

The complaint

Mrs B complains Paynetics UK Limited is holding her liable for payments she says were made by a scammer.

The payments were made from Mrs B's "Trading 212" account. So, although Paynetics UK Limited has ultimate responsibility for this complaint, I'll generally refer to Trading 212 in my decision for ease.

What happened

In September 2024, Mrs B received a call from a scammer pretending to be her bank "S", claiming fraud had been attempted on her card. Mrs B explained she had been into branch and had temporarily left her card behind. The caller persuaded her the branch staff were under investigation and had accessed her card details when she left it – convincing her the call was genuine.

Mrs B was subsequently told to take various action, including sharing codes with the scammer (thinking they were her bank) and downloading an app. She was told she couldn't tell anyone else what she was doing. But after she texted her son to say she wasn't allowed to answer the phone, he became concerned and went to visit her – at which point the scam was revealed. I understand the app Mrs B had been persuaded to download was for a Trading 212 account she was tricked into setting up. Funds had been moved from her S account to her Trading 212 account – and around £5,000 worth of card payments had then been made from that account.

Mrs B initially reported the scam to S. But it said it wouldn't refund her due to the payments being sent to, and lost from, another account held in her name. Trading 212 also didn't agree to refund her. It said it wasn't liable as she provided login details and codes to a third party which enabled them to make these payments.

Unhappy that it wouldn't refund her loss, Mrs B has asked our service to look into her complaint about Trading 212. Our investigator thought it should refund her outstanding loss (plus interest). In summary, they didn't think Mrs B's actions amounted to authorising the payments. And given the nature of the scam and the circumstances Mrs B was in, they didn't think she had been grossly negligent in being tricked into sharing her details. They also said some payments could be "distance contracts" – meaning gross negligence wasn't a relevant consideration for whether Mrs B was liable.

Trading 212 has appealed the investigator's outcome. In summary, it says the "typical" unauthorised transaction scenario doesn't apply here as Mrs B downloaded the app and made the account. It also says she was grossly negligent, and we haven't considered if she is partly liable by way of contributory negligence. It has also questioned the reference to 'distance contracts' under the regulations.

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 agree with the investigator's conclusions that Trading 212 should refund Ms B's outstanding loss. I'll explain why.

While Trading 212 has suggested this was an atypical scenario, the Payment Services Regulations 2017 (PSRs) still apply. While Mrs B downloaded the app and set up the account (due to being tricked), the starting position under the PSRs is still that Trading 212 would be liable for unauthorised payments.

It's clear Mrs B fell victim to an impersonation scam. I do agree with Trading 212 that its audit information supports it was her device which set up the account and deposit funds. And that a code was then used from this device to approve adding a new device to the account. However, Trading 212's own testimony shows it accepts that the fraudster then *"had full access through his own device, opened a virtual card, and used it to spend the majority of the deposited funds"*.

It's therefore not in dispute that Mrs B wasn't actually making these payments. Nor does it appear that she was intentionally authorising the third-party device to do so. It wasn't her but rather the new device which set up the card used to make payments. And the nature of the scam was that Mrs B was moving funds over from her existing bank account, which she thought was compromised, to a new account – to keep them safe.

However, it appears Trading 212's main argument for holding Mrs B liable is because she failed to keep her security information safe. But, as the PSRs explain, Trading 212 would only have grounds to hold Mrs B liable if she failed in this respect with intent or gross negligence. So, while Trading 212 has argued Mrs B's actions were careless, this isn't sufficient to deny a refund; it would need to show she was *very significantly* careless or seriously disregarded an obvious risk. Under the PSRs, Trading 212 doesn't have grounds to hold Mrs B (partly) liable if she fell short of gross negligence but met the lower bar of contributory negligence.

There is also a further caveat to this. As our investigator has pointed out, (some of) the payments could have formed "distance contracts". In line with section 77(4)(d) of the PSRs, Trading 212 can't hold Mrs B liable for any payments used in connection with a distance contract (other than an excepted contract) unless she acted fraudulently – which I'm confident she hasn't, nor has Trading 212 suggested she has. And there is no provision under the PSRs that would give Trading 212 grounds to hold Mrs B liable for payments forming distance contracts even if Mrs G acted with gross negligence.

Section 77 of the PSRs explains what is meant by the terms distance contract and excepted contract. But in brief, a distance contract is one where neither the merchant nor consumer is physically present, such as an online payment – aside from certain types of excepted contracts set out in regulation 6 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, such as gambling.

However, I won't dwell on this point as I don't think it's been demonstrated that Mrs G failed intentionally, or with gross negligence, to keep the security details which the fraudster used to set up the payment token and make these payments safe. So regardless of whether any payments were non-exempt distance contracts, I'm persuaded Trading 212 is liable.

The scammer told Mrs B her existing S account was at risk from card fraud. The timing of her visit to branch, and leaving her card behind, created a set of circumstances that made this claim seem more convincing. The scammer used social engineering tactics to create a sense of pressure, helping persuade Mrs B to trust them and follow their instructions to (allegedly) protect her money under the fear it was at risk. The scammer also isolated Mrs B (who, as Trading 212 is aware, was vulnerable) from getting support by persuading her she couldn't tell anyone what was happening.

Mrs B believed the caller was setting up a new account to protect her funds. In that context, I can see why she believed she needed to share identity documents and download an app, and why she didn't see the risk if the caller knew the login details. While I appreciate the app was branded for Trading 212 rather than S, I appreciate why Mrs B didn't see this as a fraud concern given the pressure she was under.

Similarly, Mrs B has told us she doesn't recall sharing the passcode used to add another device to the account – which Trading 212 says would have warned her not to share it with anyone. But she has mentioned sharing some codes, thinking the caller needed them to help protect her. I can see why she didn't recognise the risk of sharing the code in the moment – given why she believed she was speaking to S, who she thought was helping her, and the stress and pressure she was under.

Overall, I'm satisfied it wasn't grossly negligent for Mrs B to share these details, and that she didn't intentionally fail to keep them safe. She was tricked into thinking she had to follow the caller's instructions to protect her funds. In line with the PSRs, I'm therefore persuaded Trading 212 is liable for these payments and so should refund Mrs B.

My final decision

For the reasons given above, I uphold this complaint. Paynetics UK Limited must refund Mrs B's (outstanding) loss from the payments made from her Trading 212 account. It must pay 8% simple interest per year on top of this amount, running from the date of the payments to the date of settlement, to compensate her for the loss of use of the funds.

If Paynetics UK Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 9 February 2026.

Rachel Loughlin
Ombudsman