

The complaint

Mr S has complained that Metro Bank PLC won't refund him for disputed transactions he didn't make or authorise.

What happened

Mr S has a current account with Metro and several online gambling accounts

Between 29 August 2019 and 2 September 2019 Mr S's debit card was used to make several online deposits into one of his online gambling accounts totalling just under £5,000, which he says he didn't make or authorise. This was then spent on online games. Mr S has explained that he keeps his wallet and phone in his bedroom. And his casino accounts are accessed via apps on his mobile phone. He says he doesn't have a security code on his mobile phone and his online gambling accounts can be easily accessed as his account passwords are saved in google.

Mr S says during the time the disputed transactions were made he'd allowed a female acquaintance to stay at his address for a couple of weeks. He says that whilst he was asleep the woman took his bank card and phone, then made the transactions.

Mr S has explained that he doesn't know the woman very well, including her real name, but whenever she visits London, he lets her stay at his home. Mr S says that when he gets paid, he normally puts £1,000 into his account to pay for entertainment, which includes gambling. And the woman knew he had quite a bit of money in his account because he'd told her. He's explained that he normally works night shifts, and when he woke up in the early hours on 3 September 2019, after a long shift, he noticed an email from a casino which told him he'd overspent on his account. He's said at this time the woman had left his address and stolen his casino cash out card from his wallet, which would enable the bearer to withdraw winnings from the casino. Mr S said no other bank cards were taken from his wallet. Mr S reported the fraud to Metro on 3 September 2019.

Metro investigated, which included the bank contacting the casino, and decided not to refund the disputed transactions. It concluded that Mr S had made the transactions himself. In summary it said:

- Mr S's card number and CVV were used to make the transactions
- the activity was indicative of genuine use, with small stakes slots gaming, which was consistent with Mr S's usual gambling habits
- No funds were transferred from Mr S's online casino account so that it could be withdrawn as cash as Mr S had suggested
- Mr S accessed his mobile banking more than 20 times over the course of the disputed transactions. Therefore, the transactions would have been apparent to him as they were ongoing. But Mr S didn't contact the bank until after the last disputed transaction had been made
- the casino merchant confirmed that a third party wouldn't be able to use Mr S's casino cash out card to withdraw funds as part of the casino's ID process would be to check the photograph they hold on record.

Mr S disagreed with Metro's decision. So, he brought his complaint to this service where one of our investigators looked into the matter.

Based on the evidence she thought Mr S had authorised the transactions because the transactions actions hadn't followed a typical fraud pattern; it was unlikely that anyone other than Mr S would've been able to withdraw money at the casino and Mr S logged into his online banking at least 20 times during the disputed transactions. But didn't contact Metro until after the last disputed transaction.

Mr S disagreed. He said he has been the victim of fraud. And he's never reported any of his gambling transactions as fraudulent before, even when he's lost money. Mr S says the bank should have noticed the disputed transactions and stopped them leaving his account. As no agreement could be reached the matter has come 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.

The investigator wrote a detailed view that sets out the full facts, the disputed transactions, the relevant regulations and the evidence. Both Mr S and Metro have read the investigator's view. So, I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mr S that I've read the file, including his comments and evidence. Having done so I've reached the same conclusion as the investigator and for much the same reasons. I's explain why.

Generally speaking, if the evidence suggests its more likely than not that Mr S authorised the payments, Metro is entitled to hold him liable. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Mr S says he didn't make the disputed transactions, so my primary concern is to come to a view about whether or not I think Mr S authorised the transactions by making them himself.

Having reviewed Metro's technical evidence, I'm satisfied that Mr S's card details were used to make the disputed transactions and that they were authenticated. But, the regulations relevant to this case say that this is not on its own enough to enable Metro to hold Mr S liable for them. So, I also need to think about whether the evidence suggests that it's more likely than not that Mr S consented to the transactions being made or whether he is the victim of fraud as he's alleged.

Having looked at all the evidence, despite what Mr S has said, I'm not persuaded that his female acquaintance made the transactions. And I'm satisfied that Mr S did consent to the transactions he is disputing. I say this because:

- Metro's technical records show the transactions were made using Mr S's mobile device
- the disputed transactions took place over five days during the early hours, late at night or early morning
- this would mean a third party would have to take and replace Mr S's bank card and mobile phone without being noticed over a number of days at different times. I don't think that Mr S's acquaintance would risk taking Mr S's bank card and phone, replacing it, taking it again, completing further transactions and then returning the them. This back and forth would've created an unnecessary risk of alerting Mr S that

fraudulent transactions were taking place. This was particularly risky given Mr S has told us that his acquaintance was staying with him for a couple of weeks

- the person making the transactions needed to be aware of Mr S's gambling account details
- no other bank cards were taken or used which were in Mr S's wallet with his cash out casino card – which is unusual. I would expect someone committing fraud to take the opportunity to either take the cards or at the very least use them to make further fraudulent transactions – but this didn't happen
- the casino merchant has confirmed that no funds were transferred to be withdrawn via Mr S's cash out card. And no attempts were made to withdraw cash using the card. The casino security processes would also have prevented anyone other than Mr S being able to do so, as Mr S's photographic ID (driving licence and branch photo) are stored in his gambling account. So, Mr S's acquaintance wouldn't have been able to access cash in his account as he's suggested
- the disputed transactions took place at a merchant normally used by Mr S and for similar gaming activity – slot machines
- Mr S logged onto his online banking on at least 20 separate occasions on different days during the period the disputed transactions were made. But he didn't notice the transactions and report them to the bank
- the disputed transactions reduced Mr S's account balance significantly, yet he didn't dispute the transactions until 3 September 2019, after the last disputed transaction had been made, which left just £0.12 in his account. So, I think he would've noticed the transactions much sooner than he's said he did as his account balance was reducing significantly over the period
- the disputed transactions don't fit the usual pattern of fraud. Usually a fraudster will try and maximise the usage of the account in order to get the greatest benefit from the account before the account holder notices their funds are missing and the card is cancelled. But this didn't happen.
- the technical evidence provided by the casino shows the IP addressed used to make the online deposits into Mr S's gambling account is a usual address used by Mr S
- any winnings would have been paid into Mr S's account. So, there's no explanation for how Mr S's acquaintance would have benefitted from the winnings – especially given what I've said about the casino's security measures which would have prevented anyone other than Mr S accessing any winnings. So, it doesn't seem likely that anyone would defraud Mr S like this if ultimately any money went back to him and the thief didn't make any profit. And had no way of accessing the funds.

So, when I weigh everything up, I'm not satisfied there's evidence of fraud here. In my view the most likely explanation here is that Mr S made the disputed transactions himself. So, in the circumstances it wouldn't be fair for me to ask Metro to refund Mr S the disputed transactions.

Mr S has said that the bank should have spotted the transactions and stopped them from going through. So, the bank's at fault. My primary task has been to decide if Mr S authorised the disputed transactions. I can't decide he didn't authorise them just because Metro didn't block the payments. I have to look at the evidence, which in my view connects him to the disputed transactions. And I've set this out above.

My final decision

For the reasons I've explained I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 December 2020.

Sharon Kerrison
Ombudsman