

The complaint

Miss M complained because American Express Services Europe Ltd (Amex) refused to refund her for a transaction she said she didn't make.

What happened

On 3 August 2022, Miss M used her Amex account to pay £600 to a carpet business. On 30 September, Miss M paid a further £300 by phone.

Neither of these payments is disputed.

On 19 October, there was a further debit for £300, again authorised by phone. On 23 October, Miss M contacted Amex and said she hadn't made the transaction. She said she'd made payments to the carpet business before, but hadn't authorised the 19 October payment.

Amex gave Miss M a temporary credit and investigated. It wrote to the carpet business. The carpet business replied, and enclosed a copy of the invoice for Miss M's order. It told Amex that the order had been for stair carpet to be supplied and fitted at Miss M's home. The invoice shows the same address as the one on Miss M's account. The order shows an order for a total of £1,200. The merchant also attached the merchant copy for all three Amex payments: for £600, £300 and £300 for the complete carpet job.

The carpet business said the disputed £300 payment on 19 October had been made over the phone at completion. The business owner said it was completely beyond him, because the client had been completely happy with the job. He asked Amex how it would be possible for him to charge the card without her having provided him with the security number on the back of the card. He said the transaction was beyond question and the payment should stand.

Amex wrote to Miss M on 7 November, telling her that the merchant had provided documentation, which it copied to Miss M. Amex told her that as the documentation appeared to support the charge, the temporary credit of £300 had been re-debited from her account.

On 12 November, Miss M complained. She said she was extremely disappointed in the service from Amex. She said he hadn't authorised the payment, and didn't know how it had been authorised. She said it was wrong of Amex to encourage businesses to charge customers without consent. She said she hadn't had any problem with the carpet business until the unauthorised charge, which she felt was an invasion of her liberty. She said it wasn't for Amex to interfere in her personal finance and authorise payments without her consent.

There was further correspondence between Amex and Miss M. On 27 February 2023, Amex wrote again to Miss M. It said its investigation team had discovered that the initial £600 payment in August was for the carpet itself. The remaining £600 balance had been needed before the carpet was fitted, but Miss M had told the carpet firm that she couldn't afford the

last £600. The carpet firm had said she could pay £300 in September, and then the final £300 at fitting. The final £300 had then been made by Miss M over the phone.

Amex said that the carpet firm had pointed out that Miss M hadn't disputed either of the first two payments, and the invoice was for £1,200. The carpet had been fitted and the firm had finished all the work, so the final £300 charge wasn't fraudulent.

Miss M didn't agree and wrote again on 14 March. She said Amex had simply regurgitated what the merchant had said and hadn't carried out any true enquiry. She said she didn't owe the carpet firm any money. She said her parents were the homeowners who had bought the carpet. She said her sister and she had helped with some of the payment. She'd paid the initial £600. She'd also paid the £300 payment which her sister had given her as cash for their parents. Miss M said she wasn't the homeowner where the carpet was installed, so she wasn't liable for it. She said it was a crime for the carpet firm to charge her card without her knowledge.

Miss M contacted this service. She told our investigator that the order had been in her mother's name and there had been a family agreement that Miss M's sister would pay the disputed £300 final payment – but there was no written agreement saying this. She argued that the carpet firm had no right to access her account and Amex shouldn't have paid it.

Our investigator didn't uphold Miss M's complaint. Amex had provided the carpet firm's invoice, which showed that it was in Miss M's name. This meant she was liable for the full £1,200 once the service had been provided. So it was more likely than not that Miss M had authorised the payment. He told Miss M that as she said the disputed £300 should have been paid by her sister instead, she should contact her sister and request this from her direct.

Miss M wasn't satisfied. She said that the investigator's response was the same as Amex, that it was more than likely that she'd authorised the transaction. She said she hadn't done so, and that she'd provided a message from the merchant saying so. She believed the card had been charged without her consent. She asked whether it was acceptable for the merchant to charge her card without her consent, even if it was done on the basis of money being owed. She said she was being deprived of her right to consent, and the entire situation was absurd.

Miss M also said that she didn't authorise the disputed transaction. And she's objected to both Amex and the investigator taking their decisions on the basis of what's most likely to have happened. She also said that the merchant had no right to access the account and Amex shouldn't have paid it. She asked if businesses have the right to charge a card without her consent, and said surely it would be a civil matter between the business and its customer, not Amex, if money due wasn't being paid.

Miss M asked for an ombudsman's 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.

To clarify the role of this decision, I don't have jurisdiction to decide a civil legal issue between the carpet firm and Miss M – nor between Miss M and members of her family. Miss M's complaint to this service was about a financial organisation, Amex, and her complaint was that Amex refused to refund her for the disputed £300 transaction. My job is to decide whether Amex acted fairly and reasonably when it refused to refund Miss M for the disputed

£300 final payment, on the basis that it believed that Miss M had authorised the payment herself. If Miss M wishes to pursue a civil legal dispute against either the carpet firm, or against members of her family, she's free to do so through the appropriate legal channels. But it's not something I can deal with.

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

So I've considered whether or not it's more likely than not that Miss M authorised the disputed final payment. Miss M has objected to "more likely than not" being used as a test. But when anyone taking a decision wasn't present, they can't know for certain what happened and so they make their decision on the basis of what's more likely than not to have happened.

The disputed £300 payment which took place on 19 October was made by phone, using the correct details on Miss M's Amex card. Miss M hadn't reported her card lost or stolen, so it was in her possession at the relevant time. She hasn't argued that the transaction was made by some third party fraudster, and I can't see how any such person might have made the transaction when Miss M still had the card in her possession. I also don't consider it's likely that the carpet firm retained all Miss M's card details from the previous month just in case Miss M refused to pay, and then used those again without consent.

The correct card details were provided to the merchant on 19 October and authenticated the payment. Authentication is the technical process. As the payment was correctly authenticated, I've gone on to consider who authorised that payment – in other words who gave consent to the payment.

Miss M and the merchant had had previous contact about this order, so he'd have realised if some third party fraudster had obtained the card and phoned up, instead of Miss M whose voice the merchant knew. And I can't see why any third party fraudster who'd obtained Miss M's card would have used it to pay an invoice which was in Miss M's name. There would have been no benefit in doing so.

It seems to me most likely that Miss M authorised the disputed payment herself. She's talked about a family agreement about who would pay for the carpet. But it's Miss M's first name on the invoice, not any other family member, so it was for her to pay the invoice. It's possible that Miss M authorised the payment, then regretted it because her sister or another family member didn't refund her in line with some unwritten family agreement. But that's not Amex's fault and it doesn't change the outcome. All that Amex had to consider was whether the payment was correctly authenticated, which it was, and whether it was more likely than not that Miss M, the account holder, authorised it. I find that it was reasonable for Amex to reach the conclusion that Miss M authorised the payment herself.

Similarly, if a family member had taken Miss M's card without her knowledge and used it to pay the outstanding balance, then Miss M breached her obligation to keep the payment instrument – her card – secure. But in practice I think it's much more likely that Miss M made the transaction herself. The invoice was in her name; and she'd paid the previous two parts of the payment. So I consider it's most likely that she paid the third and final outstanding balance too.

Finally, Miss M claims that a text she received from the carpet firm proves she didn't authorise the transaction. I don't agree. The text she's provided is dated 19 October and says *"Please accept my apology for the action taken re charging your balance. I seriously thought that's what we had arranged."* It seems to me that, after the payment had been

made, Miss M complained strongly about having been asked to make the payment before the fitting. There's an adjoining text from the carpet firm to Miss M a couple of hours later, which confirms that the fitter will be with her the next day. So I think the text is about whether the payment which had been authorised was to have been requested immediately before, or immediately after, the fitting. I don't consider it's evidence that Miss M didn't authorise the payment, which the invoice in her name indicates she was due to pay.

So I find it's most likely that Miss M authorised the disputed £300 payment herself. In line with the Payment Services Regulations 2017, this means that Amex doesn't have to refund her.

My final decision

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 M to accept or reject my decision before 30 January 2024.

Belinda Knight
Ombudsman