this scam, I can't see that any of those enquiries would have made a difference to Mr K's decision to go ahead. I don't think it reasonably ought to have uncovered that the casino was operating without a license.

While the merchants may have changed for the later transactions, the pattern of activity didn't. So, I don't see any grounds for COM to have intervened again later. But even if it had, I don't think this would have prevented some of the loss either. While Mr K might not have recognised the names of the recipients, he knew that he'd made payments of the same amount to the casino. And, none of the payments which debited his account actually appeared on his statement under the name of the casino. It's hard to see how Mr K wouldn't have been aware of this by the later payments.

I've also considered whether COM made a mistake by not disputing any of the payments through the Mastercard chargeback scheme. The chargeback scheme allows card payments to be disputed – but only for specified reasons and under certain conditions. I wouldn't expect COM to raise claims unless there was a reasonable prospect of them being successful.

I don't think COM made a mistake by not raising any chargeback claims – for both the payments that were made to businesses with a gambling related MCC code and those which weren't. Mastercard's rules do not allow chargebacks in relation to gambling where the dispute is about the ability or otherwise to withdraw funds. So, it would only be necessary for the merchants to show that they made Mr K's funds available to gamble with (something which he doesn't dispute).

It's important to note that ultimately it is the scheme operator that decides whether a chargeback is successful and, in my experience, it will consider any case strictly within the scheme rules: in this case whether there is evidence that the service (of making funds available to gamble) was provided. Mr K cannot demonstrate that it wasn't and the merchant would very likely be able to. Neither, in my experience, will Mastercard consider other evidence – such as allegations that the merchant is operating as a scam. So, I don't think COM have made a mistake by not raising chargeback claims for the payments.

I'm sorry to disappoint Mr K. I accept he's been taken advantage of by a fraudulent merchant, but that doesn't mean COM is responsible for his loss and I haven't found that it has made an error.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 August 2023.

Rich Drury
Ombudsman