

The complaint

Mr S complains that JAJA FINANCE LTD trading as Asda Money Credit Card (“Asda”) failed to refund transactions he didn’t recognise.

What happened

Mr S explained that he was working overnight and at some point his Asda credit card was lost from his wallet – he thinks it was stolen.

Mr S wrote the personal identification number (PIN) for his card down and kept it with his card due to problems with his memory.

Mr S returned home and slept during the day, after waking in the afternoon he saw notifications from Asda that his card was near his credit limit and contacted them.

Asda confirmed that numerous transactions had taken place earlier that day resulting in the unrecognised spend on his card. Asda had placed a block on the card which stopped any further payments from being made.

Mr S asked for a refund and Asda looked into the situation. They later concluded that they wouldn’t make any refunds based on the pattern of spending and the circumstances of the loss reported by Mr S. Asda were doubtful about the version of events given to them by Mr S.

Mr S reported the incident to the police and made a complaint against Asda for their handling of his situation. Mr S said he was asked to provide medical evidence from his doctor and despite obtaining a letter, Asda ignored it and wouldn’t refund him the cost.

Mr S had asked Asda about making payments towards his account whilst it was under investigation. He was under the impression that he didn’t need to make them but was concerned for his credit rating. Phone recordings indicate this matter was discussed although Asda’s advice was ambiguous.

Asda investigated Mr S’s complaint and again concluded they wouldn’t refund him. They analysed the transactions and thought the pattern indicated Mr S had likely made them himself. They believed the user of the card knew the credit limit because there were no further payments after it was blocked and only Mr S knew the limit.

They also didn’t think it was appropriate for him to record the PIN and keep it with his card (although Mr S later said it was in a separate compartment so wasn’t immediately obvious that it was his cards PIN).

Mr S was left unhappy with Asda’s response and brought his complaint to the Financial Ombudsman Service for an independent review where it was assigned to an investigator. Both parties were asked to provide evidence and Mr S confirmed his version of events, including a copy of his doctor’s note concerning his medical conditions. He explained how the loss of his funds and the reduction in his credit file had impacted him.

Asda provided details of their investigation which included information about the payments and their timings. Copies of calls were also provided.

After reviewing the evidence, the investigator recommended that Asda write off the disputed transactions which amounted to £2,455.53, pay Mr S £200 redress and repay the cost of the doctor's letter of £35.

Asda disagreed with the outcome and asked for an Ombudsman to review the complaint. Mr S questioned the amount of redress recommended by the investigator.

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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Asda can hold Mr S liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them, but Asda cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless Asda can show that consent has been given, it has no authority to make the payment or to debit Mr S's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr S.

Where credit is involved, as is the case here, the Consumer Credit Act 1974 also 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.

The issue of whether Mr S acted with gross negligence relating to his security information wouldn't apply to a payment resulting from a credit card debt.

It's not our role to say exactly what happened, but to decide whether Asda can reasonably hold Mr S liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

Mr S explained that his work involved him being out at night and interacting with many other people, giving rise to the possibility that his card and PIN were taken from his wallet without him noticing. His version of events is plausible, and he's been consistent with what happened throughout the complaint.

Asda's review of the evidence resulted in them declining the refund. This was partly based on their assessment of the pattern of payments where they thought the first ones had taken place near to Mr S's home address (and therefore suspicious). Having looked through the audit data which records the specific time of each transaction, Asda's assessment was incorrect. The first disputed transactions took place away from Mr S's home (likely near to where the card was taken), although the final ones were in the same town as Mr S's home address.

Asda asked Mr S to provide a letter from his doctor to support his assertion that he'd been suffering from certain conditions that meant he had to write his PIN down. Asda made a decision to decline the claim without waiting for the letter. Even after receiving it they seemed to cast doubt on its authenticity. We've since carried out additional checks and I'm satisfied that the letter was genuine. It was unclear to me why Asda took this position when they'd asked Mr S to obtain the letter themselves and initially agreed to reimburse him for the cost. Asda later declined to reimburse Mr S because of a difference in the days of the letter which Mr S explained was due to delays in obtaining an appointment.

The evidence shows that Mr S's card was used to make numerous purchases on the day he lost it, some for expensive items from retailers and other repeated attempts to obtain funds from the same location. These attempts (which were declined automatically) were made for decreasing amounts – a typical attempt to maximise the card purchase which is then lowered on the next attempt until it passes through the bank's fraud detection systems.

Asda also thought the lack of attempts on the card near its credit limit pointed towards a user who had knowledge of the account. Whilst the way a card is used can point to the user having some knowledge a thief wouldn't be expected to have (such as the credit limit), what happened here was that a £10 payment was authorised and then a further payment for £10 a minute later was blocked by Asda. It's not surprising the card was no longer used at this point as the holder of it at the time had had a transaction blocked, so it's reasonable to assume they knew the card had been reported lost/stolen.

During various conversation between the parties, Mr S was told that he didn't have to make any payments towards his account whilst the investigation was ongoing. He spoke on other occasions about this as he was worried the missed payment markers were affecting his credit rating. Different advisors gave slightly different answers to this, saying any problems would be updated later and at some point Mr S should make a minimum payment if he could. Given the ambiguous position taken by Asda, I'm not surprised Mr S didn't make payments towards his account even though he had made a few low value genuine purchases prior to its loss. To be clear, Mr S is liable for those payments he hasn't disputed.

Overall, I found Mr S's version of events persuasive and based on an objective review of the evidence I think that it's more likely than not that the disputed transactions weren't authorised by Mr S and as they were credit charges, he's not liable for them. It's both fair and reasonable that Asda now write off those disputed transactions.

I understand that Asda later made a gesture of goodwill payment of £175 although this hasn't been shown in any statements provided to our service.

I don't think that Asda acted fairly towards Mr S, partly driven by a misreading of what actually happened. Their approach led to unnecessary additional stress for Mr S and I agree with the investigator that Asda should pay £200 (additional to anything else they may have paid) to recognise this poor service.

Putting things right

In summary, because I've found that Mr S didn't authorise these payments, Asda should now:

- write the debt off resulting from the disputed transactions, including any charges and fees associated with it.
- Update Mr S's credit file to remove any reference to the disputed transactions and Asda should ensure that there are no adverse markers left on the credit file based on the ambiguous advice they gave to Mr S.
- Refund the cost of the doctor's letter (£35).
- Make a payment of £200 for the additional stress caused to Mr S by their handling of his dispute (additional to anything that Asda may have already paid).

If Mr S hasn't made any payment towards the legitimate transactions he carried out, then he's required to repay them. If they remain unpaid after the decision is finalised then Asda should make the appropriate report to the credit reference agencies.

My final decision

My final decision is that I uphold this complaint and JAJA FINANCE LTD trading as Asda Money Credit Card are required to settle it as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 September 2024.

David Perry
Ombudsman