

The complaint

Miss K complains that Curve UK Limited won't refund payments she didn't make.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my 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.

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

- Curve declined to refund these unauthorised payments under the Payment Services Regulations 2017 (PSRs) because it asserts Miss K failed with gross negligence to comply with the terms of the account and keep her personalised security details safe.
- In saying that, it's submitted that Miss K shared an activation code with a fraudster. To decide this, I've reflected on the circumstances of the scam.
- Miss K received a message on WhatsApp – it came from a mobile number but the picture showed Curve's logo. Curve argues that she should've been concerned by this method of contact, given it's not contacted her that way before. But I wouldn't expect her to know, off the top of her head, an exhaustive list of how Curve would contact someone – to realise this must be implausible. And in the circumstances when Miss K was a customer of Curve, and they were suggesting she'd been a victim of fraud, I can see why she responded.
- Curve also suggest Miss K ought to have been alarmed by the spelling and grammatical mistakes they made. But even legitimate businesses make these errors. So I don't think this was significant enough to suggest something must be amiss. And I note Miss K challenged the sender by asking how she'd know the call was genuinely from Curve, which they said they would cover in the call.
- When they called, Miss K said they knew several pieces of her personal information and took her through launching an investigation into how the fraudulent transactions happened. Given the familiarity and apparent professionalism, I can see how she trusted the caller. I think lots of other people would've done in these circumstances.
- Curve submit that Miss K ought reasonably to have googled their number and searched the Financial Services Register to check it was Curve. But the test here isn't whether she did everything she could have, or even reasonably ought to have done. It's whether her actions meant she failed with gross negligence. For the reasons I've explained, I don't think she seriously disregarded an obvious risk when she was duped by their familiarity.

- I'm also not persuaded by Curve's argument that this finding makes the fraud deterrent aspect of the Financial Services Register redundant. Because making a finding that someone wasn't grossly negligent in the specific circumstances of a particular scam doesn't render something ineffectual in all circumstances.
- I've gone on to consider how the fraudsters gained her activation code. While I recognise Miss K says she didn't share the activation code with them, I note she initially reported to Curve that she did – she explained she was told it was to verify her and didn't recognise it was an activation code for Google Pay. Given this testimony was given just after the scam, I consider it to be more reliable. Moreover, there's no other plausible explanation for how the transactions could've happened without her sharing the code.
- I've considered that the message received from Curve told her it was a code to add Curve to a Google wallet and warned her not to share it. But I'm mindful Miss K believed she was talking to Curve – something that was likely reinforced when she received a message from them when she'd been told to expect it. And she'd been misdirected into thinking it was for a different purpose. I've also considered that Miss K was ignorant to how these fraudsters already had her card details and had completed the initial steps of setting up Google Pay.
- So, in the heat of the moment when she trusted the caller and was worried about the safety of her money, I can understand how she simply focussed on the code and shared it. I'm not persuaded this one act meant she acted with very significant carelessness. Afterall, people are now accustomed to these codes, that are legitimately used for a variety of reasons. While it may not be perfectly reasonable, I'm equally not surprised to learn that someone didn't stop to read the wider context of the message, and instead trusted it was for what they were being told.
- I've reflected on Curve's points about its and others' fraud and scam warnings – which they believe holistically act as an effective warning that ought to have prevented this. But I don't think these mean she seriously disregarded an obvious risk. These fraudsters weren't 'chancers'. Instead, it was an organised, sophisticated scam designed to trick her into believing this was an urgent situation. Therefore, I can see how Miss K didn't feel she'd the time to reflect on general warnings she'd been given in the past.
- Taking this all into account, I'm not persuaded Curve has shown she failed with gross negligence. It follows that, in line with the PSRs, I don't consider Miss K can be fairly held liable for these unauthorised payments and Curve needs to put things right – by refunding her losses from the payments alongside 8% simple interest per year to compensate her for the time she's been out of pocket.

My final decision

For the reasons I've explained, I uphold Miss K's complaint. Curve UK Limited must:

- Pay Miss K the total of the unauthorised payments, less any amount recovered or already refunded.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised payments to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 19 October 2023.

Emma Szkolar
Ombudsman