

## complaint

Mr Z complains that when he questioned the amount and validity of payments on his credit cards from Creation Financial Services Limited it failed to provide the information he needed to decide whether to dispute them.

## background

Mr Z was abroad in September 2015. A number of payments were made with two credit cards issued by Creation and he did not immediately recognise all of them. In October 2015 he asked Creation for the times of the payments made. It told him it could not provide this. Mr Z says that as a result he was unable to dispute the payments. He has now received the information and says that the pattern is not consistent with normal use. He is very unhappy at the time he has spent on this matter and that Creation delayed responding to a Data Subject Access Request (DSAR) for information.

The adjudicator did not recommend Creation do any more. He said that:

- He would not be commenting on the DSAR. This was not a banking service and is something that comes under the remit of the Information Commissioner's Office.
- Creation had shown that the payments were made when the chip on the relevant card was read and the correct PIN entered.
- Mr Z had told him that he thought he had used the card in a venue in question but due to the passage of time could not say how much or the time of the transaction.
- Mr Z did not recall making 27 attempted payments (some of which were declined) and did not have a receipt for them. He had said he thought that the cards were lost and not in his possession at the time.
- Given Mr Z did not remember all the details it was difficult to see grounds for saying Creation should refund him. And to do that there would need to be an explanation of how someone took his cards, discovered his PINs and used them. He did not think that if one of the payments had been a preauthorised one it made any difference.
- He wasn't aware of the distance between two merchants involved but, if as Mr Z said, they were several miles apart that would make it even more unlikely that the cards would be returned to him.
- Had these cards been lost or stolen it was unlikely that they would have come back into his possession. But those cards were used for numerous payments when Mr Z returned to this country and this indicated the cards were still in his possession.
- He did not think that Mr Z's claim that they were not cancelled correctly had any bearing on the complaint as they were still being used and remained in his possession.
- The award from Creation was not unreasonable.
- Given that the most likely explanation was that Mr Z made or authorised the payments there were no grounds for seeking a refund or making a Section 75 claim.

Mr Z did not agree and made detailed comments on this which I will summarise here. He said that the two key issues were who was liable for the payments and how Creation handled this matter. He thought Creation should have made retrieval requests to the merchants for the receipts and he had no knowledge of "...many of these" payments. Some appeared to be errors or duplicates. Creation should not just have relied on them being made by chip and PIN as conclusive evidence. Account had not been taken of the Lending Code. He should not be held 100 percent liable for the payments if there is no certainty he made them.

A chargeback should have been attempted or consideration given to a claim under Section 75 of the Consumer Credit Act for those payments over £100 as there can have been no contract or service or goods provided. He had sent hundreds of emails about this and been given conflicting information. He had only received £50 in compensation. This did not cover his time or the interest he has had to pay on this borrowing. Creation had told him this service would consider the DSAR issues.

### **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 need first to say a few things about our approach. We provide informal dispute resolution and we are not a court or the regulator. We take into account relevant regulations in deciding what is fair and reasonable. We make our decisions on the balance of probabilities – that is what is more likely than not. And we focus on the issues which help determine a complaint.

I won't be able to say exactly what happened here. So as Mr Z says I'll need to decide whether it's fair he be held liable for all these payments. And I'll be addressing what I believe is key here having read all the correspondence.

One very important question I think is whether had Mr Z been given the times of all the payments in October 2015, when he asked, it would have made a difference to his ability to dispute them. He has now clearly said in a questionnaire for us that *"I believe my card was used in the venue on the 19<sup>th</sup> September 2015, unfortunately I cannot confirm the time and amount due to the amount of time that has lapsed also whether there was more than 1 transaction. I have no recollection of making 27 transactions both authorised and declined and have no merchant receipts for these transactions"*. And he also said *"I believe in the evening of the 19<sup>th</sup> both cards were cancelled on the provision that they may have been compromised, on this basis I can only presume they were lost and not in my possession"*.

I've looked at the email he received from Creation in October 2015 when it told him it would not be able to provide the times of the payments. It went on to say *"...if any transactions are not recognised another dispute(s) can be raised at your request"*. I understand that at this time Mr Z would have been aware of the number and amount of payments applied to his account and which merchants they were made to.

There are two broad possibilities here for the dispute which I will consider in turn.

#### *goods or services paid for but not provided*

The first is that Mr Z made the payments himself for goods or service he did not receive. That would suggest that he either disputes the amount or what he was provided with. Such a dispute could have been the basis for a chargeback. But there would need to be grounds to think this fell within the relevant scheme rules. And that's inconsistent even on what he remembers now with the 27 payments that were attempted.

I think it likely Mr Z would have had a better recall about what he had thought he had agreed to when he was in contact with Creation in October 2015. I do not agree that him not knowing the time of each payment was critical to raising a dispute given the amount and number of payments involved. The details of the way they were authorised did not indicate that these were duplicates or errors. On his account it seems that Mr Z could not remember

in 2015 whether and which he had made. He had no receipts for any payments he may have made. I don't see Creation had a basis to raise a dispute or was reasonably required to ask the merchants for more information.

My finding here also means that I don't think it did anything wrong in not considering there was a basis for a valid Section 75 claim. Again there would need to have been some evidence from him of misrepresentation or contract breach.

*fraudulent use of the card*

The other possibility, and which seems the basis for a dispute about liability now, is a claim based on fraudulent use of his card. There's no clear chargeback reason or contractual dispute behind that and the outcome would not depend on a successful chargeback. Instead this possibility would involve an unknown third party having Mr Z's cards and PINs and making payments he had no knowledge of. I can narrow down what I'd need to think had happened for this to be most likely:

- Both of his cards were taken from him and returned. Whether they should have been cancelled or not I've seen clear evidence these cards were used after his return from abroad and through October 2015. He does not dispute he made those further payments.
- As the cards were used in two different merchants the unknown third party would have needed to find Mr Z to return the cards. I'm not clear why, given there then seemed no significant credit facility remaining on either card, such a person would have decided to take the clear risk to do this.
- That person would have been able to find out the PIN for the cards (and that would be on two occasions if they were different).
- Mr Z did not notice during the day that the cards were not in his possession.

I also don't agree when dealing with this possibility that not knowing the times of the payments would be critical to a claim of fraud. He would simply have been saying that someone else made the majority of the payments. He wouldn't necessarily be able to say how that happened. Knowing what time they were made would not affect that, unless as I said above, he had no recall in October 2015 whether he made them or not. If Creation had not accepted his dispute at the time then he could have pursued a complaint about fraud.

I'm not persuaded on the evidence that the most likely explanation is that these payments were made by an unknown third party acting without Mr Z's knowledge or authority.

*the way Creation handled this.*

Having made these findings I can now consider the impact of him wrongly being told the payment time information was not available. This was a mistake. But for the reasons I've given it has not affected my view on the outcome of the part of his complaint about responsibility for the payments – so there is no financial loss from this. And I've explained why I don't think it affected his ability to make a complaint earlier.

We don't normally think it's appropriate to cover the costs of bringing a complaint. The whole issue about the provision of information to Mr Z under DSAR is not one that falls within our jurisdiction as the adjudicator's set out. So I'm not questioning here his difficulties with this and the time he has spent on that matter – I won't be able to look into that. I can see Creation has made a separate offer of compensation relating to this. It told him we could look at this further but that wasn't right. And I don't doubt his frustration at that inconsistent

information. But I'm afraid having considered all the information I won't be asking Creation to pay any more compensation than it's offered for the areas that fall within the scope of his complaint to us. I don't think that this would be appropriate taking into account my findings.

Mr Z clearly has very strong feelings about what happened and about the time he has spent on this matter. So I know he is going to be disappointed with my decision. If he does not accept this he is free to pursue this matter in court, subject to any relevant time limits, and I know he says he has already taken legal advice.

**my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 19 February 2018.

Michael Crewe  
**ombudsman**