

The complaint

Mr R complains that Metro Bank Plc held him liable for payments from his account which he says he didn't make or otherwise authorise.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. On 18 February 2022 there was activity on Mr R's Metro Bank account which he says he didn't recognise.

There were some incoming credits and three outgoing payments for £4,400, £10,540 and £3,210. The outgoing payments were all instructed by mobile banking and appear to have gone to a cryptocurrency provider. Some of the incoming payments were later reported to Metro Bank as not having been authorised by the owners of the accounts that sent them. And one of the incoming payments (£2,100) came from an account in Mr R's name (with another bank 'B') and he says he didn't instruct this payment either. There were also internal transfers from accounts also held with Metro Bank which facilitated part of the outgoing payments. Specifically, £450 from another of Mr R's accounts and £3,070 from an account controlled by Mr R on behalf of his son.

When Mr R noticed the account activity, he immediately reported this to Metro Bank. Metro Bank identified that the payments were instructed from Mr R's phone and held him liable for them. A complaint was made and the matter was referred to our service. One of our Investigators considered the complaint and was supportive of Metro Bank's position. Mr R disagreed and asked for an Ombudsman to consider his complaint. He remained adamant he hadn't made the disputed transactions.

While the complaint was in the queue for an Ombudsman's decision, Metro Bank contacted our service. They said that their specialist team had now identified that Mr R may have been the victim of a 'malware' attack on his mobile device and that this could have resulted in the unauthorised transactions being made. Initially they offered Mr R £6,975. This represented all the outgoing payments, less those reported to them as unauthorised by other banks (as those funds weren't Mr R's). But they later reduced this to £4,875 as they said Mr R's other bank 'B' should be responsible for the outstanding £2,100.

One of our Investigators considered the complaint and disagreed with Metro Bank, he recommended that they should pay Mr R the full £6,975. Metro Bank maintained that they should only have to pay £4,875. I understand they paid this amount to Mr R in June 2023. But they asked for an Ombudsman's decision in relation to the outstanding £2,100.

In August 2023 I issued a provisional decision in which I said:

"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 a similar outcome to that of our Investigator, but as there is a

difference in my proposed redress, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

I understand that the basis of Metro Bank not wanting to refund the outstanding £2,100 is that they believe that B should be responsible for this instead. I can't comment on the actions of B in this decision. This is a complaint made by Mr R against Metro Bank. And so whilst I understand why Metro Bank are highlighting the actions of B, I can't make a direction on that matter and can only consider the complaint in front of me. A complaint about B linked to these circumstances was considered by our service and closed several months ago. I am satisfied that Mr R wasn't refunded the £2,100 by B.

It no longer seems to be in dispute that the payments from Mr R's Metro Bank account were unauthorised. And given the nature of the likely compromise of his device, I don't think it can fairly be said that Mr R failed with intent or gross negligence to keep his security credentials safe.

The regulation, which applies in these circumstances, Payment Services Regulations 2017 (PSRs) is clear that the Payment Service Provider (Metro Bank) should refund Mr R with the amount of the unauthorised transactions. So as I'm satisfied that the disputed sum of £2,100 was paid away from Mr R's account with Metro Bank I intend to direct for it to be refunded. And whilst I appreciate that Metro Bank pro-actively changed their position as to whether the payments were authorised, Mr R has still been without a significant sum of money for an extended period of time. As such, to put Mr R back in the position he would have been in, but for the unauthorised transactions, I think interest should be added.

Putting Things Right

It's accepted that Mr R only has a potential claim to £6,975 of the outgoing payments. The remainder was funded by credits that he had no entitlement to. But of that £6,975, £3,070 belonged to his son (and was transferred into Mr R's account before being sent out). I can only make an award to Mr R himself as the eligible complainant, not his son.

Metro Bank has already paid Mr R £4,875. But this included £3,070 that belonged to his son. Mr R has told us (and I've no reason to doubt) that he has since paid the £3,070 into another account in his son's name. As such I think Metro Bank should pay 8% simple interest on £1,805 (£4,875 less £3,070). This should be calculated between the date the payments debited his account and the date the £4,875 payment was made and is to compensate Mr R for being without his own money for that period of time.

Metro Bank should also pay the outstanding £2,100 to Mr R and add 8% simple interest to that amount. This should be calculated between the date of debit and the date of settlement."

Mr R responded to say he accepted my provisional decision. Metro Bank didn't respond.

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.

As neither party had any further comments or evidence for me to consider, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

My final decision is that I uphold this complaint. Metro Bank Plc must take the steps outlined at 'Putting Things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 October 2023.

Richard Annandale
Ombudsman