

The complaint

Mr J complains that Guavapay Limited (“Guavapay”) failed to refund transactions he didn’t recognise

What happened

Mr J said he noticed a number of payments had been taken from his Guavapay account using his payment card. He reported to Guavapay that he’d lost his card on the bus and only noticed the payments later that evening.

Guavapay looked into the transactions and decided not to offer a refund, believing that Mr J had made the payments himself. Guavapay notified Mr J they were closing his account.

Mr J complained to Guavapay who didn’t change their position, so Mr J brought his complaint to the Financial Ombudsman Service for an independent review.

Both parties were asked to provide information about the issue. Mr J was able to say that:

- He noticed the payments about half an hour after they were made and notified Guavapay sometime later (Mr J thinks this was within a few hours).
- The matter was also reported to Action Fraud.
- Mr J has used the merchant (who processed the disputed transactions) before but didn’t think he’d used this particular branch.
- Mr J denied logging into his online account during the time the fraud was carried out. He said his phone was in his bag.

Guavapay provided details of the transactions, information concerning the online access and other details. In summary this showed that:

- Disputed transactions took place between 15:42 (3:42 pm) and 17:17 (5:17 pm) hours on 12 June 2024.
- Mr J’s online account was accessed throughout the day, including four different occasions between the two times mentioned above and a further eight times before Mr J first contacted Guavapay at approximately 20:43 that evening (8:43 pm).
- Funds were left in the account.
- Guavapay didn’t think the pattern of spending was out of character for Mr J.

After reviewing the evidence, the investigator concluded that Guavapay had acted fairly and didn’t uphold the complaint.

Mr J disagreed and asked for a further review of his complaint, which has now been passed

to me for a 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.

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

Unless Guavapay can show that consent has been given, it has no authority to make the payment or to debit Mr J'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 J.

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

Mr J has stated he lost his card on a bus and didn't notice the payments had left his account until much later that day. Guavapay's position is that they believe Mr J was responsible for the transactions.

The card payments were made using the contactless feature which only requires that the card itself is needed to make the transaction. So, it's entirely plausible that someone who found the card could use it to make transactions.

But, the pattern of use is not inconsistent with how Mr J himself used his card, including making payments to one of the same merchants (Mr J has said he hadn't used this particular one before). Also, the account was left with funds in it when the payments stopped. There was no reason why those funds couldn't also have been taken by the unknown third party as that card was still active for a number of hours before Mr J reported it. Usually, once someone starts emptying an account, they don't stop until the card is blocked or emptied.

The pattern of use doesn't follow the typical path of a stolen card, although I recognise that it's unrealistic to conclude that the card will always be used in the same way when a thief steals it.

However, Mr J has said he didn't use his app during the period the disputed transactions were taking place. Guavapay's evidence is different to Mr J's position. Having reviewed that evidence, it shows Mr J was using his mobile app throughout the period the disputed transactions were happening, so I'd expect him, at some point during that time, to notice the large number of payments leaving his account and report it much earlier.

Mr J had his phone with him throughout the day of the disputed transactions. I've considered if it's likely that someone else was responsible for accessing the app. In order to do so, they would've had to take the phone without Mr J being aware (on multiple occasions), bypass his security and return it, again without Mr J being aware of it. I don't think this is the likely explanation. So, I found it odd that Mr J would deny using his phone when the evidence shows he was using it, including multiple times between the last disputed transaction and before he notified Guavapay about it that evening.

Given the pattern of payments, the merchant, the lack of full use of the available funds and Mr J's repeated use of his account, I'm of the opinion that, on balance, Mr J was more likely than not responsible for the transactions he's disputed. I don't think it either unfair or unreasonable for Guavapay to deny Mr J a refund.

Regarding the account closure, Guavapay's terms and conditions that Mr J signed up to include provisions for either party to close the account. For Guavapay, that closure would usually be done with two months' notice. There are exceptions to this rule that allow Guavapay to close the account straight away. They've relied on those here and based on the circumstances, I don't think that was an unreasonable decision for them to make.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 3 November 2025.

David Perry
Ombudsman