

The complaint

Mr A says Yonder Technology Ltd did not do enough to protect him when he fell victim to a coaching scam, or to try to recover his money when he realised he'd been scammed.

Mr A recently added a representative to his complaint. For ease of reading I will refer solely to Mr A throughout this decision, but all his representative's comments have been considered.

What happened

Between 24 and 28 March 2024 Mr A made six credit card payments totalling £5,253.22 to purchase business coaching services from 'M', a contact he had made through social media. In April he asked 'M' for a refund as the services had not been provided. When they refused he asked Yonder first to raise a chargeback claim and then a claim under Section 75 of the Consumer Credit Act 1974.

Yonder said it was unable to progress either claim as Mr A could not provide the supporting information needed.

Our investigator did not uphold Mr A's complaint. He found Yonder's response to be fair and reasonable. He did not think Yonder ought to have intervened at the time of the payments; nor did it have enough information to successfully present a chargeback claim; nor evidence that there was a breach of contract or misrepresentation on the part of 'M' that supported a Section 75 claim.

Unhappy with this assessment Mr A asked for an ombudsman's review. He said it was clear he had been scammed and 'M' had provided no coaching at all. The payments were unusual and Yonder should have intervened. He explained he has a mental illness and is vulnerable. 'M' coerced him - he sent in medical evidence confirming at times his judgment is impaired. He then asked if in the circumstances would Yonder write-off his balance as a gesture of goodwill. Yonder declined.

As the complaint was not resolved informally it was passed to me to make a final 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 decided not to uphold this complaint, for broadly the same reasons as the investigator. I know that this will be very disappointing for Mr A, and I can understand that the whole episode has been deeply distressing for him.

It isn't in dispute that Mr A has been the victim of a cruel scam and has lost money as a result – but I need to decide if the loss he suffered should have been prevented or put right by Yonder.

I don't think that Yonder could have prevented what happened here. I'll explain why. In line

with the Payment Services Regulations 2017 (PSRs), Mr A isn't liable for payments he didn't authorise, unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe. But I am satisfied – and it's not in dispute - that Mr A authorised the payments. Whilst I understand that Mr A didn't intend for the payments to be used as part of a scam and was tricked by the scammer, this doesn't change the fact that he authorised the payments in the first instance, and businesses are generally expected to act on their customers instructions.

That said, there are some circumstances where a business should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Yonder should fairly and reasonably:

- Been monitoring accounts – including payments made and received – to counter various risks including anti-money laundering, countering the financing of terrorism and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Yonder didn't contact Mr A about any of the payments that he made – but I don't think that it needed to. The amounts were not unusual for credit card spend and there were no indicators of possible financial harm to Mr A. So, I don't think it missed an opportunity to prevent the loss.

In relation to recovering the transactions I have considered if Yonder has done enough in relation to this matter.

Chargeback

Chargeback isn't a legal right or a guaranteed way of getting a refund. But it can offer a way to informally resolve disputes between merchants and cardholders. The rules that apply are set by the card scheme, and there are limited grounds on which a chargeback can succeed. Banks must comply with those rules before attempting a chargeback on behalf of their customer. Our role in such cases is not to second-guess the card scheme rules, but to determine whether the regulated card issuer (in this case Yonder) acted fairly and reasonably when presenting - or choosing not to present - a chargeback on behalf of its cardholder (in this case Mr A).

In this instance I am not persuaded that Mr A provided enough evidence to support his claim so I don't think that Yonder did anything wrong in not pursuing the chargeback. I agree with its conclusion that a chargeback would most likely not have been successful. I say this

because Mr A would've only had prospects of a chargeback succeeding in these circumstances if it could be shown that 'M' failed to provide the goods/services paid for or that they had been misrepresented to Mr A. But there is no evidence that the goods/services paid for were not ultimately provided/were misrepresented. Mr A was unable to provide any communication showing what he initially agreed to purchase or when the coaching would be delivered. He had no invoice or sales contract. The messaging between the parties had been deleted. And 'M' had responded to his email request for a refund saying *'Your claims regarding payments for in-person and video coaching sessions that were never delivered are not accurate'*.

Section 75

Under section 75 of the Consumer Credit Act 1974, the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. Section 75 will only apply when there is a direct relationship between the debtor, creditor and the supplier (in this case, Mr A, Yonder and the scammer respectively). From what I've considered, it seems a valid debtor-creditor-supplier relationship exists in this case. But the same issue occurs that prevented a chargeback claim progressing. The lack of evidence as to what 'M' sold Mr A and under what terms makes it reasonable for Yonder to say it cannot identify neither a case of misrepresentation nor breach of contract.

I am very sorry for the situation Mr A now finds himself in. He has been the victim of a cruel scam and has lost a lot of money as a result. I do understand why he wants to be compensated. But this loss was caused by the scammer – and not Yonder so I cannot fairly hold it liable.

I have thought carefully about Mr A's submission about his vulnerabilities but it does not change my conclusion. I say this for two reasons – Yonder was unaware at the time it processed the fraudulent payments so it had no reason to exercise an adjusted level of care. And, secondly, the regulator's guidance is that vulnerable customers should experience outcomes that are in line with the outcomes received by other customers who may not be vulnerable. I find that holding Yonder liable for Mr A's losses given the circumstances of this complaint would not be following this principle. As Yonder is now aware of Mr A's circumstances it should agree any required and reasonable adjustments with him.

My final decision

I am not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 December 2024.

Rebecca Connelley
Ombudsman