

The complaint

Mr D complains that Contis Financial Services Limited (Contis) won't refund payments he didn't authorise.

What happened

- In December 2020, Mr D received a landline call from who he thought was his internet provider. He'd recently complained to them about some connection issues. He recalls them asking for information, such as his sort code, for security. At their instruction, he entered a code to allow them access to his computer, at which point he was passed to an 'engineer'. He says he was told to turn off his mobile phone in case of interference, so the engineer could work on the connection issues. And also that he'd receive a refund. But when he turned his mobile phone back on after the call, he saw confirmation of two payments, for £2,863 and £1,210, which he hadn't authorised. He reported this to Contis.
- Contis wouldn't refund Mr D. It said he'd been grossly negligent by allowing a third-party access to his computer, and it believed he'd also authorised the one-time passcodes (OTPs) sent for the payments. It tried to recall the funds but could only recover £2.30.
- Our investigator upheld the complaint. Although they couldn't fully corroborate Mr D's version of events – such as his assertion about his phone being off, and potentially being hacked – they concluded, on balance, that the payments were unauthorised. They considered it likely Mr D was tricked by a convincing scam, and didn't agree with Contis that he'd been *grossly* negligent.
- Contis disagreed. It said it had already provided sufficient evidence to document its outcome. So the case has been escalated to me to determine.

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 conclusions reached by the investigator for these reasons:

Did Mr D authorise the payments?

- In line with the Payment Services Regulations 2017, Mr D isn't liable for payments he didn't authorise, unless he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security details safe.
- The account terms set out the steps Mr D (or someone acting with his consent) needs to follow to authorise a payment. For the disputed payments, he would have needed to log into his online banking by entering his username, passcode, and an OTP. Then he would have needed to enter the details to pay the new payee, such as the name, sort code, account number and amount. Finally, he would have needed to request, then enter, an OTP to authorise each payment.

- Based on what Mr D has told us, it's not fully clear how the transactions occurred. I've not seen enough to substantiate that his phone was hacked. But he says he didn't authorise the payments. And Contis hasn't disputed this. Given that, and having considered the circumstances of this case, I'm satisfied – on balance – the disputed payments were unauthorised.
- What Mr D has told us doesn't fully explain how the scammer got the information needed to complete all these steps. But I'm mindful of why, when a consumer has been the victim of scam – as I'm persuaded Mr D was – we don't always find out exactly what happened. The consumer has been tricked, so may have divulged more information than they've realised, or be confused about what they did. And some are reluctant to tell us everything due to embarrassment.
- I think Mr D must have given away more information than he's told us about, or completed some of these steps. It's not clear how the scammer could have made these payments otherwise. But I consider it unlikely he completed all the required steps. It's more likely that some steps, such as entering the payment/payee details, were completed by the scammer when he gave them access to his computer (for another purpose). Given what he's told us, and the actions he took after realising the payments had gone through, I don't think he gave the scammer permission to make the payments.

Did Mr D fail, with gross negligence or intent, to comply with the terms of the account or keep his personalised security details safe?

- I consider it likely that Mr D did fail to keep some of his details safe, but I don't think he *intentionally* failed to comply with this obligation. He was the victim of a scam. They tricked him into thinking he was sharing details with his own internet provider, to allow them to deal with his connection issues and process a refund. I don't think he understood that his actions meant he wasn't keeping his security details safe.
- The main point Contis has made, when refusing to refund Mr D, is that it considers him to have been grossly negligent. But in the circumstances, I'm not persuaded it's fair to conclude that Mr D failed to comply with this obligation.
- The scammer knew who Mr D's internet provider was to impersonate, and did so when he'd complained about connection issues – making the call seem more likely to be genuine. Based on his account of the call, such as what was asked and hearing the background noise of a call centre, I understand why he was convinced he was talking to his internet provider. And why he therefore granted them access to his computer. I think lots of people, in that situation, would have thought it reasonable to grant access so they could work on the connection issues.
- As mentioned, it does seem likely Mr D shared other details (such as the OTPs). Otherwise, it's unclear how the scammers could have made these payments. This part of the story is less clear. But I'm mindful this appears to have been a sophisticated and (by luck or knowledge) well-targeted scam. The call was over an hour, giving the scammer lots of time to persuade and socially engineer Mr D. There were some understandable reasons why he trusted them. He's also explained that he was told he'd get a refund. So on balance, I consider it likely that he was tricked into divulging these codes without reading the messages fully or realising what they were for. It could be that he was tricked into completing some of the necessary steps as part of receiving a refund. I've not seen anything which persuades me it's likely he did this with the intent to authorise any payments *out of* his account – or that he completed *all* of the steps.

- Overall, I don't consider that Mr D was (or ought to have been) alert to an obvious risk. I don't think he was so significantly careless that he failed with gross negligence. As I've also found the payments were unauthorised, and that Mr D didn't fail with intent, Contis is liable for them.

Putting things right

Contis Financial Services Limited should refund Mr D the disputed transactions (totalling £4,073), less the amount recovered. It should pay 8% simple interest on this amount, from the date of payment to the date of settlement. If Contis considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

As I've let Mr D know, I'm not awarding compensation for his distress and inconvenience.

My final decision

For the reasons given above, my final decision is that I uphold the complaint and direct Contis Financial Services Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 August 2022.

Rachel Loughlin
Ombudsman