

complaint

Mr S has complained NewDay Ltd, trading as Marbles Card, is expecting him to pay £6,633.34. But the secondary cardholder on his credit card, Mrs S, only authorised a transaction of £800.

background

Mrs S got a call from her son on 8 July 2015. He was overseas and needed to pay an insurance excess of £800. She gave him her card details (the 16-digit number and expiry date) to allow him to pay that amount. Mr S's credit card account was charged a total of £6,633.34 plus a foreign exchange transaction fee of £195.68. Mrs S complained to Marbles as she'd never agreed to this amount being debited.

Marbles raised a chargeback but the car hire company defended this. They provided evidence someone signed a sales slip agreeing to pay Croatian Krona 70,000. This is equivalent to the sterling amount Mr S was charged. This payment was made after the same person accepted they were responsible for the damage caused to the car. Marbles charged this amount back to Mr S's account. They did refund one month's interest charges and overlimit fees they'd added to his account.

Mr S wasn't happy with this outcome and brought his complaint to the ombudsman service.

Our adjudicator investigated the complaint. He felt there was enough evidence to show Mrs S hadn't authorised the payment in full. He asked marbles to reverse all amounts – including additional fees and interest – and make sure the account was only charged the £800 he thought Mrs S had authorised.

Marbles didn't agree with this outcome. They felt Mrs S should pursue a complaint with the car hire company and they weren't liable for what happened. They were also concerned they would now be left with bearing the loss.

This complaint has been referred to an ombudsman to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There is really only one issue at the heart of this complaint. Did Mrs S authorise the payment of £6,633.34 that was charged to her husband's account? I believe the evidence is clear. I'm

satisfied she didn't. My reasons for this are:

- The transaction slip showing the amount of Croatian Krona 70,000 is not signed by her (or Mr S) but by a third party.
- She knew the credit limit on the account was £7,500. I believe Mrs S had at least a rough knowledge of what credit was available. She wouldn't have agreed to an amount greatly exceeding the credit limit.
- Marbles never authorised this transaction at all because all the evidence points to the car hire company *"forced through a dummy authorisation"*.

The regulations around card transactions say the business need to show the customer authorised the transaction. Marbles admit they can't provide me with any evidence to show this. And in fact, as I've pointed out to them, all the evidence points in the other direction.

Mrs S was definitely not present, nor did she sign for the amount that was charged. Having spoken to her our adjudicator felt there was no reason not to believe what she was saying. She'd allowed her son to charge £800 for the insurance but that was it. I agree Mrs S's evidence is convincing and I'm satisfied she didn't authorise the payment.

I appreciate there is some difference between what Mrs S's son says happened and what Marbles was told when the chargeback was defended. I'm surprised marbles didn't take the chargeback defence further, as they could have under the card scheme rules. The fact the card transaction was forced through – as marbles admit – suggests to me the car hire company knew this transaction was likely to fail if they'd followed the rules for authorising this properly.

But overall what happened at the car hire company is a bit of a red herring. I think it's fair and reasonable to rely on what I know about Mrs S not authorising the transaction.

The car hire company may be able to pursue a complaint against Mr S's son for any liability for the condition of the car. Although since they have their money I can't see why they would.

I can see marbles are concerned they're going to be out of pocket. I'm sorry about that but I see no reason why Mr S should have to pay for something his wife did not authorise.

my final decision

For the reasons I've given, my final decision is to instruct NewDay Ltd, trading as Marbles Card, to do the following to put things right:

- Rework Mr S's credit card account to make sure no more than £800, and the relevant foreign currency transaction fee, is charged to his account;
- Refund all other fees and charges as appropriate; and
- Make sure this has had no negative impact on Mr S's credit record.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 November 2016.

Sandra Quinn
ombudsman