

## **The complaint**

M Ltd, represented by its sole director Mr H, complained because Metro Bank PLC refused to refund it for transactions which he said he hadn't authorised.

## **What happened**

Around 5.30am on 17 December 2023, Mr H was in a large city ordering a taxi on his phone. Thieves then grabbed his phone out of his hand. His phone was unlocked because he was in the middle of ordering the taxi, and the phone had several of Mr H's bank cards with it.

The thieves then used three of Mr H's bank cards, including the one for his company account with Metro Bank. Between the three banks, the thieves took several large cash withdrawals, made large phone store purchases, and (with one of the other banks) applied for and received a £25,000 loan.

Later the same day, Mr H went to his local Metro branch to report the theft of his card. Branch staff checked his account and told him that several transactions had already debited his Metro account. These were card purchases for £2,440, £2,500, £2,500, and two £250 cash withdrawals. Mr H confirmed he hadn't made any of these transactions, totalling £7,940.

Mr H also contacted the other two banks, his phone insurance, the taxi firm, and the police.

The other two banks refunded Mr H, and cancelled the fraudulent loan which had been taken out in his name. The taxi firm refunded trips made by the thieves, and his phone insurance company also paid out his claim.

But Metro Bank refused to refund M Ltd. Mr H complained, but Metro Bank didn't change its decision.

In Metro Bank's final response letter, it said it was sorry to hear he'd appeared to have been the victim of fraud. It had looked at the disputed payments, and said they'd been made by chip and PIN, and only Mr H should have known the PIN. It said there was no sign of a compromise or how any other party could have known the PIN. So it said it was reasonable to assume that Mr H had authorised the transactions himself, or he hadn't taken adequate care to keep his security details safe. So it refused to refund him – and it added that false claims of fraud might be registered with other financial institutions and fraud prevention agencies.

Mr H asked Metro to review its decision, and offered more evidence including a letter from the police. Metro Bank said if Mr H supplied this extra evidence, it wouldn't change its decision.

Mr H contacted this service. He sent us copies of correspondence with both the other banks, and the taxi firm, showing refunds; proof of his phone insurance claim being paid; and both a crime reference number and a letter from the police. He said he didn't understand why two banks would refund him but not Metro. He said he did have the same PIN for all his banks,

but he hadn't written down his PIN and nor did he have it on his phone, and it wasn't easily guessable. Mr H also said that if Metro looked at his previous spending, it should have been obvious that the disputed spend wasn't made by him.

Our investigator asked both Mr H, and Metro Bank, for more information. Metro provided some, but not all, of the information she requested.

Our investigator upheld M Ltd's complaint. She said that she appreciated that Metro Bank had said there wasn't any clear point of compromise for Mr H's PIN. And there hadn't been any genuine chip and PIN transactions just before the disputed transactions at which a fraudster could have seen Mr H entering his PIN.

But the information which Mr H had sent us showed other unrecognised activity on his phone, which was unlocked at the time it was grabbed by the thieves. This included password resets for a variety of accounts and apps. And Mr H's account with one of the other banks had been accessed through the mobile banking app.

The investigator looked at the procedures for that other bank. She considered it more likely than not that the thieves had been able to obtain Mr H's PIN using a View PIN feature on the other bank's app. As Mr H used the same PIN for all three banks, this would have enabled the thieves to carry out the Metro bank, and other bank, transactions with the correct PIN. The type of transactions, with cash withdrawals and phone store purchases, was similar for all three banks.

The investigator considered it was reasonable to conclude that Mr H hadn't authorised the disputed Metro Bank transactions, and nor had he failed to keep his security details safe. So she said Metro Bank should refund M Ltd with £7,940 plus 8% interest.

Metro Bank didn't agree. It said it wasn't persuaded or convinced about how Mr H's account with the other bank had been accessed.

Our investigator replied that she appreciated that Mr H couldn't evidence exactly how the thieves had obtained access to the other bank app, which would have shown them Mr H's PIN. She sent Metro Bank details, from the other bank's website, about how a reset could be carried out using its mobile app. This would have enabled the thieves to obtain the PIN for that bank, and therefore also for Mr H's Metro Bank account because he used the same one for all three banks.

Metro Bank asked for an ombudsman's final decision.

### **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.

#### *Regulations about disputed transactions*

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*." The regulations don't define "*gross negligence*", but there has been advice from the regulator, the Financial Conduct Authority

(FCA), and there have also been legal cases. The relevant standard is a higher standard than the common law standard of negligence. The FCA says it has to be “*a very significant level*” and in a key legal case, the judge said it had to be serious disregard of risk.

*What’s most likely to have happened here?*

When considering a complaint, there isn’t always evidence which is clear and certain about what happened. When that happens, I take my decision on what I consider is more likely than not to have happened.

Metro Bank refused to refund M Ltd because it believed that either Mr H had carried out the disputed transactions himself, or he hadn’t taken enough care with his security information – in other words, that he could have written down his PIN number and put it with his card, or recorded it on his phone.

Having considered the evidence, I accept that Mr H was likely to have been the victim of crime and genuinely did have his phone and his Metro Bank card stolen. Mr H’s evidence has been consistent, and he sent us a lot of evidence about the disputed transactions and disputed loan with the other banks too. He’s also sent evidence about other actions, such as his phone insurance claim and buying a replacement, re-setting passwords, and a letter from the police as well as the crime reference number. I think all this means it’s most unlikely that Mr H carried out all these transactions himself and tried to disguise it by carrying out a considerable amount of admin with multiple organisations. So I don’t agree with Metro Bank that it’s likely Mr H might have carried out the disputed Metro Bank transactions himself.

I’ve gone on to consider whether, having been a victim of the thieves on 17 December, Mr H was at fault for being “*grossly negligent*” with his security details. As I’ve set out above, the bar for something to be considered gross negligence is high. I consider it’s more likely than not that Mr H told the truth when he said he hadn’t written down his PIN or recorded it on his phone. He’s been consistent about this, and did say that he used the same PIN for all his banking accounts. Although using the same PIN for multiple accounts isn’t ideal, I don’t consider that it counts as gross negligence in the manner set out in the Payment Services Regulations. I also don’t consider the theft of his phone and cards by thieves when he was using his phone counts as culpable failure to protect his security details. The letter from the police about Mr H’s crime report says that “*Crimes of this nature are unfortunately all too common and the perpetrators are organised and efficient.*” So I don’t agree with Metro Bank that it’s likely Mr H hadn’t been sufficiently careful with his security details.

Unfortunately Metro Bank hasn’t been able to provide this service with all the information we’d hope to have. It said this was because of the time that had passed.

I’ve also looked at Mr H’s complaint that Metro Bank should have realised the disputed transactions were out of character compared with previous transactions on his account – and should have prevented them. Metro Bank replied to us saying that it had sent a text message, in line with normal processes, asking if the transactions were genuine. It received a positive reply confirming this. As the fraudsters had the stolen phone at the time, this wasn’t surprising. Metro Bank also said that when the later transactions took place, it sent another text and did block the card, preventing further transactions. But unfortunately five transactions had already taken place, because the fraudsters were able to confirm Metro Bank’s texts on the stolen phone.

Taking all these factors into account, I consider it’s more likely than not that Mr H was genuinely a victim of crime in relation to the disputed transactions on his company account M Ltd. I don’t consider it’s likely that he carried out the disputed transactions himself, or was complicit in them, nor that he was grossly negligent in respect of his security. So I order

Metro Bank to refund M Ltd for the unauthorised transactions, and to pay interest at 8% from 17 December 2023 to the date of payment.

### **My final decision**

My final decision is that I uphold this complaint. I order Metro Bank PLC to pay M Ltd:

- £7,940 to refund the five disputed transactions which took place on 17 December 2023; and
- Interest at 8% simple on this amount, from 17 December 2023 to the date of payment.

If Metro Bank deducts tax from the interest on the award, it should provide M Ltd with a tax deduction certificate to show how much it has deducted, in order to allow M Ltd to reclaim the tax from HMRC if appropriate to its circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask M Ltd to accept or reject my decision before 8 January 2025.

Belinda Knight  
**Ombudsman**