

complaint

Ms S complains that Creation Financial Services Limited ('Creation') debited a series of payments totalling approximately £6,235 from her credit card account which she says she didn't make or otherwise authorise.

background

In early May 2018, Ms S gave her son her card and PIN so that he could buy an online food shop whilst she was in hospital. He returned the card to her after this, having made four payments on her card instead of one. But she says in the meantime he stopped her paper statements and kept her card details to allow him to continue using his card without her noticing. Her son didn't live with her at the time but did visit her often. She explained that whilst she did consent to him using her card for the online food shop, he had returned the credit card to her and she didn't expect him to use it again. Her son used the card for a series of online transactions between May and July 2018 which totalled approximately £6,235.

When Ms S discovered her son had been using her card, she got in touch with Creation to inform them of what had happened. They completed an investigation and told Ms S that they wouldn't be refunding her as she had breached the terms and conditions of her account by giving her son the card and PIN. Creation agreed to reverse the charges that Ms S had incurred on her account during the period of the disputed transactions which totalled approximately £520.

Ms S wasn't happy with this, so she came to our service. Our investigator reviewed what had happened and recommended that the complaint be partially upheld. They felt that it was most likely Ms S's son made the transactions without her consent and used the details he obtained when he had the card to do so. So, they asked Creation to refund all of the disputed transactions apart from the four made in the time her son had her credit card. They also asked Creation to re-structure Ms S's account as though the transactions had never been completed and requested the removal of any linked adverse information on Ms S's credit file.

Creation didn't agree. They suggested that:

- Ms S's son must have had her physical credit card to make some of the transactions such as those made in a pub and a fast food restaurant;
- The card was used between April and July 2018 so they felt she must have given him the card on more than one occasion.

They have also since said that they felt Ms S should never have provided her card and PIN in the first place as this was not only against the terms and conditions of the account but means she has not kept her card and details securely. They felt Ms S should have realised in handing him these details she was allowing him access to all of the details needed to complete further transactions, and by implication, giving him consent to do so. As Creation didn't agree, 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. Having done so I have reached the same conclusion as our investigator, and for broadly the same reasons.

Generally, Creation can hold Ms S liable for the disputed transactions if the evidence suggests that it is more likely than not that she authorised these payments or gave someone else consent to make them on her behalf. I'm satisfied from the banks evidence that these payments were properly authenticated – that is that the genuine card details were used to make these transactions. But the regulations relevant to this case say that it's not, on its own, enough to enable Creation to hold Ms S liable.

I agree that Ms S was in breach of the terms and conditions of her account by sharing her PIN with her son, but this in and of itself doesn't mean that she consented to these payments such that Creation could hold her liable for them. So, I also need to think about whether the evidence suggests that it's more likely than not that Ms S authorised the transactions being made. Having done so, I think it is most likely Ms S didn't authorise these transactions. I'll explain why.

The relevant regulations say that if someone gives their credit token – that is their physical credit card – to someone else with their consent, then they will be held liable for any use of their credit facility by the other person. This remains the case even if they exceed the parameters of their consent – in this case allowing the son to buy one food shop. So I agree with our investigator that whilst Ms S only meant for her son to use her card for one online grocery shop, it is fair for her to be held liable for the four transactions he made whilst he had the card in his possession.

The relevant regulations do also allow banks to hold their customer liable for transactions where the consumer does or says something that permitted the third-party to undertake the procedure for giving consent. But this authority, once given, shouldn't be regarded as continuing indefinitely. The question is, on the facts, did the Ms S do enough to annul any implied representation that the third-party, her son, has their authority.

It is Ms S's testimony that her son returned her card to her after the initial four transactions, and I have seen nothing to make me doubt this account. Creation have said that as Ms S accepts, she had given her credit card to her son on the previous occasion, she has given him open ended consent to use it. They said that as her son was not a supplementary card holder, Ms S had actively and independently made the decision to give her son access to her card and credit facility in a way that was not agreed and independent from Creation. But in this case Ms S has explained that her son returned her card to her, and that she was unaware that he had taken note of the details, so there is nothing to say she would have thought he would be able to use her card or credit facility again.

She's also explained that he stopped her paper statements which was how she usually monitored her account, meaning that he could continue spending on her account without her noticing. Creation confirmed that her statement preference was changed in late May 2018. And I have seen no evidence which would make me disbelieve her account. When considering the circumstances of this complaint, I think Ms S's consent ended when her son returned the card to her. Consequentially I find that when her son made the disputed transactions, he did not have her credit token, nor was he acting with her implied consent. Having considered this, I do not think it is fair or reasonable to hold Ms S liable for the transactions that occurred after her son returned her credit card to her.

In order to put things right, Creation must refund the disputed transactions from 6 May 2018 to 17 July 2018; restructure the account to remove any impact of these disputed transactions; and remove any relevant adverse information from Ms S's credit file.

my final decision

My final decision is that I uphold this complaint and ask that Creation:

- refund the disputed transactions from 6 May 2018 to 17 July 2018;
- restructure the account to remove any impact of these disputed transactions; and
- remove any relevant adverse information from Ms S's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 29 April 2021.

Katherine Jones
ombudsman