

The complaint

X complains that Metro Bank Plc (“Metro”) failed to refund transactions they didn’t recognise.

What happened

X was on a short trip overseas when their wallet and phone were stolen. When they realised they’d lost their bank cards, they blocked them and reported the issue to Metro the following day.

Metro advised that two transactions had been made using the genuine card and X’s personal identification number (PIN). At the time the charges were still showing as “pending”. X advised Metro they hadn’t made those transactions and asked them to be stopped.

Metro were unable to prevent the payments from completing and X asked Metro to refund them. Metro and X discussed what happened. X advised that their PIN wasn’t written down anywhere, the passcode for their phone was different to the PIN on their debit card and they hadn’t used the PIN facility whilst on the trip.

Metro couldn’t see how the PIN was obtained and advised X they were declining the refund for the two transactions. X disagreed and maintained they hadn’t carried out the transactions themselves.

X raised a complaint with Metro about the way they’d handled the situation and their lack of fraud monitoring. X thought Metro should have noticed they were abroad and put in place additional security precautions.

Metro investigated the complaint but didn’t change their position, repeating their belief that there was no evidence of a compromise of the PIN, and they continued to hold X accountable for the two transactions.

X was unhappy with Metro’s response and brought their complaint to the Financial Ombudsman Service for an independent review where it was assigned to an investigator. They collected evidence from both parties and after reviewing the supplied information, didn’t uphold the complaint. They commented that:

- the genuine card and PIN were used to make the two disputed transactions.
- There was no opportunity for anyone to obtain the PIN through “shoulder surfing”.
- The PIN wasn’t stored on X’s phone, which also had a different passcode.
- X confirmed no one else knew the PIN.
- There was no plausible explanation how anyone else could have obtained the PIN.
- The transactions weren’t sufficiently unusual to expect them to trigger Metro’s anti-fraud systems.

X disagreed with the investigator's outcome and made further submissions, which in summary was that:

- they believed thieves used a sophisticated Chip and PIN methodology to make the transactions.
- Metro failed to carry out any verification checks on the transactions.
- Metro bank didn't investigate the situation thoroughly.
- X was at an event at the time of the transactions, which took place some distance away.
- X felt they were being accused of lying and complicit in the transactions.

X wanted a further review of the complaint which has now been passed to me for a decision. As part of my own review of the evidence, I asked for further information from both parties.

X was able to say that:

- they'd reported the loss of cards to other banks and provided evidence.
- They didn't make any other payments towards their trip whilst overseas because the arrangements had already been made.
- The loss of X's wallet, cash and cards was extremely upsetting.
- X's phone used biometric protection and a passcode.
- X referred to a study which indicated the Chip and PIN system was capable of being breached.

I asked Metro to provide more data about the transactions and use of X's debit card. In summary this showed that:

- both transactions used the genuine card and X's PIN.
- The larger of the two transactions took place first, quickly followed by the second (smaller) one.
- There were no wrong PIN attempts.
- The card wasn't used again.
- There were no declined transactions.
- The account was left with about £12 after the two payments were carried out.

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 was sorry to hear that X's trip was impacted by what happened with their bag. I don't doubt the stress and inconvenience caused by its loss.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Metro can hold X liable for the disputed payments if the evidence suggests that it's more likely than not that they made them or authorised them, but Metro cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless Metro can show that consent has been given, it has no authority to make the payment or to debit X's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to X.

It's not my role to say exactly what happened, but to decide whether Metro can reasonably hold X liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

Put simply – that means I have to weigh the evidence and come to a decision based on an objective assessment of the evidence. I wanted to address the issue of complicity that X has raised. They think that somehow they're being accused of being involved in this claim and there's dishonesty involved on their part. I wanted to stress to X that nothing could be further from my mind here. I've also not seen anything where Metro have made any allegations concerning X.

I don't doubt that X was in a different location to the payment terminal that registered the two transactions, but I haven't seen anything to suggest how the PIN was obtained. In order to uphold the complaint, I would have to have a plausible explanation to counteract the evidence provided by Metro. For example – if X had made a Chip and PIN transaction prior to the loss of the wallet, it would no doubt have changed my mind about this complaint because there would be a clear reason (that X could have been shoulder surfed), and I'd have a reasonable basis to overturn the complaint.

But here, there's no plausible explanation how the PIN became known to the user of the card. X confirmed they didn't have it written down and that it wasn't known to anyone. It's unlikely it could have been guessed on the first attempt (because there were no wrong PIN attempts) and there are 10,000 combinations available for a card's PIN.

I acknowledge X's reference to a study carried out concerning Chip and PIN. But, our service hasn't seen any reliable evidence of a PIN obtained from the debit card. I'm afraid it's not realistic for me to argue the existence of something without some form of evidence to back that up. I do appreciate that X would be unlikely to be able to provide that. That's why I asked Metro to break down the two transactions to check the audit data they received, so I could examine the behaviour surrounding the card's use.

Their data shows the card's Chip was "read" by the payment terminal, which identifies the card was the one reported stolen by X. The two transactions were then further authenticated by the entry of the PIN. As this was only known to X and there's no plausible explanation how anyone else could have obtained it – I have little choice but to agree with Metro's decision not to make a refund. I've also considered how the card was used – there were no further attempts to use the card after the balance was taken down to about £12. It's unlikely a random user of the card would know what the balance was and typically, stolen cards continue to be used until they're stopped. That didn't happen here, so whilst I accept that X was unlikely to have used the card themselves, the evidence supports a third party with enough information to use it – both the card, PIN and appeared to have some idea of the overall available balance. As X has stated the PIN wasn't known to anyone – I can only

reasonably conclude that X was more likely than not responsible for the payments, and it was both fair and reasonable for Metro to hold them liable.

I've also considered the criticism X had about Metro's systems and lack of action when they reported the loss. Once Metro were informed, they replaced the card and this is something I'd expect to see. Regarding the issue of the "pending" transactions – unfortunately, even though online banking systems often show this status, it means the authorisation has already been provided and the "pending" element just means the process hasn't yet completed. Metro would have had limited opportunity to do anything about this and I don't think they acted unreasonably here.

X have also complained about the lack of additional security – but just because X was travelling doesn't automatically mean that Metro has to put in place additional protections. Neither of the payments were particularly suspicious or sufficiently large enough to expect Metro to reasonably have felt they were unusual. The use of the card and PIN is also of relevance as this is a method that Metro would accept as giving a higher level of protection – as opposed to say, some online transactions, because it required the genuine card and details known only to the cardholder (PIN). Metro has to balance their obligation to follow legitimate instructions and protect the account holder. I don't think that Metro acted unreasonably here and overall, whilst I'm sure X will disagree with me, without stronger evidence to the contrary, I'm unable to uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 27 October 2024.

David Perry
Ombudsman