

The complaint

A company, which I'll refer to as S, complains that PayrNet Limited won't refund payments it didn't make. Mr J, who is a director of S, brings the complaint on S's behalf.

ANNA Money, who J's account is with, is an agent for PayrNet, who's ultimately responsible for the complaint. But ease, I'll mainly refer to ANNA throughout the decision.

What happened

In May 2023, Mr J received a call from a fraudster claiming to be from ANNA, who said that his account had been compromised. He's explained he was told that, to access his account and stop money leaving, he'd need to enter one-time passcodes (OTPs) on his phone that they'd send my text, which he did.

Mr J later realised that the OTPs were in fact used to facilitate two card payments, for £8,236.00 and £849.00 respectively. He disputed these payments with ANNA who declined to refund them. That was because he'd shared OTPs despite warnings in the text messages that they're for payments and ANNA wouldn't ask for them.

Unhappy with its response, Mr J brought S's complaint to our service to investigate.

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 for these reasons:

- The starting position, in line with the Payment Services Regulations 2017 (PSRs), is that S isn't liable for payments Mr J didn't authorise.
- So I've firstly considered whether Mr J authorised the payments in dispute. The PSRs explain a payment is to be regarded as authorised if he consented to it – and that consent must have been given in the form, and in accordance with the procedure, agreed between ANNA and D.
- ANNA has highlighted the following terms from its agreement that explain the form and procedure: *"Each transaction will need to be authorised by the Cardholder. We will treat the transactions as authorised and genuine if the Card PIN or other security code personal to the Cardholder is used and, where prompted by ANNA, authenticated by the Cardholder through 3DS."*
- While Mr J shared the OTPs with the fraudster, it's accepted it was the fraudster that entered the OTPs on the merchant's website to authenticate the payments. So I'm not persuaded the payments were authenticated through 3DS *by the Cardholder*. That means Mr J didn't consent to these using the agreed form and procedure.

- ANNA submit that the message with the OTPs is designed to make it clear it's for a payment and to warn someone not to share it. I don't think this point changes that Mr J, in line with the PSRs, didn't complete the agreed form and procedure to consent to these payments. But I have nonetheless considered whether it could reasonably mean that he gave permission for someone else to go through the steps to consent to payments on his behalf.
- Firstly, I note from ANNA's records that it seems Mr J usually consents to payments in his app, rather than by an OTP in a text message. Moreover, Mr J's consistently explained he was tricked into sharing the OTPs – he was panicked and believed they'd protect S's account. It's clear he also didn't appreciate the caller had his card details and had set up payments with the merchants. Given this deception, I don't think I could fairly say that he permitted them to carry out the steps to consent to these payments on his behalf. It follows that I remain satisfied that payments were unauthorised, in line with the PSRs.
- I've gone on to consider whether ANNA has shown there's a reason S ought not to be refunded for the unauthorised payments under the PSRs. Given that Mr J shared OTPs with the caller, I've considered whether he failed with gross negligence to comply with the terms of the account and to keep S's personalised security details safe. This is something which, if ANNA proves, would mean S wouldn't be entitled to a refund under the PSRs.
- Having reviewed the circumstances of the scam carefully, I'm not convinced Mr J failed with gross negligence. I'll explain why.
- Mr J explained he questioned the caller – he trusted they were genuinely from ANNA given the personal and sensitive information they were able to share about him and S. I think lots of people would've done in these circumstances.
- In Mr J's representative's complaint, it said he was told by the caller that S's account had been flagged for fraudulent activity – and Mr J could see payments were attempted in his app which panicked him. But ANNA submits there weren't any attempted payments before the unauthorised payments.
- Overall, I don't think it's unusual or significant that some details may be misremembered as time goes on. Moreover, I don't consider that the exact detail is crucial to a fair answer here. That's because I'm satisfied Mr J genuinely thought he was speaking with ANNA, so I can see why he would've been generally worried by what they told him. And even without any attempted transactions beforehand, ANNA hasn't disputed he saw requests for the unauthorised payments. It follows that I can understand how, in the heat of the moment, Mr J could've seen this as evidence of the fraud the caller was supposedly trying to stop.
- Mr J said he was told that in order to access the account and stop the payments, he'd need to share OTPs from text messages he'd receive from ANNA. Mr J hasn't been consistent in explaining exactly how he shared them. But I think it's likely he entered them in his keypad, given that's what he said just after it happened, when it was likely fresh in his mind.
- I've considered how the messages with the OTPs said they were for payments and how they shouldn't be shared with ANNA. But I also understand how Mr J would've felt reassured that the messages came through from ANNA when he'd been told to expect them – and how he was asked to type them in, as opposed to sharing them

directly with the caller. I'm also mindful that he would've been on the call, supposedly with ANNA, and dealing with the message at the same time – all while he was worried he needed to act to stop S losing money.

- Taking into account these circumstances – his trust in the caller, the pressure of the situation, and the multiple tasks at once – I can see how Mr J focussed on the code and simply shared this. While it may have been careless, I don't think it meant he acted with *very significant carelessness* to conclude that he failed with *gross* negligence.
- It follows that I'm not persuaded S can be fairly held liable for these unauthorised payments and ANNA needs to put things right – by refunding S's losses from the payments alongside 8% simple interest per year to compensate it for the time it's been out of pocket.
- Finally, I've noted ANNA's point that it doesn't think it could've done more to prevent this fraud. But that's not a consideration for whether it's liable for an unauthorised transaction under the PSRs. So it doesn't change my mind about what's a fair outcome to this complaint.

My final decision

For the reasons I've explained, I uphold S's complaint. PayrNet Limited must:

- Pay S the total of the unauthorised payments, less any amount recovered or already refunded.
- Pay S 8% simple interest per year on this amount, from the date of the unauthorised payments to the date of settlement (less any tax lawfully deductible)

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 22 August 2024.

Emma Szkolar
Ombudsman