

The complaint

Miss B is a sole trader. She complains that PrePay Technologies Limited (trading as PPS) won't refund a transaction she didn't make.

PPS partners with Mettle to provide e-money accounts for its customers. For ease, I've generally referred to PPS throughout the decision as it's ultimately responsible for the complaint.

What happened

Miss B was the victim of a scam. She was tricked into taking steps that led to fraudsters making a payment for £2,320 from her account. PPS declined to refund this, so Miss B brought a complaint to our service.

On 6 July 2023, I reached a provisional decision upholding Miss B's complaint. She accepted my findings. PPS said they'd nothing further to add, but did question my recommended award for distress and inconvenience given how this concerns a business account.

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've thought about PPS's response questioning whether a business can feel distress and inconvenience. But Miss B is a sole trader, so I remain satisfied she can suffer this in the course of running her business. This is different to limited companies, who are a distinct legal entities, and therefore, couldn't suffer distress.

Given that neither side had anything further to add, I've not changed my mind about what's a fair outcome to this complaint. For completeness, I've included my reasons again below:

- In line with the Payment Services Regulations 2017 (PSRs), the starting position is that Miss B isn't liable for payments she didn't authorise.
- To determine authorisation, I've considered regulation 67 of the PSRs. This says a payment is to be regarded as authorised if Miss B consented to the execution of it – and that consent must have been given in the form, and in accordance with the procedure, agreed between PPS and Miss B.
- PPS submit that Miss B approved the payment in the app, so she consented to it. But it's not provided its terms and conditions to show that's the entire agreed form and procedure for consenting to making payments. In the absence of this, I've reflected on the practical steps needed to make a payment like the one in dispute. It seems Miss B would've needed to enter her card details on the merchant's website. As per PPS's submission, she then needed to click 'Approve payment' in her Mettle app followed by her biometrics.

- Here, it's not in dispute that Miss B's card details were used by a fraudster on the merchant's website. So, even if I accept Miss B took some of the steps in the app, that wouldn't mean she completed all the steps in the form, and in accordance with the procedure, required to consent to making the payment.
- Nor do I think that Miss B could reasonably be described as having given someone else permission to go through the form and procedure to make this payment on her behalf. After all, she didn't know the caller had her card details, and she's consistently explained that she followed their instructions under the belief she was talking with Mettle and helping to protect her account from fraud.
- Taking this all into account, I'm not persuaded she went through the agreed form and procedure to consent to this payment or gave someone else permission to consent to the payment on her behalf. It was, therefore, unauthorised.
- Our investigator concluded this unauthorised payment was in connection with a distance contract and so, under the PSRs, it ought to be refunded. However, given this is ultimately a consumer protection, and this complaint concerns a business account, I'm not persuaded that's the right consideration.
- So I've gone on to consider if there's anything else under the PSRs that fairly means Miss B is instead liable for this unauthorised payment. For example, if PPS can show she failed with gross negligence to comply with the terms of the account or keep her personalised security details safe. While it's not explicitly argued this, it seems some of their submissions allude to this.
- But, having considered the circumstances carefully, I'm not persuaded PPS has shown that's the case. I'll explain why.
- Miss B received a call from someone pretending to be from Mettle. She's explained they knew several pieces of sensitive information about her and her account and they told her someone had attempted to make a large payment. Given the caller's detailed knowledge and the circumstances they presented, I can see how Miss B trusted the caller and became panicked about the safety of her account. I think lots of people would've reacted in a similar way.
- Miss B said she was subsequently told someone was attempting a further payment which they'd need to stop – they asked her to go into the payment on her app and follow their instructions.
- She can't recall a screen which asked her to approve or deny the payment. And I note from the evidence that '3DS Version 1' was used, so I'm not sure that PPS has sent us an accurate depiction of what she would've seen. I note PPS's response to her complaint referred to her providing a code.
- But, even accepting she would've seen the screens PPS shared with us, I'm not persuaded her actions here meant that she failed with gross negligence. Or, in other words, that she fell so far below what a reasonable person would've done, acted with very significant carelessness, or seriously disregarded an obvious risk.
- Here, Miss B already trusted she was genuinely speaking with Mettle – and I can see how she was further convinced when the attempted payment appeared in her app when they told her about it.

- PPS suggest Miss B ought to have recognised these steps from other payments she made. But it's clear she was panicked by what she'd been told and was acting with urgency to protect her account from fraud. So I can see how she didn't put this all together at the time.
- I've also noted this wasn't a long drawn-out process that gave Miss B a lot of time to reflect on what she was doing. And that, while we know with the benefit of hindsight that the caller had stolen Miss B's card details, she was entirely ignorant to this in the heat of the moment.
- Taking all these circumstances into account – her trust in the caller, the panic and urgency they'd falsely created, and the simplicity of the actions needed, I can see how Miss B focussed on following their instructions without properly taking account of what the screens were telling her. And while she may have been careless, I don't think PPS has shown she was grossly negligent here.
- It follows that I don't think PPS has shown a reason not to put right this unauthorised payment in line with the PSRs. So my decision is that Miss B isn't liable for the disputed payment and PPS needs to put things right – by refunding her losses from the disputed payment alongside 8% simple interest per year to compensate her for the time she's been out of pocket.
- PPS ought to have refunded this much sooner. Because it didn't, Miss B's new business struggled to keep afloat. So I also award £150 to reflect her distress and inconvenience.

My final decision

For the reasons I've explained, I uphold Miss B's complaint. PrePay Technologies Limited must:

- Refund Miss B the disputed payment, less any amount recovered or already refunded.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised payment to the date of settlement (less any tax lawfully deductible).
- Pay Miss B £150 to reflect her distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 August 2023.

Emma Szkolar
Ombudsman