

Complaint

Mr T complains that Creation Financial Services Limited (which I will refer to as Creation) held him liable for credit card transactions that he says he neither made nor authorised.

Background

Mr T had a Creation credit card.

In June 2017 Mr T went on holiday to Spain. Whilst on holiday he visited a gentleman's club, which I will refer to as club B, on 17 June 2017. Between 17 and 18 June 2017 15 transactions were made on Mr T's credit card. He disputes 13 of the 15 payments.

Below are the transactions I consider relevant to Mr T's complaint. The transactions in bold are the ones Mr T disputes.

Date and time	Location	Amount
17/06/2017 22:38	Club B	£52.45
17/06/2017 22:48	Club B	£122.39
17/06/2017 23:06	Club B	£122.39
17/06/2017 23:21	Club B	£349.69
17/06/2017 23:43	Club B	£349.69
18/06/2017 00:03	Club B	£437.11
18/06/2017 00:31	Club B	£437.11
18/06/2017 00:48	Bar H	£41.68
18/06/2017 00:58	Club B	£437.11
18/06/2017 01:30	Club B	£437.11
18/06/2017 02:07	Club B	£611.95
18/06/2017 02:37	Club B	£611.95
18/06/2017 02:59	Club B	£655.66
18/06/2017 04:11	Club B	£655.66
18/06/2017 04:12	Club B	£524.53

Mr T says he was out drinking with a friend on the night of 17 June 2017. He's explained that he and his friend went to club B, which is a gentleman's bar. Mr T says on arrival at the club he bought some drinks and after about half an hour his friend left him and went back to his hotel, leaving him alone at the club.

Mr T has told us that he thinks his drink was spiked and he blacked out in the club after his second drink, though he didn't seek medical treatment or report the matter to police. He says he woke up in the club around 7am the following morning and can't remember much about the night. He's explained that he was still in possession of his credit card and wallet. So, he didn't think anything was amiss and went back to his hotel.

Mr T says apart from buying drinks when he first arrived at the club, he didn't carry out any other transactions at the club and shouldn't be held responsible for them. He believes the staff at the club took advantage of his drugged state and potentially saw him inputting his PIN when he bought drinks at the bar. And thinks someone must have taken his card after he'd passed out.

When the investigator spoke to Mr T about what had happened, he told the investigator that the fraudsters also tried to use his bank card for an account he has with another bank, which

I will refer to as bank B. He's said that the PIN for this card is different to his Creation card, so the transactions were declined. Mr T said he reported what happened to bank B.

Creation didn't accept Mr T's disputed transaction claim because:

- Mr T says he hadn't disclosed his PIN to anyone else, it wasn't recorded anywhere and wasn't a number easily guessed by a third party
- the correct PIN was used for the transactions
- Mr T initially told Creation that he had lost his card
- he later said the card didn't leave his possession and he still had it at the time of raising the dispute
- Mr T hadn't provided any plausible explanation as to how his bank card and PIN were compromised. And told the bank when he reported the claim *'I took every reasonable care to mitigate the risk of 'shoulder surfing' - I keep no record of my PIN as it's memorised, nobody knows my PIN number and I always try to ensure nobody can see me entering my PIN*
- there are genuine transactions between the ones Mr T disputes.

Having looked at the sequence of events, the investigator said it was more likely than not Mr T authorised the disputed transactions. Mr T disagreed. As no agreement could be reached the complaint has come to me to decide.

My findings

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

Generally, Creation are required to refund unauthorised transactions and are entitled to hold consumers liable for authorised transactions. The relevant regulations, to this effect, are the Payment Services Regulations 2009 (the PSRs 2009). Mr T says he didn't make the transactions and is seeking a refund of just under £6,000. So, my primary concern is to decide whether or not I think Mr T authorised the payments from his account. If I decide on the balance of probabilities that he did, then I am unlikely to ask Creation to refund them.

I'm satisfied from the bank's technical evidence that Mr T's genuine card and PIN were used to make the disputed transactions. But the regulations relevant to this case say that is not, on its own, enough to enable Creation to hold Mr T liable. So, I also need to think about whether the evidence suggests Mr T most likely consented to the payments being made.

Based on what Mr T has said, there are only three scenarios which explain what happened. He made the payments himself either knowingly or wasn't aware he was making the payments because he was drugged. Alternatively, as Mr T has suggested, a staff member shoulder surfed him, stole his card while he was drugged and used it at the club before returning it to him before he woke up.

I've considered the possibility that Mr T's card was taken by someone else at the club and gained access to his PIN. And that he didn't carry out the transactions. But having considered all the evidence I don't think this is the most likely explanation and I'll explain why:

- the transactions were made using Mr T's genuine card and PIN, but I don't see a convincing explanation for how a third party could have known his PIN and gained

possession of his credit card. I say this because from looking at the timings of the transactions the first disputed transaction was made only ten minutes after Mr T says he bought some drinks at 22:38. This means a third party had a window of just ten minutes to drug Mr T, take his card and use it at 22:48. And I think this is unlikely.

- I've also kept in mind that Mr T said he went to the club with a friend who stayed with him for at least half an hour at the club. With this in mind I think it's unlikely a third party would risk being seen taking and using Mr T's card. And that Mr T's friend would leave him in a drugged state and not alert the police or seek some medical help for him. But I've not seen any evidence to support that this happened.
- Mr T says he had his credit card in his possession when he left the club and the transactions took place over a period of about five hours, on average every half hour or so. Whilst it's possible I don't think that an unknown third party would risk taking Mr T's wallet, replacing it, taking it again, completing further transactions and then returning the card. This back and forth would've created an unnecessary risk of Mr T becoming aware that fraudulent transactions were taking place.
- I also think it would be unusual for a third party, having managed to take Mr T's card and PIN without him noticing, to make transactions with twenty and thirty minute gaps between them. In these circumstances I'd expect an unknown third party to maximise use of the card by accessing any available funds as quickly as possible as they wouldn't know when Mr T might notice his card was missing.
- there appears to be a genuine transaction between the ones Mr T disputes which was made on 18 June 2017 at 00:48, for £41.68. Mr T said he simply doesn't remember anything about this transaction, but he hasn't disputed it. So, I think it's likely he consented to this transaction.
- I think it's worth noting that Mr T has been consistent about saying he believes his drink was spiked. So, I've also considered if he made these transactions, whilst in this state of mind, whether this would make a difference. Even if he completed the transactions whilst under the influence of a substance, this doesn't mean the transactions weren't authorised. Creation wouldn't have known of Mr T's state and he was the one who ultimately gave consent. And for the reasons I've already given I think it most likely that Mr T did consent to these transactions, even in the circumstances he's described of his drink being spiked.
- I've also considered whether the bank ought to have flagged or stopped these transactions' but I don't think that would have resulted in a different outcome. I say this because even if Creation had contacted Mr T to raise suspicion about the transactions, I'm satisfied Mr T would most likely have indicated he'd consented them.
- I think the most compelling argument against third party theft, is the use of Mr T's other bank card. Mr T told the investigator that the card for his account with bank B was also taken by the fraudsters. And they attempted to use it but couldn't because the PIN was different to his Creation card PIN. But bank B has provided evidence that contradicts what Mr T has said. This shows Mr T's bank card was used to make three transactions at club B, on 18 June 2017, which match the general pattern and amounts spent on his Creation card. Mr T hasn't disputed these

transactions. So, I think its most likely he consented to these transactions. And his card wasn't taken by a third party.

In summary, for the reasons I've explained, I think it's more likely than not that Mr T authorised the transactions he's disputed. I therefore think it's fair and reasonable for Creation to refuse him a refund of these transactions.

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 T to accept or reject my decision before 14 June 2020.

Sharon Kerrison
Ombudsman