

The complaint

Miss L complains that Modulr FS Limited (herein referred to as Algbra) won't refund payments taken from her account which she says she didn't authorise.

What happened

Miss L holds an account with Algbra. She has explained she agreed to grant a third party (T) access to her Algbra account, by forwarding on a 'magic link', on the understanding she would make money in return. I understand she thought the arrangement involved some form of cryptocurrency investment.

Between late September 2022 and early October 2022, over £5,000 was sent from Miss L's Algbra account. Several credits were received that funded some of these payments, but others appear to have been funded by the money Miss L already held in the account.

In late October 2022, Miss L reported to Algbra that money had been stolen. As she had granted someone else access to her account, it wouldn't refund her. She complained she had been scammed, but Algbra maintained it wasn't liable and closed her account.

Unhappy with this response, Miss L referred her complaint to our service – supported by a professional representative. Our investigator didn't uphold her complaint. In summary, they said Miss L was liable for payments made by T, as she had allowed them access to the account. While they accepted Miss L had been tricked, they weren't persuaded Algbra would have been able to work this out if it had intervened. They also didn't think Algbra needed to take further action in relation to the account closure.

Miss L has appealed the investigator's outcome. In summary, she says intervention would have worked as, if she had been texted or emailed, she would then have realised what was happening and put a stop to things. She also says she thought the money was being sent on to her own cryptocurrency account, and that T had guided her to tell Algbra she was no longer disputing the payments after reporting them as fraudulent – on the understanding T would then pay her back.

Miss L's representative also says Algbra should have realised she was highly vulnerable to cryptocurrency scams; they disagree a warning would have been ineffective; and the payments were not authorised as defined by the Payment Services Regulations 2017 (PSRs) as the scammer used deception to elicit them.

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. I'll explain why.

I'll start by addressing whether the payments were authorised. In broad terms, under the PSRs, Miss L is generally liable for authorised payments – but Algbra is generally liable for unauthorised payments.

The PSRs make it clear that a payment is authorised if Miss L consented to the execution of it. And that consent must be given in the form, and in accordance with the procedure, agreed between her and Algbra.

In practice, that means a payment is authorised if Miss L completes agreed steps to make a payment (such as accessing the app, setting up a payee, and selecting an amount to send to them). But it's also authorised if she gave someone access to use that agreed form and procedure to make a payment. Miss L admits sharing a link with T to allow them access to her account. The context of what she has told us also suggests she understood T would be making payments from the account – as she says she thought the money would be sent on to cryptocurrency.

It therefore appears to me that Miss L allowed T to act as her 'agent' – as in she permitted them to use her account to make payments. While she may not have been aware of each and every payment made, they would still be treated as authorised under the PSRs due to the access/authority Miss L effectively granted T. Meaning she is presumed liable in the first instance.

Despite what has been suggested by Miss L's representative, the PSRs don't treat a payment as unauthorised purely because the account holder has been deceived. As I'd expect them to know, the concept of consent under the PSRs isn't a matter of *informed* consent. So this point doesn't have a bearing on whether the payments were authorised.

However, I do accept that Miss L was tricked into granting access to her account. While I think the evidence suggests she knew they would be making payments, she also thought she would make money from the arrangement. Instead, she has lost out. So, I've considered whether Algbra ought to have prevented her fraudulent losses.

Although the starting position is that Miss L is liable for the payments, due to them being authorised, there are some circumstances when it might be appropriate for Algbra to identify a fraud risk and to therefore take additional steps before processing a payment. That might occur as when the payment is significantly unusual or uncharacteristic compared to the normal use of the account.

I am conscious this account doesn't appear to have been running for that long. So Algbra didn't have much knowledge of how Miss L normally transacted, to know what looked uncharacteristic for her. However, I understand why the investigator has concluded that, due to the number and value of payments made within a day, there is a point at which it would be reasonable to conclude that Algbra should have identified, and responded to, a fraud risk.

However, I agree with the investigator that displaying a warning would likely have been a proportionate response to the level of risk identified. As it was T, rather than Miss L, who would have seen this, I don't think this would have prevented her further fraudulent loss.

Miss L argues Algbra should have reached out in another way, such as by text or email. I don't think it necessarily had cause to think an in-app warning was insufficient. Regardless, I'm not convinced that, if it had contacted Miss L directly, the further payments would have been prevented.

That's because it's clear Miss L was being coached by T. To the extent that, after reporting her dispute, she told Algbra she was revoking the claim – as instructed by T. In those circumstances, it's unclear to me that Miss L would have responded in a way that made the fraud risk apparent to Algbra. Or that contact from Algbra would have caused Miss L to end her involvement with T.

We've also seen messages between Miss L and T, in the midst of these payments, showing she knew payments were being taken. Yet she didn't take steps to remove T's access, or to dispute the payments, for a further month – during which time more payments were taken. This also wasn't the first time T gained access to an account Miss L held; the dispute occurred after T had already taken payments from another account. Our service is considering Miss L's complaint about that separately.

In that context, it seems clear Miss L knew T were/would be making payments. And that fits with the scam she has reported. She thought the funds would be moved to her cryptocurrency account, and/or that she would be paid for granting access to her account. So I don't think it seems likely that, if Algbra notified her of the payments, that would have caused her to put a stop to things.

I note Miss L's representative says Algbra should have known Miss L was vulnerable to cryptocurrency scams. However, I'd point out that the payments being taken were transfers to an individual. So I don't think Algbra had cause to suspect Miss L was falling victim to this type of scam. I'd also point out that the representatives' submissions repeatedly refer to another firm who, so far as I'm aware, aren't involved in Miss L's dealings with T. That has made it difficult to assess the accuracy of their submissions.

Algbra did make enquiries to recover the funds after Miss L reported her dispute, but it wasn't successful in recovering them. I note it received a reply from the recipient bank saying their account holder reported their dispute with Miss L had been resolved – which matched her message to Algbra (which she says was sent on T's instructions) that she was no longer disputing the payments. In that context, I'm not persuaded there is more Algbra ought to have done which would have successfully recovered her loss.

Overall, I'm not persuaded it's fair to hold Algbra at fault for the loss Miss L incurred as a result of granting T access to her account.

I have also considered that Algbra went on to close the account. I'm not persuaded it was unreasonable for them to do so. As the investigator has pointed out, the account terms make clear there are circumstances in which it may close an account. I don't think those have been unreasonably applied here. While the terms don't make clear what notice period ought to be given, I can't see the timeframe applied unduly affected Miss L. The account was cleared by the time it was closed – meaning she wasn't left without access to her funds (bearing in mind I've not found Algbra is liable for her loss).

I do appreciate Miss L has clearly lost out here, and has been tricked and coerced by T. But what I'm considering is whether it's fair to hold Algbra, as the provider of her account, liable for her loss. Overall, I'm not persuaded it would be reasonable to direct Algbra to refund Miss L, or to take other action to resolve this complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 17 January 2024.

Rachel Loughlin
Ombudsman