

The complaint

S, a limited company, complains that Cumberland Building Society (CBS) won't refund them for transactions they say they didn't authorise. They'd like the funds returned to them.

What happened

The background to this complaint is well known to both parties, so I will cover it only briefly here.

In June 2023 one of the directors of S, Mr O, was contacted by some purporting to be from an online retailer, asking if he was attempting to buy two phones. When he confirmed he wasn't, he was persuaded that he needed to provide more details to the caller to prevent the transactions taking place – including a one-time passcode (OTP) from CBS.

But Mr O wasn't a signatory on the CBS account. The passcodes were sent to another director, Ms W. She asked Mr O what the codes were for, and he explained they were needed to block the transactions. In all she passed on three OTPs to Mr O. He in turn passed these on to the caller.

When the directors of S checked their account, they discovered that two card payments for £980.49 had been taken from the account, without their knowledge.

They reported this to CBS and asked for the payments to be reimbursed. The society declined to do so, saying that because Ms W had shared her card details and OTPs with Mr O then she had breached the terms of the account. They didn't see that they should be liable for refunding S. But they said that they should have added Mr O as a signatory on the account in 2020, and offered £50 in compensation for this.

Unhappy with this Ms W referred S' complaint to our service, saying that Mr W was a director of the account and allowed to make payments on S' behalf.

One of our investigators looked into what happened, but didn't think CBS had been unreasonable in declining to refund the transactions. They said they accepted the payments were unauthorised, but that by sharing the codes with the fraudsters the directors of S had failed to keep their security credentials secure with gross negligence. They were satisfied that the relevant regulations allowed CBS to decline to reimburse S.

Ms W disagreed so the complaint has been passed to me to decide.

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.

The relevant rules that govern payments from an account are the Payment Services Regulations 2017 (PSRs). Broadly these say that an account provider should only make a

payment out of an account if it has been authorised – as in they've agreed for it to be made, or allowed someone else to transact on their behalf.

If the payment hasn't been authorised then the account provider can only hold them liable in limited circumstances, such as if they've acted fraudulently, or not kept their security credentials secure, either intentionally or with gross negligence.

The PSRs contain some provisions for refunding payments made where the payer isn't physically present with the merchant. But the provision only applies to "consumers", or individuals acting outside their business or profession. Considering S is a limited company, these would not apply here.

The terms of S' account with CBS reflect the PSRs.

In this case there doesn't seem to be any real dispute that the directors of S didn't intend their card details to be used for the two transactions. It's accepted they were carried out by a fraudster who obtained S' payment details by deception. So, I don't see that there is any reasonable argument that these payments were "authorised". S is the victim of fraud. But the key question then is whether CBS can reasonably rely on any of the exceptions under the PSRs to hold S' liable for the transactions.

There's no suggestion that S or the directors have acted fraudulently themselves. Nor that they intended to allow the fraudster to make payments from the account. So, the only reasonable exception could be if they have failed to keep their security credentials safe, with gross negligence. In this case the security details would be S' card details and the OTPs.

This concept of *gross negligence* isn't defined in the regulations. But industry guidance and case law suggest it goes beyond mere negligence, and encompasses a very significant degree of carelessness and goes beyond what a reasonable person may be expected to do. So, this is a point I've considered carefully.

I've also considered what Ms W has said in allowing Mr O to use her card details – and I don't think this is uncommon in a limited company. CBS have accepted he should have been added as a signatory in 2020 and offered compensation for this. But I think it's reasonable to consider what happened here, rather than what *could* have happened had Mr O been a signatory.

In this case, on balance I'm persuaded that the handing over of the OTPs was grossly negligent. There are several points that lead me to this conclusion.

Firstly, the OTPs themselves are clear that they intend for a payment to be made, rather than to prevent a payment going out or to apply for a refund. It would also be unusual for Amazon to require an OTP from CBS.

The code also says, "*never share this code with anyone, only a fraudster would ask*". I understand if Mr O could have been swayed by an explanation from the fraudster as to why they needed it. But my understanding is that Ms W wasn't speaking to the fraudster. So, a warning like that ought reasonably to have given her pause before sharing the OTPs. In her submissions to this service, she has mentioned being hesitant, and understanding that you only require the OTP to make a purchase. So, this tells me she had an understanding of the risks involved.

Taking this all into account, I think there should have been enough here to give Ms W a reasonable amount of concern before passing on the codes. And from what she's told our service I'm satisfied she understood there was a degree of risk involved but went ahead

regardless. I'm afraid to say that I see that the sharing of the OTPs was grossly negligent. I've no doubt Ms W and Mr O will find this disappointing, but it follows that it's reasonable for CBS to decline to refund these payments.

I have considered whether there is any reasonable reason for CBS to have stopped the payments before they were made. But as they were verified with the OTP, I'm not minded that CBS ought to have intervened any further.

CBS have offered £50 to reflect any inconvenience to S by not adding Mr O on to the account as a signatory in 2020. Overall, I see this as reasonable.

My final decision

My final decision is that Cumberland Building Society should pay S £50 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask S and S to accept or reject my decision before 10 February 2025.

Thom Bennett
Ombudsman