

## **The complaint**

Mr S complains that New Wave Capital Limited trading as Capital on Tap won't refund payments he says he didn't authorise from his account.

## **What happened**

Mr S explains that he was looking to book three air tickets online on 11 November 2022. He got to the point of booking with one merchant. But says he didn't complete this as he didn't enter a one-time passcode sent to him by text. He says he still booked the same trip but with better terms through a different merchant. He found that the first merchant had still charged him a total of £2,864.58 and he asked for a refund. He is unhappy that this refund was only partial and that he has lost money and spent time pursuing this.

Capital on Tap said that it had raised a chargeback with the merchant. A partial refund had been provided but Mr S wasn't eligible for anything further. It said that the payments were authorised when Mr S selected the product and provided his card details online. The use of the one-time passcode was at the discretion of the merchant. It wouldn't be refunding the rest of the payments.

Our investigator didn't recommend that the complaint be upheld. She said that the issue was whether Mr S consented to the payments. He had done so and authorised the payments before any secondary authentication check. Mr S wouldn't have known that this was going to be made. Capital on Tap had fairly attempted a chargeback. There was now a contractual dispute between Mr S and the merchant. Whether Capital on Tap ought to have declined the payments was a risk-based decision and not about authorisation.

Mr S didn't agree and provided a detailed statement. He said that we hadn't considered the possibility that once the code had been issued it isn't optional as otherwise what is the use of it. And not using it as part of the process would be misleading. He wasn't sure how we'd concluded that he'd decided to go ahead and completed the payment process. He said that he didn't do so. He said that Capital on Tap failed to apply a secondary security measure and that it must refund the unauthorised transactions and the interest charged. The outcome here was biased, not factual and not fair at all.

## **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 into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated. And if they weren't authorised Mr S wouldn't generally be responsible for them.

So, I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of how these payments were made?
- Did Mr S authorise the payments on the account?

Mr S says he had an account with the merchant and his details were already stored on its website. He was looking to buy tickets. And he accepts he entered his card details for payment. As part of the chargeback process the merchant has sent sample screen shots of its booking process. And I'm satisfied that Mr S would have needed to have agreed to its terms and conditions before a payment could have been processed. A purpose of asking for stronger customer authentication is to help prevent fraud. By it seems to be accepted here that the merchant didn't require the one-time passcode issued to be entered to proceed. That meant it adopted the higher risk of this transaction having not been by Mr S using these card details. But here there was no other party than Mr S involved and one of the tickets was issued in his name. And there was no claim of fraud.

The issue is whether he consented to the payments. I appreciate he says that he didn't do so because he didn't enter the one-time passcode. I'm afraid I don't agree that this was a pre-requisite to him consenting to the payments whether or not he expected such a code to be issued or required. I accept the possibility of confusion about whether the booking had gone ahead. But I can also see that he was sent an email at that time by the merchant confirming the booking and providing ticket numbers. And that if there was a mistake there was it seems a 24-hour period for him to contact the merchant. Otherwise, his booking terms said the payments were non-refundable save for some taxes and fees on cancellation.

Based on Mr S' statement he then went on to make a similar booking with a different merchant and then did enter a one-time code. I can see the related amount that debited his account.

He raised this dispute with Capital on Tap on 7 December 2022. And it followed its chargeback process. It received a response from the merchant defending the chargeback and later refunding only part of the fare related it seems to certain taxes and fees. That was in line with the cancellation terms of the tickets and not due to any error with the payments. And so, Mr S remained liable for a net amount of over £2,300 and has been charged interest on the payments.

I understand what is at stake for him and why he is dissatisfied with the outcome from Capital on Tap. But having considered his testimony and all the other evidence provided I'm satisfied that he consented to and so authorised these payments. It's also clear that he changed his mind and believed that the initial payments wouldn't go through. Unfortunately, he couldn't withdraw his consent to the payments including by not inputting a one-time code. It is possible that not inputting the one-time code could have resulted in the transactions being declined but that didn't happen here.

For these reasons I don't find Capital on Tap has made a mistake or acted unreasonably. And so, I'm afraid, Mr S remains liable for the remaining balance of these payments after the refund and for the related interest and charges applied. If he doesn't accept my decision he remains free to pursue this in court subject to any relevant time limits.

## **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 October 2023.

Michael Crewe  
**Ombudsman**