

complaint

Mrs P complains that Creation Financial Services Limited won't refund the money for a number of transactions on her credit card that she didn't make or authorise.

background

Mrs P says that she received a credit card from Creation but she never received the personal identification number (PIN). She thinks a third party took her card and made a number of transactions totalling in excess of £700. Mrs P believes that Creation should refund the money. Creation didn't agree and told her it was closing the account.

The adjudicator didn't recommend that this complaint should be upheld. She concluded that Mrs P had received the card and activated it. She couldn't exclude the possibility that the transactions were made with Mrs P's knowledge or authority.

Mrs P didn't agree. She said that she had never used the card.

my findings

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

I can't know for certain what happened in this case so I have to reach my decision on the balance of probabilities – in other words, I need to decide what I consider is most likely to have happened given the evidence available.

Mrs P is quite clear that she didn't make the transactions herself. But I'm satisfied they were made using her genuine card, with its imbedded chip being read by the machine through which the transactions were made. So I am happy that her card wasn't cloned. And the actual card was used with the correct PIN.

For me to accept that Mrs P isn't liable in this case, I need to be satisfied it was more likely than not that a third party stole her card having obtained her PIN. Mrs P says that she never received the PIN. Whilst I accept it is possible that the PIN could have been intercepted in the post I find it unlikely that someone would have done this on the chance that they may have been able to take Mrs P's card at some time in the future.

Mrs P says that she remembers receiving the card but she never activated it. But I find the card was activated three months after Mrs P opened the credit card account. When this was done, the person calling Creation successfully answered the security questions. I consider that this was either Mrs P, or someone who knew Mrs P's personal details. And the person asked why the card had been declined when they tried to use it. To be able to use the card, the PIN is needed. So if the card had been declined it is more likely than not that it had been used with the PIN. So I consider the person who made that phone call had both the actual card and PIN. And Creation explained that the card was only declined because it hadn't yet been activated.

I don't need to decide who made the transactions using Mrs P's card. Given that she says she didn't make them herself and I'm satisfied her actual card was used, I find I can't safely to conclude the payments were made without Mrs P's authority, whether directly or implicitly.

And, in either case, the bank is entitled to apply the payments to its account and hold Mrs P responsible.

I realise that Mrs P will be disappointed but, on balance, it wouldn't be fair for me to uphold the complaint and I can't ask Creation to refund her. The account remains overdrawn and I would urge Mrs P to contact Creation, or its debt agents, to agree an acceptable 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 Mrs P to accept or reject my decision before 29 August 2017.

Karen Wharton
ombudsman