

The complaint

Ms G has complained that Rightcard Payment Services Limited (trading as “LemFi”) didn’t protect her from falling victim to an impersonation scam, and it hasn’t refunded the money she lost.

What happened

The background of this complaint is already known to both parties, so I won’t repeat all of it here. But I’ll summarise the key points and then focus on explaining the reason for my decision.

Ms G has explained that in August 2023 she received a call from an individual (“the scammer”) claiming to be from her bank, which I’ll call “H”, who convinced her to open a LemFi account and transfer £2,450 into it. She says she was told the funds would then be transferred back to her H account, but they weren’t, and her LemFi account was then locked, meaning she could no longer access the £2,450 she’d sent to it.

The funds were transferred from Ms G’s LemFi account as four payments to two different individuals: three of £750 and one of £200.

I understand Ms G made a complaint to H and it has refunded 50% of what Ms G lost as part of this scam.

Ms G also made a complaint to LemFi, but LemFi didn’t respond. So Ms G referred it to this service.

Our investigator considered everything and didn’t think the complaint should be upheld. She explained that she thought the warnings LemFi had displayed before the payments were made was a proportionate intervention in the circumstances, so she didn’t think LemFi was responsible for reimbursing Ms G for her loss.

As Ms G didn’t accept the investigator’s opinion, the case has been passed to me to make a decision. I’ll only be making a decision on Ms G’s complaint against LemFi – not against bank H.

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 disappoint Ms G but having considered everything I’m afraid I’m not upholding her complaint. I broadly agree with the investigator’s findings, but I’ve also added some additional reasoning.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer’s account. And in this case

although I recognise she was likely guided by the scammer, I'm satisfied that Ms G gave the instructions to LemFi and LemFi made the payments in line with those instructions, and in line with the terms and conditions of Ms G's account.

But that doesn't always mean that the business should follow every instruction without asking further questions or intervening to ensure requests coming from their customers are firstly genuine, and secondly won't result in harm.

Whilst I don't intend to go into detail here, it appears the scammers obtained Ms G's details during a phone call as she'd also had genuine contact from her credit card provider around the same time. So it appeared to Ms G the different calls and messages originated from the same company, although this seems to be an unfortunate coincidence.

In its response to the complaint LemFi said that Ms G had credited her LemFi account and then the funds had been withdrawn. It says it displays scam warnings on its mobile app, and it says the IP address (a unique string of characters that identifies each computer connected to the internet) used to make the payments that credited and debited the account were the same.

Having reviewed the transactions on Ms G's account I can see that on the same day the £2,450 credited Mr G's LemFi account, four payments were made. Two of these, for both for £750, were made to one payee and the other two, for £750 and £200, were made to a different payee.

I'm satisfied that Ms G made the payments, but I've also considered what, if anything, LemFi did before they were made.

LemFi has provided a copy of a warning message it says it showed before each payment was made. I note part of the warning says: "Could someone be trying to scam you? Stop if: You were told that your account is at risk and to make an unexpected payment". The warning includes a box that Ms G would've been required to tick before proceeding to make the payment. As the payments were all processed, I'm satisfied that this box was ticked. As the payments were modest in value, and as LemFi didn't have any prior account history for Ms G, I'm satisfied this was a proportionate intervention. Although I do realise there's more to the story than this, which means the warnings weren't effective in this situation.

I'm aware that as part of this scam Ms H was convinced by the scammers she was speaking to the fraud department at bank H. She says she was told to open the LemFi account, as well as to download a piece of software, which she says she assumed was fraud detection software. But this software allows other individuals to access and control internet-connected devices remotely, and it seems this may be what's happened here.

It seems the scammer impersonated the fraud department at bank H to convince Ms G to transfer funds to LemFi, and then used remote software to guide Ms G to make the payments from her LemFi account. So although I'm satisfied that the warnings LemFi showed before the four payments were a proportionate way for LemFi to warn Ms G about the risks, they were unfortunately unsuccessful because of the circumstances of this scam, because it's unlikely Ms G saw them or was given the chance to consider them.

I understand Ms G doesn't think LemFi is fit for purpose as it didn't do enough to protect her. But LemFi has to balance what's practical, alongside its obligations, as well as making payments promptly and without unduly inconveniencing its customers. The fact these transactions didn't flag as suspicious, although I recognise Ms G will likely disagree, doesn't mean LemFi isn't fit for purpose.

I understand that the funds Ms G has lost are a significant sum, and it's unfortunate that she's fallen victim to this cruel scam. But in order for me to hold LemFi responsible for that I'd need to think it didn't act in accordance with the regulations under which it operates, or that it was negligent in some other way, which led to the loss. And I haven't found that to be the case here, so I'm afraid I don't require it to refund any of Ms G's money.

I note Ms G's point that what happened here should've been obvious to an impartial observer as criminal activity, given that LemFi operates as a money transfer service primarily targeted at sending money to Africa. But as the payments were indeed sent to Africa, I don't agree that LemFi should've identified the fraud or taken any additional steps to intervene, despite the fact that Ms G says her British name should also have been an anomaly, bearing in mind the African names of the recipients she was sending to.

Recovery of the funds

LemFi attempted to recover the money from the beneficiary bank four days after Ms G reported the scam, but it was told the funds had already been withdrawn so it wasn't successful.

Whilst I understand Ms G's sentiment that LemFi should've initiated the recovery process sooner, I can see that LemFi attempted to contact Ms G in the interim days before doing so, to gain some more information from her.

Although there's an argument to say LemFi could've tried to recover the funds sooner than it did, before contacting Ms G, I still think it's unlikely they would've remained. Funds that are obtained deceitfully in this type of scam are generally withdrawn within hours, if not sooner, of being received. So I don't think LemFi's actions prevented the recovery action from being successful.

It's also important to note that international payment recoveries are completed on a *best endeavours* basis – meaning they aren't guaranteed, as differing laws in other jurisdictions can often hinder recovery attempts.

I'm very sorry that Ms G has fallen victim to this scam and I do understand that my decision will be disappointing. But for the reasons I've set out above, I don't hold LemFi responsible for that.

My final decision

I don't uphold Ms G's complaint against Rightcard Payment Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 30 October 2024.

Sam Wade
Ombudsman