

## **The complaint**

A company, which I'll refer to as E, complains that PrePay Technologies Limited won't refund a payment it didn't make.

Mr D, who is a director of E, brings the complaint on E's behalf.

PrePay Technologies Limited is the principal for Countingup who E's account is with. So I'll mainly refer to Countingup throughout the decision.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my 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.

Having done so, I've reached the same outcome as our investigator for these reasons:

- The starting position under the Payment Services Regulations 2017 (PSRs) is that E is liable for authorised payments and Countingup is liable for unauthorised payments.
- To consider a payment authorised, the PSRs explain that E must have given its consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between it and Countingup.
- To establish the agreed form and procedure, I've reviewed the terms and conditions that Countingup has referred us to. Of relevance to the card payment in dispute, they explain that E can authorise a payment with its card by entering a PIN or other security code. They also state that where 3D Secure is involved, E will be taken to a Mastercard screen where instructions will be available.
- I've thought about what these steps would've looked like practically. It seems E would've needed to use its card details with the online merchant, and subsequently followed the instructions on the Mastercard screen, which I understand involved approving the payment via E's app.
- Here, it's not been disputed that it was fraudsters who used E's card details and approved the payments in E's app, having tricked Mr D into forwarding them an email that granted them access to it.
- It follows I'm not persuaded E completed the steps to consent to this payment. And given the deception, I don't think it gave someone else permission to complete the steps and make the payment on its behalf. So, in line with the PSRs, I consider it unauthorised.

- Countingup submit that, even it was unauthorised, it's not liable to refund E because Mr D failed with gross negligence to comply with the terms of the account and keep E's personalised security details safe. This is something which, if proven, would mean E wouldn't be entitled to a refund under the PSRs.
- To consider this I've reflected on the circumstances which led to Mr D forwarding an email which ultimately enabled fraudsters to access E's account.
- He's explained how he received a call from someone claiming to be from Countingup. They knew several pieces of personal information and referred to an attempted fraudulent payment, which they asked Mr D to reject in the app. Taking this into account, I can see why he trusted the caller and became concerned for the safety of E's account – I think lots of people would've done.
- Mr D was asked to forward an email he received from Countingup to an email address they gave him. Countingup says he ought to have recognised the address was suspicious, as he'd been a customer for some time and had communicated via email in the past. It adds that its terms refer to how it contacts customers, and it consistently says it wouldn't ask someone to forward security information via phone calls.
- These arguments don't persuade me that Mr D acted with *very significant* careless to conclude he was grossly negligent. After all, when fraudsters asked him to do this, Mr D had been cleverly duped into trusting the call was genuine. I also wouldn't expect him to be able recall a particular business' genuine email address in the heat of the moment. Even if he did, I don't think it's so far-fetched to think it might use something different for fraud purposes.
- Taking this all into account, I'm satisfied Mr D fell for an organised, clever scam. And while he may have failed to meet the obligations of the account, I don't think he did so with gross negligence. It follows that, in line with the PSRs, Countingup needs to put things right – by refunding E's losses from the unauthorised payment alongside 8% simple interest per year to compensate it for the time it's been out of pocket.

### **My final decision**

For the reasons I've explained, I uphold E's complaint. PrePay Technologies Limited must:

- Pay E the total of the disputed payment, less any amount recovered or already refunded – I understand this to be 3,500.00.
- Pay 8% simple interest per year on this amount, from the date of the disputed payment to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 9 April 2024.

Emma Szkolar  
**Ombudsman**