

The complaint

Mr and Mrs C complain that Co-operative Bank Plc trading as Smile won't refund payments which they have said they didn't authorise.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Between 2 February 2023 and 7 March 2023, Mr and Mrs C's son made several transactions totalling approximately £753.12 using debit card details connected to their Co-operative account. The payments were made to various gaming sites, and their son didn't realise the payments were debiting his parent's account.

Mr and Mrs C discovered what had happened when they tried to pay a bill and the transaction was declined. They complained to Co-operative Bank because they felt it should have identified the payments as unusual for the account and intervened to prevent their loss.

Co-operative accepted the account hadn't previously been used for gaming transactions, but it explained its systems consider other factors before blocking payments and it considered its fraud prevention systems had worked as expected. So, it didn't accept it had made a mistake in allowing the payments to be made. It explained it was Mr and Mrs C's responsibility to monitor and manage their accounts and that they should check their account regularly to prevent the matter reoccurring.

Mr and Mrs C weren't satisfied and so they complained to this service. They said they didn't give their card details to their son to purchase games. The only time the card details were used was in the play store at the initial setup of the game, and had they known about the implications of doing so, they would never have done it. They said this had never happened before and they maintained transactions were very unusual for the account.

Co-operative Bank said its fraud analysts had reviewed the disputed transactions and confirmed that because the payments debited the account sporadically over a number of weeks, and were all low value, they wouldn't have triggered on its fraud prevention systems.

It said Mr C had allowed the card to be used for age verification on the gaming sites and in doing so he gave permission for payments to be debited from the account, so the payments weren't fraudulent. It accepted Mr C didn't intend for his card to be used that way and that his son was unaware that he was using the card when making purchases within the games, but he gave the merchants permission to debit his account, so it was unable to assist him in recovering the funds.

It also said it looked at the possibility of raising a chargeback claim and had asked Mr C to email its Disputes Team with a list of the transactions he wanted to dispute, along with information about the type of gaming device used to make the purchases, the specific games the purchases were made on, and any other relevant information, but he didn't

respond. It also offered to raise a claim in accordance with the Visa International Dispute Rule, but it was unable to guarantee the claim will be successful.

Our investigator noted that the genuine and correct card details were used to make the transactions and she explained that a consumer can be bound by the acts of a third party which appear to have been made without the consumer's authority, which is known as apparent authority. She noted Mr C had saved his card details onto his play store account and that he likely shared his play store account details with his son, which then enabled him to make the disputed transactions.

She was satisfied that by sharing his play store account with his son, which had his card details saved on there, Mr C had given his son apparent authority for all the transactions that were carried out. So, she thought the disputed transactions were all authorised for the purposes of the PSR 2017, and Co-operative Bank didn't do anything wrong in processing the transactions.

Our investigator also commented that the disputed payments were spread out over a period four weeks, so she didn't think they were unusual enough to have prompted Co-operative Bank to intervene.

Finally, she noted that Co-operative Bank had offered Mr and Mrs C the option of pursuing a chargeback claim upon receipt of further information, but the time for raising one had most likely expired and she didn't think a claim would have been successful because payments were made to legitimate businesses, and services were received.

Mr and Mrs C have asked for their complaint to be reviewed by an Ombudsman. They disagree that 40 transactions in a four week period wasn't unusual as they had been customers of Co-operative Bank for nearly 25 years and had never made gaming purchases in that time. They also said the payments were unusual when compared to the other transactions on the account as they were only spending money on food and bills.

They have further argued that Mr C didn't authorise their son to make the transactions, and he didn't share his play store details, therefore he didn't give apparent authority for any of the transactions.

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 conclusion as our investigator. And for largely the same reasons. I know Mr and Mrs C feel strongly about this complaint and this will come as a disappointment to them, so I'll explain why.

I've thought about whether Co-operative Bank could have done more to recover the payments when Mr and Mrs C reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Co-operative Bank) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr and Mrs C).

It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the gaming sites would have been able to evidence they'd done what was asked of them. So, any chargeback was destined to fail, therefore I'm satisfied that Co-operative Bank's decision not to raise a chargeback request against any of the merchants was fair.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply – like the issue around apparent authority, which has an impact on this complaint.

Mr C has described that he inputted his debit card details into his play store account at the initial set-up of a game and that this was necessary for age verification purposes. From there, their son unintentionally used those details to make purchases from various gaming sites without their knowledge.

A payment out of someone's account can only be treated as authorised if the payer has consented to it. So, I've gone on to consider here whether I think Mr and Mrs C consented to the transactions and therefore whether they were authorised or not.

The PSRs say that someone acting as an agent on behalf of Mr C can be treated as acting with apparent authority when making transactions on their account. Authority consists of two elements. The transactions must be authenticated, and Mr and Mrs C need to have consented to the payments being made.

I'm satisfied the payments were authenticated from the information provided to us by Co-operative. In other words, their genuine card details were used to make them. And Mr and Mrs C don't dispute that Mr C inputted his card details into his play store account.

Mr and Mrs C don't accept that they consented to their son using their debit card details to make purchases or that Mr C shared the details of the play store account with him. But I'm satisfied that Mr C inputted his debit card details into his play store account and then permitted his son to use a PC, which enabled him access to those debit card details. Having inputted the debit card details to the play store account, Mr C could have withdrawn apparent authority by deleting the details or securing them with a password, but he didn't do that. So, having considered the issues around authority, I believe Mr C granted apparent authority to his son to use his card details.

Because of this, I'm satisfied that Mr and Mrs C 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although they didn't intend for their son to make purchases using their card details, under the Regulations, and under the terms and conditions of the bank account, they are presumed liable for the loss in the first instance.

Prevention

I've thought about whether Co-operative Bank could have done more to prevent Mr and Mrs C's son from making the payments altogether because if there are unusual or suspicious payments on an account, I'd expect it to intervene with a view to protecting them from financial harm due to fraud.

The payments didn't flag as suspicious on Co-operative Bank's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr and Mrs C normally ran their account and while I accept there were no previous payments to gaming companies, these companies were legitimate companies, none of the

payments were high value and they were spread out over a period of 34 days, so I don't think Co-operative Bank needed to intervene.

Recovery

I'm satisfied that Co-operative Bank also told Mr and Mrs C it could attempt to recover the funds from the beneficiary accounts but it would need more information. As this information wasn't provided, it was unable to attempt to recover the funds.

Overall, I'm satisfied Co-operative Bank took the correct steps prior to the funds being released – as well as the steps it took after being notified of the disputed payments. I'm sorry to hear that Mr and Mrs C weren't aware that their son was making payments on their account and the effect this has had on them. But for the reasons I've explained, I don't think Co-operative Bank is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 10 January 2024.

Carolyn Bonnell
Ombudsman