

The complaint

Ms K complains that American Express Services Europe Limited has declined to reimburse her for payments made as part of a scam.

What happened

As the facts are well known to both parties and not in dispute I'll summarise them briefly.

Ms K met a scammer online who she believed she was in a romantic and trusting relationship with. He persuaded Ms K to make multiple transactions on her accounts and took out credit cards. Ms K says she sent the scammer her Amex credit card in the post as well as sharing her PIN with him. At the time Ms K believed that he was acting in her interests including undertaking investment activity on her behalf, and so she didn't pay attention to the activity on her account.

When Ms K realised she'd been scammed she raised a dispute with Amex. As part of this, Amex refunded £1,650 and paid Ms K £50 compensation. Ms K would like the remaining disputed transactions reimbursed.

When Ms K referred the matter to our service the investigator didn't uphold the complaint. In summary they concluded that it would be fair to treat the disputed payments as authorised. They didn't think Amex ought to have done more to prevent the scam or recover the funds in the circumstances.

Ms K didn't agree and so the matter has been passed to me to decide.

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've reached the same conclusion as the investigator for similar reasons.

I'm very sorry to learn of the scam Ms K has fallen victim to and the impact this has had on her, I understand she's vulnerable and that this has made her situation worse.

Ms K has mentioned PPI to our service, but I'm not aware that Amex has addressed a complaint about this – as this is a separate issue I haven't considered it as part of this complaint.

The Payment Services Regulations (PSRs) 2017 set out the relevant law in relation to the authorisation of payments like the ones Ms K is disputing. These allow for Ms K to authorise payments by consenting to them herself or for a third party to consent to them on her behalf.

Ms K accepts she took out the credit card and that she gave the scammer the card to use. It isn't entirely clear whether Ms K made some payments herself – but if she did, these payments would be authorised even if she made them as part of a scam.

Ms K has confirmed that she sent the physical card to the scammer at some point and that he then made payments. When a consumer creates this kind of agency relationship informally, they are bound by the acts of the agent that are within the scope of the actual authority given. And the consumer can also be bound by the acts of a third party which appear to have been made with their authority in certain circumstances. Put more simply, this means that where Ms K has let a third party make payments on her behalf, these can be treated as authorised depending on the circumstances.

Here, it's not clear that there was any limit on what Ms K agreed the scammer could do on her credit card with Amex, but I understand she believed he would be acting in her interests and that there would be some sort of investment return in the future. When Ms K permitted the scammer to appear as if they had her authority to make payment transactions, it was reasonable for Amex to rely on that and process the payments. So, I think it can fairly treat the payments as authorised in the circumstances.

Having taken into account longstanding regulatory expectations and requirements, and what I consider to be good industry practice, Amex ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.

I've reviewed the payments on Ms K's account and having considered when they were made, their value and who they were made to, I'm not persuaded Amex ought to have found any of the payments suspicious to the point that it ought to have made enquiries of Ms K before processing them.

Looking at the payments, which are mostly to well-known retailers, it's likely whatever goods/services the scammer paid for were provided, so I don't think it's likely that Amex could have raised a successful chargeback or had other liabilities in relation to the payments.

Amex wasn't aware of Ms K's circumstances at the time of the payments, and I'm not aware of any reason why it ought to have identified that Ms K was vulnerable at the time.

While I appreciate Ms K may well not have benefitted from the payments, for the reasons I've explained I don't think Amex has acted unfairly in holding her liable for them. As Amex has refunded some of the payments to Ms K and made a compensation payment for how it handled the matter once reported, I think it has acted fairly and that it doesn't need to do anything further.

I understand Ms K has been given the details of debt support charities. If Ms K is in financial hardship, she would need to communicate with Amex (or the current owner of the debt if different) to arrange an affordable repayment plan.

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 Ms K to accept or reject my decision before 7 April 2025.

Stephanie Mitchell
Ombudsman