

The complaint

Mr K has complained PayrNet Limited hasn't refunded nearly £3,000 worth of transactions he didn't authorise.

What happened

In January 2021 Mr K noticed payments from his Cledara account that he'd not made. These had gone to a cryptocurrency provider. Mr K contacted them, but they said they could do nothing to help. Mr K contacted Cledara. The chargeback process was started.

Cledara told Mr K the chargeback wouldn't be successful. They were going to hold him liable for the fraud as they believed he'd not kept his account security details safe.

Mr K brought his complaint to the ombudsman service. During our investigations PayrNet – on behalf of Cledara – were unable to provide any information about how the transactions were made and why Cledara believed Mr K was liable.

Our investigator thought that Mr K should be refunded in full. There was no evidence he'd either authorised the transactions or acted in a grossly negligent manner.

PayrNet tried to provide further evidence but nothing made our investigator change her mind. Mr K's complaint has been referred to an ombudsman for a 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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Cledara – who Mr K has an account with – is an agent of PayrNet Limited who is the regulated entity for the purposes of this complaint.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence. I say this as PayrNet has been unable to provide the evidence I'd expect in this type of case – specifically there is no information about how the disputed payments were made. Our rules allow me to take this into account when making my decision.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mr K's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Other factors do apply. I will refer to these where they are relevant in Mr K's case.

Our investigator suggested the transactions may not have been authenticated. It's certainly the case there's no evidence to show authentication. However, these transactions debited Mr K's account and it's been suggested – if not shown – that the card number and details were used. I think it's more than likely authentication took place as the transactions debited Mr K's account.

However, this isn't the key issue here. This is whether Mr K authorised the transactions.

I have seen nothing to show that Mr K authorised the four disputed transactions. He has explained – and there is no evidence to contradict this – that he has a virtual card for his Cledara account. He has also told us he's never been required to provide any further verification for any transactions he made which suggests any two-factor authentication offered by Cledara at the time of these transactions was limited.

PayrNet has provided no evidence about why Mr K would authorise or could have done so. Taking into account, Mr K's consistent evidence on this aspect I'm satisfied Mr K didn't make or authorise the payments in dispute.

Cledara accused Mr K of acting with gross negligence in looking after his account details. The PSRs require a business to provide evidence to back up this allegation. As I've already confirmed, PayrNet has been unable to provide us any evidence.

As this fraud only required the compromise of Mr K's card details, I don't believe there's anything to show there was any gross negligence on Mr K's behalf. In any case I would add this is a high bar to get over.

Putting things right

As I don't believe Mr K made or authorised the transactions, it's right to ask PayrNet to refund him for the money he lost. I believe this amounts to £2,909.71. PayrNet must add 8% simple interest a year to compensate for the time Mr K has been without his money.

Mr K was told he had to keep his account with Cledara open to receive any refund. Mr K has told us he's had to pay account charges. Unfortunately, PayrNet hasn't been able to provide any evidence of exactly what and why Mr K was charged. Like our investigator, I believe any charges Mr K had to pay whilst his account remained open will need to be refunded.

My final decision

For the reasons I've given, my final decision is to instruct PayrNet Limited to:

- Refund £2,909.71 to Mr K;
- Add 8% simple interest a year to this amount from 27 January 2021 to the date of settlement; and
- Refund any account charges Mr K paid after this date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 July 2022.

Sandra Quinn¹
Ombudsman