

complaint

Mr S complains about a disputed transaction taken from his account. He would like Monese Ltd to refund this to him.

background

Mr S complained to Monese about a transaction on his account which he said he hadn't made nor authorised. Monese asked him for some more information about the use of his account and in his response, Mr S confirmed that he had given his card and PIN to his daughter on a previous occasion to use in a shop.

Monese then rejected his complaint. It said that he had been grossly negligent, he shouldn't have disclosed secure information about his account to a third person and that the usage on the card was not typical of a fraudster. In the circumstances, it said he would be held liable for the transaction.

Mr S then brought his complaint to this service where our investigator looked into matters for him.

Our investigator did not think Monese had dealt with the complaint fairly. He thought that Mr S should not be held liable for the transaction for the following reasons:

- Whilst he thought the payment had been authenticated, he did not agree that Mr S had consented to the transaction – an essential element in considering authorisation. He thought it was more likely that Mr S's daughter had used his card without his permission.
- Under the relevant rules, as the transaction involved a distant contract - and Mr S had not consented - he could not be held liable.

Mr S agreed with these findings but Monese did not and asked for an ombudsman's 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 and based on what I have seen, I will be upholding Mr S's complaints – for very much the same reasons as the investigator.

In fact, I'm not sure if there is much that I can helpfully add.

The crux of Monese's objection is unfounded I am afraid. It says that it is excluded from being a party to a distant contract because of the nature of its business. But, as the investigator explained – the contract is not between Mr S and Monese but rather between Mr S and the merchant responsible for the disputed transaction.

The rules have been applied correctly here – so I am afraid I agree that Mr S cannot be held liable for the transaction which he disputes.

my final decision

My final decision is that I uphold this complaint.

Monese Ltd need to refund the transactions of £45.54, along with 8% interest from the date of the transaction to the date of settlement. In addition, for the distress and inconvenience caused, it should pay Mr S £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 December 2019.

Shazia Ahmed
ombudsman