

## **The complaint**

Miss T has complained Contis Financial Services Limited won't refund her for transactions she didn't make.

## **What happened**

In October 2023 Miss T got in touch with Contis as she holds an account with Engage. She'd seen four transactions she didn't recognise that had taken place abroad. She complained that she'd not made these.

Contis confirmed they believed the evidence showed Miss T must have been aware of these transactions as they'd sent codes to verify these which they believe Miss T must have given to a third party.

Miss T brought her complaint to the ombudsman service.

Initially an investigator felt that Contis had done nothing wrong but on further review an investigator told Contis the evidence didn't support their outcome. He was going to ask Contis to refund Miss T in full, along with the foreign exchange fees that had been charged.

Miss T accepted this outcome, but Contis didn't.

Miss T's complaint has been referred to an ombudsman for decision.

## **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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Miss T's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Contis has implied Miss T was grossly negligent in providing one-time passcodes to a third party so I've considered the gross negligence aspect too.

To help me come to a decision, I've reviewed the evidence Contis provided as well as what Miss T has told us.

I believe these transactions were carried out without Miss T's authorisation. I say this because:

- The evidence Contis provided confirmed that Miss T's card details were set up on a number, which Contis agree is not Miss T's mobile which was registered to her account. The one-time passcodes were all then most likely provided to this number. This immediately suggests there is no evidence Miss T received the one-time passcodes and therefore the suggestion she was grossly negligent seems unlikely.
- The four transactions took place along with other attempted transactions which were rejected as there were insufficient funds. I believe this confirms the person using Miss T's card details was unaware of her account balance.

Overall I don't believe there's sufficient evidence to show that Miss T made or knew about these disputed transactions. As required under the guidelines about gross negligence, the burden of proof lies with the financial institution to show a customer committed gross negligence. Based on the evidence Contis provided, as confirmed above, I don't agree this has been shown.

### **Putting things right**

As Miss T didn't authorise these transactions, Contis will now need to refund her for the four disputed transactions, along with the charges for foreign exchange. They will also need to add 8% simple interest from 23 October 2023 to the date of settlement.

I'm very aware that Miss T has found the lack of this money to be extremely challenging and has been anxious for this complaint to be resolved.

### **My final decision**

For the reasons given, my final decision is to instruct Contis Financial Services Limited to:

- Refund four disputed transactions along with associated fees; and
- Add 8% simple interest to those amounts from 23 October 2023 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 5 April 2024.

Sandra Quinn  
**Ombudsman**