

The complaint

Mr and Mrs K, as partners of the company M, have complained that Metro Bank PLC won't refund transactions they say they didn't make or otherwise authorise, which were the result of a scam.

What happened

Mr K received a pop-up message that his security had been compromised. He called the listed phone number and spoke to scammers who were impersonating technical support. They knew his information and took him through a security process. They persuaded Mr K to download a technical support app, which allowed them access to his device, saying it was to secure his accounts. Using this remote access, the scammers transferred money from another account of Mr and Mrs K's to M's Metro account, then on from the Metro account to themselves. The total transferred was £8,700.

Metro managed to get £1,900 of this reversed, and refunded £224 of the loss which had originated from M's Metro account. But it felt that Mr and Mrs K's other bank were liable for the rest of the loss, totalling £6,576.

Our investigator looked into things independently and upheld the complaint. Metro didn't agree, so the case has been passed to me to decide.

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.

It's not in dispute that these payments were unauthorised. And under the Payment Services Regulations, the starting position is that Metro are liable for payments which their customer did not authorise.

Metro can still hold M liable for these payments if Mr and Mrs K (on behalf of M) failed to keep the account safe either intentionally or through acting with gross negligence.

While I agree that Mr K acted negligently, *gross* negligence is a much higher standard than normal negligence. It involves an actual appreciation for the risks involved and a very serious disregard to those risks.

In this particular situation, this was a sophisticated scam, where the scammers created an environment of trust with Mr K. The scammers took substantial measures to imitate a genuine support function, using key information they'd found out to seem genuine, taking Mr K through a fake security process, and asking him to download a genuine verified app that really is used for technical support. So Mr K didn't actually realise he was putting M's account at risk. In fact, ultimately Mr K was trying to *protect* the account from the risk of harm by doing what he thought was necessary.

So while I do empathise with Metro's position, and while I agree that Mr K should take greater care in future, I don't think his actions quite meet the bar of gross negligence here. And given that he was trying to protect M's account, I cannot reasonably conclude that he intentionally failed to keep it safe.

This means that under the Payment Services Regulations, Metro is responsible for refunding the unauthorised payments.

Metro has made arguments about where the loss originated. But that's not really a relevant consideration here. Under the relevant rules, both Metro and Mr and Mrs K's other bank are fully liable for the unauthorised payments, regardless of where the loss originated. And when it comes to fairness, I'm sure Metro would think it unfair if I relieved the other bank of its liabilities and held Metro solely liable – so it follows that it would be unfair for me to do it the other way round, too.

So for the unauthorised payments where both banks were involved, I find that the fairest thing is for each bank to refund 50% of the loss. Those payments totalled £6,576, so 50% of that is £3,288. Metro should also add 8% simple interest onto this amount, as compensation for the loss of use of those funds. This is the same rate the courts use in situations like this.

Putting things right

Metro Bank PLC should:

- refund £3,288; and-
- pay simple interest on that loss, at the rate of 8% simple a year, payable from the date the disputed payments were debited until the date the loss is refunded[†].

[†] If Metro considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell M how much tax it's taken off. It should also give M a tax deduction certificate if Mr and Mrs K ask for one. M may be able to reclaim the tax from HMRC if it doesn't normally pay tax.

My final decision

For the reasons I've explained, I uphold this complaint, and direct Metro Bank PLC to put things right by doing what I've said above.

If M accepts the final decision, Metro Bank PLC must pay the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 13 November 2023.

Adam Charles
Ombudsman