

## **The complaint**

E, a club, complain that PayrNet Limited have declined to refund them in full for transactions they say they didn't make.

E held an ANNA branded account – who provide services on behalf of PayrNet. For ease of reading in this decision I'll refer to ANNA.

## **What happened**

The background to this complaint is well known to both parties and not in dispute, so I will cover it off only briefly here.

In December 2023, the treasurer of the club, Mrs S, received a call from someone purporting to be from ANNA. She was persuaded that the account was in danger, and she needed to take steps to secure the account. She checked and found the caller's number was the number from her card. In the course of the call, she received two one-time passcodes (OTPs) from ANNA, which she entered into her phone's keypad.

After the call Mrs S discovered that the OTPs had been used to set up a new payment device. Two payments had been made using this device to retailers – one for £4,217 and one for £170. She reported these to ANNA.

ANNA reviewed the situation, but said didn't think they should be liable to refund E. They reasoned that by sharing the OTP Mrs S had allowed the fraudster to access E's account and authorise the payments on her behalf. But they said at their discretion they would refund 50% of the losses.

Unhappy with this Mrs S referred E's complaint to our service, asking for the remaining losses to be refunded. One of our investigators looked into what happened and thought the complaint should succeed. They didn't think that under the relevant regulations the payments could be considered authorised. They accepted Mrs S had given over the OTP, but didn't feel this amounted to gross negligence, such that ANNA could hold E liable for the transactions. They suggested ANNA refunded the remaining losses and include 8% simple interest per annum for the period they were without the funds.

Mrs E accepted this on behalf of E. ANNA disagreed, saying that the OTP included a warning that neither ANNA nor the police would ask for the code. They also provided evidence that funds had been transferred in to the account before the payments. But the investigator didn't think this changed the outcome.

As no agreement could be reached 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 regulations in relation to disputed transactions at the Payment Services Regulations 2017 (PSRs). Broadly, these say that a payment services provider can only debit an account if a payment instruction is authorised by their customer, or someone acting on their behalf. If the customer denies agreeing to a payment being made, it is generally up to the payment service provider to demonstrate why they feel it was authorised.

If a payment is unauthorised then the expectation is that the payment service provider restore the account as if the payment hadn't been made – but there are some scenarios where they can decline to do so, such as where the account holder has not met their obligations to keep their security details secure, either intentionally or with gross negligence.

In this case it seems accepted by ANNA that the payments were made by an unknown third party, using a new payment device. I've seen nothing to suggest Mrs S' intention here was to set up a new device. So, I don't see that any transactions using this device as a payment instrument could reasonably be considered authorised.

The general position under the PSRs then would be that ANNA are expected to refund E. So, the key question for me to answer is whether it's reasonable for ANNA to rely on the exceptions to refunding given by the PSRs.

The specific argument here is that by sharing the OTP Mrs S has been grossly negligent – and that the code messages warned her not to do this. She would also have been familiar from setting up a new device, as she had done so previously. And that ANNA had previously provided messages warning Mrs S about scammers trying to impersonate the firm.

There is a reasonable argument that Mrs S was negligent by sharing the OTP. But the concept of gross negligence goes beyond mere carelessness – it represents a significant failing in disregarding an obvious risk.

In this case I'm not that persuaded that she was grossly negligent. From what she's consistently said she thought she was genuinely speaking to ANNA and needed to take urgent steps to protect E's funds. I think in these circumstances many people wouldn't immediately recall previous education on potential scams.

The wording on the OTP is quite clear that a payment device would be set up. So, this may have been an opportunity for Mrs S to pause and reflect on what she was being asked to do. But the scam works by creating a false sense of urgency, where action is required right away. And in this case entering the details on the keypad gave Mrs S confidence that she wasn't sharing it with a third party.

In similar circumstances I think that many people could be persuaded to act in the same way. I don't think ANNA have demonstrated that Mrs S' actions were so out of line with what a reasonable person could be persuaded to do, that it amounts to gross negligence.

For these reasons I don't think ANNA have been fair in declining to provide E with a full refund. I think a reasonable resolution would be to refund the remaining losses of £2,193.50. I also think it would be fair for interest to be added to this amount, to reflect the time the club has been without these funds.

### **My final decision**

My final decision is that I uphold this complaint and that PayrNet Limited should refund the remaining £2,193.50 – along with 8% simple interest per annum from the date of payment to date of settlement.

If PayrNet Limit considers its required by HMRC to pay tax on this interest award they should tell E how much has been taken, and provide a certificate showing this, should E ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 12 February 2025.

Thom Bennett  
**Ombudsman**