

complaint

Mr M complains that Metro Bank PLC is holding him responsible for several disputed transactions that occurred on his account.

background

I've set out the background to this complaint in my provisional decision which I've also attached, as it forms part of my final decision.

Mr M responded to my provisional findings, he didn't agree. He provided a detailed response, in summary he said:

- he has further documents and screen shots to show that his account was hacked;
- his bank account with Metro, at the time, didn't have any facility to transfer money, this is supported by the fact he couldn't access the funds in his account after Metro closed it;
- the online gambling site doesn't require the CVV for each deposit, only when a new card is added;
- regarding the chargeback – the laptop he purchased was fraudulent and the police advised him to raise a dispute and then he was directed to the bank, he included all information he could about the laptop; and
- regarding the phone calls – he doesn't agree with my opinion about the way Metro handled the calls with him.

Metro responded to say it didn't have anything further to add after receiving my provisional decision. We shared Mr M's screenshots and documents about his account being hacked, with Metro. In summary Metro wasn't of the opinion that the information Mr M had provided would result in a change in the outcome of the complaint.

Metro also provided evidence that all its cash accounts, for customers over the age of 16, had facilities for faster payments and to set up standing orders, using online banking from 23 February 2017.

As Mr M didn't agree with my provisional findings and had some further comments I will address these here in my final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I haven't seen any persuasive evidence that would suggest I need to depart from the findings given in my provisional decision, so I'm not upholding this complaint.

the disputed transactions

I've considered the screen shots and documentation Mr M has provided which he says show his account was hacked. But I also have to consider all the facts of what has happened and the evidence surrounding the disputed transactions. In doing this I have to consider on balance what I think most likely happened.

As I set out in my provisional findings, the disputed transactions took place from an account that Mr M already used. The transactions occurred at a time that Mr M generally logged in, to both the gambling sites and his online bank account. The transactions fit Mr M's pattern of spending and activity and there isn't anything unusual about the transactions. So on balance I'm not persuaded that the gambling transactions were carried out by someone other than Mr M or by someone without his authority.

I have taken on board Mr M's comments about the CVV not being required for every deposit and the information on this point is unclear from the online gambling company. But considering all the other evidence I don't think this has any bearing on my findings about the transactions.

Mr M has also said that a fraudster also hacked into his bank account. In my provisional decision I considered that simply viewing an account balance would be unusual for a fraudster. Mr M responded to say his account didn't have any other features so this didn't prove that it wasn't a fraudster accessing his account. But considering the evidence from Metro I don't agree with Mr M's comments, that his account couldn't be used for any other purpose by a fraudster. And as I said previously I think it's unusual that if it wasn't Mr M accessing his online bank account at these times, why someone wouldn't have taken the opportunity to access his funds via faster payment.

chargeback

Mr M has said he was told by the Police to raise a dispute regarding his laptop. And whilst I appreciate he says he provided everything that he could to Metro, that doesn't change my opinion that Metro did anything wrong by not processing the chargeback.

Banks don't have to raise chargebacks if it looks clear that it wouldn't be successful. It's for the bank to decide to process the chargeback based on the likelihood of it succeeding. And because Mr M didn't have any further information, that doesn't mean it changed the likelihood of it succeeding. So I won't be asking Metro to do anything further regarding this.

phone calls with Metro

I appreciate Mr M says he'd been dealing with an issue that was upsetting and he says the call with Metro was accusatory. He said he'd had the ordeal of speaking to the Police and fraud prevention teams and he felt the onus of proof was heavily on him, whilst he'd been the victim of fraud.

Although I appreciate Mr M says this was a distressing time I can only consider what Metro did. I've listened to the calls and although Metro isn't overly empathetic I don't think it did anything wrong or acted in the way that would warrant compensation for Mr M, especially bearing in mind my findings that I don't think the transactions were unauthorised. So I won't be asking Metro to pay any compensation to Mr M.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 September 2017.

Sophia Smith
ombudsman

copy of my provisional decision

complaint

Mr M complains that Metro Bank PLC is holding him responsible for several disputed transactions that occurred on his account via an online gambling account. He says he didn't authorise these transactions and the bank should refund these to him. Metro Bank also closed his account immediately without any notice and Mr M complains that this inconvenienced him.

background

Mr M reported fraudulent transactions to Metro Bank from a merchant he'd used in the past. The transactions occurred in the early hours of 14 March 2017, via an online gambling website. Mr M and the merchant confirm the account was opened in April 2016.

Mr M says he did not carry out these particular transactions, totalling £900. He said he's not aware that anyone has access to his account information or knows it and he doesn't write it down anywhere. Mr M believes his online gambling and bank accounts have been hacked and that's how these transactions occurred.

Metro Bank issued its final response saying the merchant had confirmed Mr M's genuine gambling account had been used. It also added that the same IP address had been used for the disputed transactions as well as previous genuine ones when Mr M was viewing his online bank account.

Metro Bank also said Mr M had used similar merchants in the past with a history of online gambling and so concluded that the transactions were genuine. As a result Metro Bank decided to close Mr M's account and informed him in its final response letter, dated 15 March 2017. Mr M received the termination notice on 23 March 2017 which had immediate effect. Metro Bank quoted its terms and conditions which allow it to close accounts in certain circumstances, without notice.

Mr M was unhappy with this outcome and the way Metro Bank spoke to him and dealt with his complaint. So he brought the matter to us. One of our investigators looked into the matter. She didn't think that the transactions were carried out by an unauthorised person. But she did think Metro Bank hadn't considered its terms where it said it would reduce inconvenience to the consumer when closing their account. And that Mr M didn't represent a high risk to justify the immediate closure of his account. So she recommended £100 compensation to reflect this.

Mr M and Metro Bank both disagreed with this outcome. Metro Bank said, where the bank suspects fraud or wrong doing it is entitled to decide what its tolerance to risk is. And so didn't agree to pay the £100 compensation recommended. Mr M replied with several screen shots which he says show he didn't carry out the transactions and his computer was likely hacked.

Mr M also had another dispute with Metro Bank where he asked it to carry out a chargeback for him. He purchased a laptop via a website and said the goods were not as described. Metro Bank asked for supporting documentation which Mr M didn't provide as he says he wasn't able to. Metro Bank didn't attempt the chargeback as it says it didn't have enough information to consider the chargeback as having a reasonable prospect of success. The investigator didn't think Metro Bank did anything wrong because she didn't think the chargeback was likely to succeed anyway. Mr M disagreed and said he was being assisted by a manager of the Brighton Metro Bank, who assured him the issue would be resolved by her.

In the initial view the investigator also considered another set of disputed transactions. But Mr M has confirmed these have been resolved directly with the merchant, so I don't need to comment on these any further.

As neither party to the complaint agreed with the investigator, it has been passed to me.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I don't intend to uphold Mr M's complaint. I appreciate this will come as a disappointment to him but I'll explain why.

I'll start by explaining that where there is a dispute about what has happened, I need to think about what I do know, the wider circumstances at the time, and decide what *most likely* happened.

I've considered what Mr M has told us and the information he has provided about his computer being hacked but I have also considered all the other evidence surrounding the transactions. Having done so, I've come to a slightly different outcome to the investigator.

online gambling transactions

The disputed gambling transactions themselves don't look unusual. What I mean by this is that they are for similar amounts, as previous genuine gambling activity that Mr M has carried out. In the same month Mr M spent around £680 on various other gambling websites with similar frequency and similar amounts each time. So the disputed activity doesn't look like its unauthorised use of Mr M's online gambling account or the actions of a fraudster.

Mr M has also said that he doesn't keep any written records of his gambling account passwords. He says no-one else knows them and no-one else would have access to his computer. Mr M suggests someone hacked his gambling account to get this information. The online gambling company hadn't seen any evidence that Mr M's account had been hacked.

Metro Bank also had information from the merchant which said: the three digits on the back of the bank card (the CVV) were needed in order to deposit money into the gambling account. It would appear this information was needed each time a deposit was made. So

Mr M's card details were also needed to carry out these transactions. Mr M hasn't said that his card was missing or stolen at the time so there's no explanation how these details could've been known to someone else.

online banking account

The investigator also found that Mr M's online banking had been accessed during the time that the disputed transactions occurred. I'll cover this in more detail later. But Mr M also told us no-one had access to these details either so believes his bank account was also part of the hack.

I've considered this but if someone had hacked into his bank account its unusual that they only checked his balance and didn't attempt to make any transactions or carry out any other activity. Again this doesn't look like the activity of an unauthorised person accessing Mr M's bank account.

As mentioned our investigator let Mr M know that she had seen records showing Mr M's online banking activity and that this had been accessed, around the same times as the disputed transactions to the merchant. This was in the early hours of the morning on the 14 March 2017, Mr M has said he had no access to his online banking between those hours and neither did his family – although he hasn't provided any explanation why he didn't have access.

I have also seen Mr M's bank account log-in times between January and March 2017. These show that Mr M logs in at similar times, in the early hours of the morning, on a fairly regular basis. So I'm not persuaded by Mr M's statement that he had no access to his account on 14 March 2017, during these hours. And I'm not persuaded on balance, considering all the evidence, that it wasn't Mr M checking his account at the same time that the disputed transactions were occurring.

There are 11 disputed transactions which occur between 02:40 and 03:45am. Mr M accesses his bank account at 01:09, 02:17, 02:39, 03:33 and 03:43 and then again at 05:04. He reports the transactions to the gambling company at around 5am. I think if Mr M was checking his account and saw these transactions he'd have reported them much sooner if he believed they weren't genuine. So considering all of the evidence I'm not persuaded that the disputed transactions were unauthorised. And so I don't recommend that Metro Bank needs to do anything further or refund these to Mr M.

Overall I haven't seen any explanation for how the online gambling account information, bank account information and card details were obtained by someone else.

Of course I can't be certain that Mr M's account wasn't hacked. But the information Mr M has provided doesn't persuade me that the online gambling transactions were unauthorised. I can't see that the screen shots show a link to his computer specifically to any hacking of his accounts. But I'm happy to consider any further evidence Mr M may have about this.

account closure

Metro Bank investigated the disputed transactions and concluded that they were made by Mr M. And as a result it decided to close Mr M's account, on 23 March 2017. But as I've set out in the background Mr M was aware this would happen when Metro Bank issued its final response dated 15 March 2017. In that letter it said;

The evidence suggests that the transactions in question were indeed genuine, and not fraudulent. It is for this reason that I support and maintain our commercial decision to close your account with immediate effect.

A separate letter confirming the 'Notice to Close' your account will be sent separately to your home address.

I've underlined the relevant section where it says Mr M's account would be closed with immediate effect. I appreciate the following paragraph says 'notice to close' will be sent to Mr M, but the notice he received just confirmed the immediate closure of his account. And in fact Metro Bank did provide some leeway as the closure didn't occur until a further eight days after the date of the final response letter. So I'm not persuaded that Mr M was unaware or surprised that the account closure would happen and in fact he had eight days in which to make alternative banking arrangements.

Mr M complains that he should've received a longer notice period before his account was closed and the lack of this caused him inconvenience. The investigator thought that the bank hadn't acted fairly in allowing Mr M time to find alternative banking arrangements and that in this instance it should've given the two months' notice stated in Metro's account terms.

I'm afraid I don't agree. Metro Banks' own terms and conditions allow it to make account closure decisions, with immediate effect, in exceptional circumstances. And it's not for me to dictate what those circumstances might be. As long as it hasn't acted illegally, or in a discriminatory way, and there's no evidence here to indicate that it has, then it's entitled to make its own commercial decisions as to who it wants to do business with.

So I can't say Metro Bank did anything wrong in closing the account, or in stopping Mr M's debit card. And so I don't intend to ask Metro Bank to pay Mr M any compensation for closing his account as it did.

chargeback

Mr M complained that Metro Bank didn't process his chargeback request for goods he received that he says weren't as described. Metro Bank asked for more information before agreeing to process the chargeback. I have seen these requests for information and I don't think they are unreasonable. I say this because Metro Bank can only submit the chargeback and await a response from the merchant's bank. And it's likely that without persuasive evidence the chargeback will be defended. So in order for the chargeback to have the best possible chance of succeeding Metro Bank asked Mr M to provide additional information which he wasn't able to do. I don't think the request for additional information was unreasonable so I don't think Metro Bank did anything wrong here in asking for more evidence before processing the chargeback. And based on the evidence Mr M did provide to support the chargeback I'm not persuaded it would've been successful.

Although Mr M says he was reassured the chargeback would be resolved by the branch manager I don't think it's reasonable to think that he would receive a refund without having to provide more evidence.

So I don't intend to ask Metro Bank to do anything regarding this matter. But Mr M can of course take this up with the retailer, if he wishes to.

phone call

Mr M is unhappy with the way Metro Bank handled his complaint and in particular the tone of the phone calls he had with the bank. The investigator listened to these and didn't believe that Metro Bank had behaved in a way that caused her any concern.

I too have listened to these calls and I agree. The advisor at Metro Bank isn't rude, threatening or abusive in anyway. In the initial call he explains that if the transactions are believed to be genuine then the account would be closed – but he also caveats that this would be the same for any customer. Mr M accepts this during the call and he is asked if he wants to proceed with the claim, which he does.

In the second call the advisor sets out the facts and reason for declining the disputed transactions and says the account will be closed. And then ends the call. So although I appreciate Mr M wasn't happy with the outcome, I won't be asking Metro Bank to pay any compensation to Mr M for these calls.

my provisional decision

So based on my conclusions above I don't intend to uphold Mr M's complaint.

I'll wait two weeks to see if either party has anything further to add – before considering my decision on this complaint once more.

Sophia Smith
ombudsman