

The complaint

Mr D complains that Tymit Ltd won't refund payments he didn't make with his credit card.

What happened

Mr D says he lost his credit card. And so, he disputes the three payments which came to £1,413.10 that were made after this. He is unhappy that Tymit won't refund them.

Tymit said that it wouldn't be refunding the money. The payments were made when the chip on the card was read, and the correct PIN entered. Mr D had told it that he'd kept a record of the PIN with the card in his wallet. And although he'd taken action to disguise this he'd not acted vigilantly, and this allowed his security information to be exposed to a third party.

Our investigator recommended that the payments be refunded together with any interest, fees and charges. She said that it wasn't in dispute that these payments were unauthorised as Tymit was saying that Mr D had been 'grossly negligent' with his security information. But these were credit transactions and Section 83 of the Consumer Credit Act 1974 meant that a consumer isn't liable for any loss arising from the use of a credit facility in these circumstances.

Tymit didn't agree and wanted an ombudsman to review the complaint. It referred to its terms and conditions requiring Mr D to keep his security information safe. And it said that this Mr D had effectively disclosed his PIN.

What I've decided – and why

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

I need to take account of the Payment Services Regulations 2017. And to think about whether Mr D authorised the payments from his account. And where credit is involved as here on credit cards, the Consumer Credit Act 1974 applies, and it states that a consumer wouldn't be liable for an unauthorised payment *unless* they consented to someone else having possession of that credit card.

I've seen the information provided by Tymit showing that the payments were made when the chip on the card was read, and the correct PIN entered. And so were authenticated. Mr D's explanation about the loss of his card isn't disputed by Tymit. So, I've no reasonable basis to find that the payments were authorised. He provided details of how he'd disguised the PIN within a phone number and said that he didn't use the card very often. I can't see evidence that he intended that someone else have possession of the card and PIN and use it in this way.

While I appreciate that the terms and conditions of the account required Mr D to keep his card and security information safe they also state (in condition 13) that:

“If you allow someone else to use your Card, you will be liable for all Purchases they make until you tell us that the Card may have been misused. You will not be liable for (and we will refund) any other Purchases not authorised by you.”

And for the reasons I've given I don't find that Mr D consented to someone else having possession of his card and then using it.

I agree with the refund recommended by our investigator. And also, I add that putting Mr D in the position he ought now to be in will require any related adverse credit information to be removed from his credit file.

My final decision

My decision is that I uphold this complaint and I require Tymit Ltd to:

- 1) Refund these disputed payments and rework the account to remove any related interest, fees or charges.
- 2) Ensure that no adverse credit information about Mr D in relation to these payments is reported to third parties including to credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 April 2023.

Michael Crewe
Ombudsman