

The complaint

Mr S has complained Marks & Spencer Financial Services plc, trading as M&S Bank, did nothing to help when he ended up buying vouchers supposedly to help out a work colleague.

What happened

In July 2023, Mr S was the victim of a scam. He was approached by an email from a third party, masquerading as his Chief Executive. Mr S tried to check whether these were genuine messages but was unable to get any further confirmation.

Mr S ended up buying eight vouchers of £500 each using his M&S credit card to help out. He soon realised he'd been scammed and complained to M&S Bank and asked why they'd not intervened and stopped the repeated transactions.

M&S Bank felt these transactions had been properly authorised by Mr S so there were no grounds for them to complete a chargeback. They felt Mr S had not completed due diligence so didn't feel they were required to refund him.

Mr S brought his complaint to the ombudsman service. Our investigator noted that Mr S had responded to a fraud alert from M&S Bank confirming he was making the transactions and he wouldn't have expected them to intervene further. He wasn't going to ask M&S Bank to do anything further.

Mr S disagreed with this outcome and has asked an ombudsman to consider his complaint.

After considering the evidence I completed a provisional decision on 16 February 2024. I didn't feel that M&S Bank had done enough to identify a potential fraud from the nature of the transactions. I asked them to refund part of Mr S's losses.

Mr S accepted this outcome. M&S Bank didn't. They believed Mr S had carried out no due diligence so should bear all the losses. They didn't think he'd checked whether the email he received was valid.

I now have all I need to complete my 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.

Having done so, I've reached the same outcome as I did in my provisional decision. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I don't dispute Mr S was scammed and lost a considerable amount of money. He has my

sympathy about what he has gone through.

There's no dispute that Mr S made and authorised the eight transactions. Mr S believed he was using his credit card to buy vouchers and was then able to give the voucher codes to the person he believed was his Chief Executive.

I'm satisfied the transactions were authorised under the Payment Services Regulations 2017

It's generally accepted that M&S Bank has an obligation to follow Mr S's instructions. So in the first instance Mr S is presumed liable for his loss. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that M&S Bank should:

- have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Mr S fell victim to a purchase scam. These unfortunately aren't particularly unusual and the individuals carrying these out work hard to disguise their tracks. I can also see that, despite M&S Bank feeling otherwise, Mr S did try to check that what was taking place was genuine.

I have considered whether M&S Bank should have intervened and asked Mr S what he was doing. It's accepted by all parties that they didn't. And having reviewed the facts around these payments, I think I'd have expected them to do so.

I say this because:

- Whilst Mr S used his credit card quite a bit and for large value transactions, these transactions were unusual in that within a short period of time, Mr S made eight separate but identical purchases. I can see no history of such payment behaviour in the previous year.
- I appreciate M&S Bank sent Mr S an alert to check whether his card was being used genuinely. And he responded to say he was making the transactions. That's not in dispute.
- However I would expect to see more here. The nature of the transactions should have merited more action on M&S Bank's behalf. Banks, whether we're talking about push or pull transactions, should be able to identify potential fraud where the customer has been scammed and isn't aware that the transactions they're authorising are to benefit a fraudster. This has all the hallmarks of such a scam.

So I've looked at what would have happened if, say, after three identical transactions M&S

Bank had blocked Mr S's card. And then required Mr S to have a conversation with them. Mr S would have been able to explain what had happened and I'd expect M&S Bank to identify this as a scam.

I've considered again what M&S Bank has said about Mr S not doing due diligence. I would just mention what I've said above that he tried to check using WhatsApp and Microsoft Teams but was unable to get confirmation as he required. So despite the unusual nature of the request, Mr S had no reason to doubt he was being asked to help following what looked like a genuine email. He has specifically confirmed that the nature of the email replicated the style of the person it was supposed to have come from. I therefore disagree with M&S Bank that no checks were carried out by Mr S.

Overall I think M&S Bank should have taken more action and intervened after the third transaction. At that stage, I think any subsequent conversation would have alerted Mr S to this being a scam and he'd have stopped making any further purchases.

I also note that M&S Bank stuck to their view that all these transactions were conducted using chip and PIN in their correspondence with us for some time. Yet it was clear these transactions couldn't have been conducted that way due to the nature of them and what Mr S had confirmed about how these were conducted. Whilst I accept this was an error on their part, I'm sure they can appreciate this will have caused Mr S further concern and doubt about M&S Bank's response to him.

I know M&S Bank has given Mr S £100 compensation for their delay in responding to his complaint. I won't be asking them to provide any further compensation to Mr S.

I know Mr S carried out quite a bit of his own research into what happened and contacted both the retailer, whose vouchers these were, and the voucher supplier and tried to have their use stopped. He is understandably disappointed that M&S Bank made no attempt to recoup any funds. I don't dispute what M&S Bank has said about there being no possibility of chargeback because of how these transactions were carried out but I can, at the same time, understand why Mr S feels M&S Bank did nothing to follow up what happened.

Based on what I've said, I'm going to ask M&S Bank to reimburse £2,500 to Mr S, along with 8% simple interest. I say the latter as I note Mr S paid off the fraudulent transactions on his credit card bill in full and took money from his savings to do so.

My final decision

For the reasons given, my final decision is to instruct Marks & Spencer Financial Services plc, trading as M&S Bank, to:

- Reimburse £2,500 to Mr S; and
- Add 8% simple interest a year from the date of the £4,000 payment to M&S Bank to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 April 2024.

Sandra Quinn
Ombudsman