

The complaint

Mr W complains that John Lewis Financial Services Limited (JLFS) would not refund a transaction made using his credit facility.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

- Mr W's partner was on holiday abroad and had visited a popular tourist destination. They took a taxi to travel a short distance of approximately 2km and paid for the journey using a card linked to a credit facility JLFS provides to Mr W. Mr W says the expected fare was €15, but the taxi driver must have dishonestly entered over €1,500 on the card machine and deceived his partner into entering the PIN. No receipt was issued.
- JLFS looked into things but rejected the claim. It said the transaction was authorised by chip and PIN and there was no way for JLFS to dispute the payment.
- Mr W made a complaint. He said that JLFS knowingly made this payment and knew it was fraud so should be doing more to help. JLFS issued its final response. It maintained it could not support the claim for reimbursement and suggested that Mr W should report his concerns to the Police or try to communicate with the merchant directly. Mr W referred the matter to this service.
- One of our Investigators considered the complaint and recommended that it should be upheld. In summary, she said that by not raising a chargeback, JLFS had deprived Mr W of the opportunity to try and recover the money. She suggested that JLFS could have raised a dispute under the card scheme rules for questionable merchant activity or unreasonable amount. She thought it was more likely than not that the money could have been recovered because the amount was so unlikely for a legitimate taxi journey.
- JLFS didn't agree. It said it couldn't have raised chargebacks that were speculative and did not meet the criteria set in the card scheme's rules. It felt there was no reasonable prospect of a chargeback being successful in these circumstances and said there were no chargeback rights to attempt that could assist here. It said Mr W didn't have the evidence that was required under the card scheme's rules and pointed out JLFS could face sanctions from the card scheme for raising disputes with no reasonable prospects of success.

Our Investigator was not persuaded. Mr W said he considered JLFS to have knowingly facilitated a fraud. As no agreement could be reached, the complaint was referred to me. I issued a provisional decision last month setting out why I didn't agree with the outcome our Investigator had reached. I have reproduced my provisional findings below:

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 am currently minded not to uphold it. I know this is going to come as very disappointing news to Mr W. He's out of pocket and this is a lot of money for anyone to lose. So I will explain why.

JLFS doesn't dispute the amount charged for this taxi journey is high. I accept that Mr W's partner has been the unwitting victim of sharp practice from the merchant. But unfortunately, that alone isn't enough for me to say JLFS is responsible for refunding the loss.

When an account holder raises concerns about a transaction, I'd expect their card issuer to look into the situation further to see whether it has any responsibility for refunding the amount in dispute. It may need to provide a refund if its customer didn't authorise the transaction, or if it didn't intervene in the payment to check it was one its customer wanted to make when it ought fairly to have done so. In some circumstances, a card issuer can ask for a transaction its customer made to be refunded through the chargeback process operated by the card scheme. In addition to this, if a customer paid using a credit facility such as a credit card, the customer may have a claim about the merchant's misrepresentation or breach of contract against the finance provider if certain conditions are met.

I have considered whether JLFS has treated Mr W fairly by declining his claim for a refund. I'll address each potential avenue of redress for Mr W in turn and explain why it isn't applicable on the circumstances here.

Was the transaction authorised?

First, Mr W, in line with the Payment Services Regulations 2017 and the terms of his account, is generally responsible for transactions made using his credit facility which he authorises. Authorisation here carries a narrow meaning.

Here, there's no dispute that Mr W's partner was able to use Mr W's credit facility with his permission and that they made a transaction in a taxi. This means that Mr W's partner had been given his authority to make transactions and any transactions made by Mr W's partner are treated as legitimate. The fact both Mr W and his partner believed the payment to be for another amount does not invalidate that authorisation. So, as a starting point, JLFS can hold Mr W responsible for the payment.

Should JLFS have intervened in the transaction at the time?

I'm also mindful that JLFS should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I've looked at Mr W's credit card statements in the months leading up to when the disputed payment was made. I can see that Mr W tends to make frequent, low value transactions. Although I agree this particular transaction was higher than the types of transaction that were typically made on Mr W's account, I don't think its size alone was necessarily enough to cause JLFS concern. In addition, previous transactions have occasionally been made abroad so I don't think the fact a card was being used in another country ought to have concerned JLFS either. Overall, I don't think the transaction was unusual or suspicious enough that JLFS ought to have intervened before it was made.

Does Mr W have a potential claim under Section 75 of the Consumer Credit Act 1974?

When deciding what I think is fair and reasonable, I have regard to (amongst other things) any relevant law. In this case, relevant law includes Section 75 of the Consumer Credit Act 1974 (Section 75).

Section 75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is a breach of contract or misrepresentation by the supplier of goods or services.

Among other conditions, Section 75 applies only to items which 'the supplier has attached a cash price' of more than £100. Here Mr W has explained that the expected fare was €15. So the value of the journey is less than the £100 required for a valid Section 75 claim.

I can understand why this conclusion seems counter-intuitive and Mr W might feel it should be the amount actually charged that should be considered the price – but that higher amount is not technically the cash price for the journey. As such, I don't think JLFS has treated Mr W unfairly by not considering a claim under Section 75.

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme (in this case Mastercard's) rules. What this means is that JLFS can in certain circumstances ask for a payment made to be refunded.

A chargeback isn't guaranteed to result in a refund. There needs to be a right to a chargeback under the card scheme rules. And under those rules the merchant can defend a chargeback if it doesn't agree with the request.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and it is reasonable to do so.

Our Investigator was particularly mindful that sharp practice tantamount to a scam had taken place. Against this backdrop, I can see why she wanted to ensure that JLFS had done all it reasonably could to help in this situation.

But JLFS has explained that the chargeback reasons our Investigator had suggested didn't apply here because Mr W doesn't have any supporting documentation as required by the card scheme rules. Without this documentation, all the merchant or merchant's bank needed to do was respond advising JLFS hadn't supplied the documentation needed to meet the chargeback requirements and the chargeback would have been rejected.

As such, I'm satisfied that JLFS didn't make an error by not disputing this payment through the chargeback scheme as I don't think there was any reasonable prospect of a chargeback succeeding. I say this because I agree that the card scheme rules required Mr W to provide supporting evidence of what the correct transaction amount should have been. Mr W's testimony or a common-sense approach to the cost of a metered fare for a journey of this distance is not sufficient to meet the card scheme's rules.

Overall

I have every sympathy for Mr W as the particular circumstances of this case mean he is afforded little protection and I know my outcome will not feel fair to him because it is clear

that he's lost out financially. But, having considered these matters carefully, I can't fairly say that JLFS must refund this payment when the relevant law, rules and codes of practice do not place that responsibility on it. As such, I can't agree JLFS made a mistake by declining to provide a refund to him.

JLFS confirmed it had received my provisional decision and said it had nothing further to add.

Mr W didn't agree. He said the provisional decision didn't address an essential part of his complaint. He pointed out that JLFS invited him to pursue a complaint with the merchant and the French Police, knowing this to be impossible as they supplied no information such as the merchant's details. He said JLFS could have approached the bank that received the funds for information. He said that JLFS has breached its duty to prevent money laundering, which has directly impacted on him as their customer.

Mr W also pointed out the type of card reader used by the fraudulent taxi driver did not have a printing facility and that it's not possible to enter into a written contract with a taxi driver. He said that the failure to provide a receipt or other documentation cannot prevent a successful claim. He said that if taxis are issued with this type of card facility banks must accept that as a commercial 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'm sorry to have to disappoint Mr W further. I've thought carefully about everything he's said in response to my provisional decision, but I'm afraid that these points do not change the position that I am unable to fairly hold JLFS liable for the loss.

I do not doubt that the taxi driver acted maliciously, and that Mr W has been left to stand a large loss as a result. I accept his point that it's not possible to enter into a written contract with a taxi driver and agree it's increasingly commonplace for this type of transaction to be processed without a paper receipt being issued. But the criteria for a chargeback claim is set by the card scheme, meaning there are only limited grounds and limited forms of evidence for a chargeback to be considered valid. This is why I am unable to conclude that JLFS has treated Mr W unfairly by not disputing this payment through the chargeback scheme when there wasn't any reasonable prospect of a chargeback succeeding.

I do appreciate why Mr W wanted JLFS to do more to help him try and trace the money. He's pointed out that JLFS should have tried to provide the merchant's details and ultimately should have done more than it did to prevent financial crime. But JLFS has no control over a merchant that's taken a card payment, nor does it have any control over the financial business that provides the merchant with the facility to accept card payments. When making a payment a cardholder is, in effect, giving their card issuer authority to pay the merchant and to debit the card account. The way for JLFS to try and recover a disputed card payment is through the chargeback scheme. On this occasion, JLFS was not able to instigate that process, for the reasons I've explained both above and in my provisional decision.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 March 2024.

Claire Marsh
Ombudsman