

The complaint

Mr and Ms T complain that Citibank, N.A. did not refund a series of disputed transactions.

What happened

Both parties are aware of the circumstances surrounding the complaint, so I won't repeat them in detail here. In summary, Mr and Ms T were scammed when attempting to sell furniture online. The scammer asked for their debit card details so they could pay for a courier to collect the furniture. When Ms T was told she would receive a code she says she got suspicious and blocked the scammer. Despite this, three lots of £1,000 left their current account with Citibank.

As the payments that went through were authorised using One Time Passcodes (OTPs), Citibank determined that the payments were authorised. This is because the OTPs were required in order for the payments to succeed. As they had reason to believe Ms T either passed on or entered the OTP's herself, they felt the payments were therefore authorised and did not agree to refund them. They pointed to the terms and conditions that state they will not refund authorised transactions.

Our Investigator agreed with Citibank and did not think that they needed to refund the £3,000. Mr and Ms T disagreed with this. They said that they received the texts for the OTPs after the funds had already debited the account so felt the complaint should be upheld.

I issued a provisional decision which read as follows:

I've first considered if I think the payments were authorised or not. Generally, Citibank is able to hold Mr and Ms T liable for the disputed transactions if the evidence suggests it's more likely than not that they made or authorised them themselves. This position is confirmed in the Payment Service Regulations 2017 (PSRs) and the terms and conditions of the account.

From what I've seen, the payments were made using the genuine card details. While this is important, it isn't enough on its own to say Mr and Ms T are liable for the transactions. Citibank also has to show it's more likely than not that Mr and Ms T made or otherwise authorised the transactions themselves.

It is not in dispute that Ms T passed her card details onto the scammer and this is how her genuine card details were used to initiate the payment. There is a dispute over whether or not Ms T also passed on the OTPs which were required to process the payment and this will be discussed in more detail later.

For the purposes of this part of the complaint about authorisation, I've considered whether I think Ms T authorised for the payments to be made regardless of whether or not she passed on the OTPs.

Ultimately, regardless of whether or not Ms T passed on or entered the OTPs herself, I don't think this means, in this particular circumstance, that she therefore consented to the transactions. The PSRs state how consent is given – it's not something that's open to

interpretation. They say it must be given in the form, and in accordance with the procedure, agreed between Mr and Ms T and carried out but Citibank. However, in Ms T's case, there was no agreed form and procedure between herself and Citibank as she was unaware that the transactions were occurring. And she was not reasonably aware that she was consenting to a payment being authorised when passing on or entering the OTPs, particularly as she was expecting to receive money. So, on balance, regardless of whether or not the OTP was shared by Mr and Ms T, I don't think the payments were authorised. This means Citibank cannot automatically hold Mr and Ms T liable for the transactions.

There are some circumstances, however, in which Mr and Ms T can be held liable for unauthorised transactions made from their account. The PSRs say that Citibank can hold Mr and Ms T liable for disputed unauthorised transactions where they've been grossly negligent in failing to comply with their obligations relating to their account. Among other things, those obligations are that they must take all reasonable steps to keep safe their personalised security credentials. Looking at the account terms and conditions, Citibank states they will not refund an unauthorised transaction if 'you have deliberately or very carelessly failed to keep the personalised security features of your Payment Instrument or your Account safe'. And I think the personalised security features includes the OTPs.

I've firstly considered whether I think it's more likely Ms T shared the OTP with the scammer or entered it herself to validate the payment. Ms T has said she received the texts containing the OTPs after the funds had already debited her account, so could not have passed them on or used them. Citibank has said the timings for the OTP texts being sent correspond with the transactions being approved and any issues with the timing of the texts is likely due to an issue with the time and date setting on Ms T's mobile phone.

I've considered the evidence available to me. Citibank has provided evidence showing that OTPs were used in order to validate the three transactions. And they have provided evidence that these were sent to Ms T's mobile phone number. This alone is enough to make me think it's more likely Ms T passed on the OTPs or used them herself to validate the payments, as it was not possible for the transactions to be completed without them.

I've gone on to consider the chat log that Ms T provided between herself and the scammer. In this I can see that at one point the scammer asks if Ms T had received a code, and then asks her to try typing it in again. This suggest Ms T may have received the OTPs at that point and was being asked to input them into the link she received.

I've listened to the phone call between Ms T and Citibank's fraud department after her account was blocked. In this, Ms T is asked if the transactions appear on her online banking and she confirms there are three payments of £1,000 pending. The call handler asks Ms T if she had received any OTPs and she confirms she had received a lot. This contradicts what Ms T has said to us, that she received the OTPs after this call and after the payments debited the account. I understand that memories can fade over time, but this makes it difficult for me to rely on Ms T's version of events. Based on the phone call that I've listened to, Ms T had received a number of OTPs and at that point the payments were pending, so I think it's likely that the OTPs were therefore used to process the transactions.

Considering everything available to me so far, I currently think it's more likely Ms T did pass on the OTPs or use them herself to process the three transactions of £1,000. So, I've gone on to consider whether or not I think she did so very carelessly, or with gross negligence.

In the phone call between Ms T and the fraud department at Citibank, Ms T explained that she was trying to receive £50 using her Citibank card, but the message said she was trying

to send £1,000. It's more likely Ms T was referencing the OTP text messages that read 'Citi will never ask you to share this code. Your One Time Password for your... transaction to [merchant] for GBP 1,000 is...'.

Considering this, I'm satisfied that Ms T read the text message and identified there was a potential risk, as she mentioned to the fraud team that the texts said she was trying to send £1,000 when she was expecting to receive £50 into the account. It's therefore clear Ms T noticed the discrepancy before passing on the OTPs.

Looking at the chat logs between Ms T and the scammer, there was no time pressure placed on the situation, meaning she was not being pushed to complete the sale within a specific time period. So, I don't think there was a specific urgency to the transaction.

Despite the identified risk, alongside the clear message within the texts warning her never to share the code, I think it's more likely Ms T passed on or entered the OTPs herself. Based on what I've seen so far, I don't consider the scam to be particularly sophisticated and with the lack of urgency as well as the risk that had been identified by Ms T, I think the passing on of the OTPs amounts to gross negligence. So, I don't currently think Citibank needs to refund the £3,000 to Mr and Ms T.

I've considered if there is any other reason why it would not be fair to hold Mr and Ms T liable for the unauthorised transactions, and having carefully considered everything available to me, I've not identified anything. So, for the reasons outlined above, I currently do not intend to uphold Mr and Ms T's complaint.

Citibank responded to the provisional decision and agreed with the findings.

Mr and Ms T responded with the following additional points:

- Ms T blocked the scammer prior to receiving any OTPs.
- In the initial phone call with Citibank in which Ms T was asked if she had authorised any payments, she had not received any OTPs and told them that. She rang back once she had received the OTPs several hours later.
- Ms T has asked how Citibank managed to stop several payments succeeding but did not manage to stop the three lots of £1,000.
- Ms T has provided evidence from her phone company stating that the time of arrival of messages is as per the phone records.

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'll respond to Mr and Ms T's additional comments.

I've firstly focussed on the telephone call recording I listened to, which Ms T has indicated was the second phone call that day which she made after she received the OTPs. However, I'm satisfied this was the initial phone call, as both the call handler and Ms T confirm she had missed the previous attempted call, meaning this was the first contact made about the transactions.

In this call, Ms T is asked whether she authorised the transactions, which Ms T has indicated occurred in the initial phone call. As mentioned in my provisional decision, Ms T confirmed in that initial phone call that she had received several OTPs and the payments were pending on their online account. And I think it's likely the OTPs were therefore used to authorise the

payments.

Mr and Ms T have asked how Citibank managed to stop several payments but were unable to stop the three lots of £1,000. This is because the OTPs were used to authorise the three transactions in question, but were not used for the other attempted transactions, which is why there were not authorised and therefore were unsuccessful. So, it isn't the case that Citibank stopped the other payments, instead the added layer of security in the form of the OTPs were not inputted to authorise the other transactions.

We have sent Mr and Ms T the evidence from Citibank showing the transactions were authorised using the OTPs and that these were sent from 11:50am GMT. I appreciate there has been some confusion caused as the statements Mr and Ms T provided show the times as British Summer Time (BST), which is +1hour when compared to GMT.

Ms T has questioned some of this information, including that the transactions had an 'alert' level. The 'alert' level is what prompts OTPs to be sent to the consumer's mobile phone number as an added layer of security, which is what happened in this case. Ms T has also questioned what happened to the initial transaction of 73p, as this also had the OTP entered. As this did not form part of the £3,000 loss Mr and Ms T raised a complaint about, this hasn't been looked into further. And I don't think any possible issues with this payment affect my findings that the OTPs were entered as the evidence suggests.

While I appreciate that Mr and Ms T have sent correspondence from their phone provider that says the timestamp on a mobile phone shows the arrival time of a message, and they feel this shows they received the OTPs after the payments had been authorised, I have to look at all of the evidence as a whole. Having done so, as the payments were authorised by OTPs, and the only way this is possible is by the OTPs physically being used to authorise the payments, I'm satisfied it's more likely Mr and Ms T passed on or otherwise used the OTPs to authorise the payments.

I explained in my provisional decision why I therefore feel the passing on of the OTPs amounts to gross negligence on Mr and Ms T's part and why Citibank is able to hold them liable for the payments. So, for the reasons outlined in my provisional decision, I don't think Citibank needs to refund the £3,000 to Mr and Ms T.

My final decision

I do not uphold Mr and Ms T's complaint against Citibank, N.A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Ms T to accept or reject my decision before 4 August 2023.

Rebecca Norris

Ombudsman