

## The complaint

Mr W has complained that Caxton Payments Limited won't refund transactions he says he didn't make or otherwise authorise.

## What happened

This complaint surrounds a foreign currency account which Mr W used when travelling. It had been dormant since January 2020, owing to the global pandemic.

In April 2021, a fraudster drained the balance of the account over the course of just a few days, through cash withdrawals and point-of-sale payments in the UK, spending about £3,500. Caxton have explained that the fraudster hacked the account, changed the login and contact details on file, then ordered a new card to their own address, which they used for the disputed spending.

In September 2023, Mr W booked his first holiday since the pandemic, and went to check his Caxton account. He couldn't log in at first as the details had been changed. When he did get in, he discovered the balance had gone, and reported the matter to Caxton.

Caxton held Mr W liable for the payments in dispute, on the basis that he'd reported them too late to be able to do a chargeback.

Our Investigator looked into things independently and upheld the complaint. Caxton didn't agree, so the complaint's been passed to me to decide.

I sent Mr W and Caxton a provisional decision on 23 July 2024, to explain why I thought the complaint should be upheld. In that decision, I said:

*First, I should explain that the chargeback rules are not determinative here. Chargebacks are just one way to try to get a customer's money back, based on a voluntary scheme. Whereas under the Payment Services Regulations, Caxton are required to refund unauthorised payments, regardless of the chargeback rules.*

*There doesn't seem to be any dispute that the payments involved here were unauthorised. Caxton have said that they were made by a third party who'd hacked Mr W's account. And the activity on the account is highly indicative of fraud. The contact details were changed to someone else's, a new card was sent to someone else instead of Mr W, and that card was used across the country from where Mr W lives, for UK-based payments instead of the intended use abroad, draining his account via rapid spend. The spending follows a common pattern of fraud, involving using up the cash withdrawal limits and supplementing this with high point-of-sale spending. Mr W seems to have genuinely lost access to the account following the third party's access. And there doesn't seem to be any evidence which shows or substantiates that Mr W authorised any of these payments.*

*So the starting position appears to be that the payments in question were unauthorised, and so Caxton were responsible for refunding them.*

*Under the relevant rules and the terms of the account, Mr W was supposed to report the disputed payments within 13 months of the debit date. So under normal circumstances, Caxton could still hold him liable for the loss on that basis.*

*With that said, I am required to consider not just the letter of the rules, but what is fair and reasonable in the individual circumstances of the case. That means I can depart from the rules where fairness demands it.*

*Here, I find that the reason Mr W didn't report these payments sooner was primarily due to exceptional circumstances. His account was intended for use while travelling abroad, as is supported by his genuine use of it. But due to an unprecedented global pandemic, it was not possible or not reasonably safe for Mr W to travel abroad for a long time, not least given the age bracket he was in. So he had no compelling reason to be accessing this account. Moreover, Caxton have sent us their contact with Mr W, and as far as I can see, they did not send him any notifications or statements at the time which would've reasonably made him aware he needed to check the account. Once Mr W did have a need to check his account, he did so, and reported the payments as soon as he was aware of them.*

*Further, it looks like Caxton failed to flag the disputed activity, which meant the issue was not brought to light sooner. Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, Caxton should have fairly and reasonably: been monitoring account and payments to counter risks such as fraud, had systems in place to look out for particularly unusual activity or signs of fraud, and when appropriate made further checks or even blocked payments to help protect customers. Here, the activity on the account should've stood out as being remarkable: the spend was large and rapid, it drained the account, and it followed a typical pattern of fraud. It was made on a new card, sent to a new address, which would've been ordered on a new device using a new IP address. It was made across the country from where Mr W lived, and was spent in the UK despite the purpose of this account.*

*Lastly, given that Caxton seem to have already accepted that the account was hacked and the payments were unauthorised, I can't say that the delay unduly affected Caxton's ability to argue that the payments were authorised.*

*So taking into account everything that's been said and provided so far, I currently think that the time limits should be fairly and reasonably set aside in this particular case. And as both sides appear to accept that the payments involved were unauthorised, it means that Caxton need to refund them to Mr W.*

I said I'd consider anything else anyone wanted to give me – so long as I received it before 6 August 2024. Mr W thanked us for the decision and pointed out that it appeared Caxton no longer allowed payments within the UK on his foreign currency card. We didn't receive a response from Caxton.

### **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 reconsidered the matter, I've found no reason to depart from the findings in my provisional decision. And if what Mr W says is true – that Caxton no longer allow this card to be used within the UK – then that would tend to reinforce that the account was intended for use abroad, that it was reasonable for Mr W not to be accessing it in these particular circumstances, and that the fraudster's usage should have looked suspicious to Caxton.

Otherwise, neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

### **Putting things right**

I direct Caxton Payments Limited to rework the account to put it in the financial position it would've been in had the disputed transactions never been debited. That will mean refunding the disputed payments, along with any interest and fees charged because of those payments. And it will mean paying any account-rate interest that would've been credited had the balance not been reduced by the disputed payments.

### **My final decision**

I uphold Mr W's complaint, and direct Caxton Payments Limited to put things right in the way I set out above.

If Mr W accepts the final decision, Caxton Payments Limited must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 September 2024.

Adam Charles  
**Ombudsman**