

The complaint

Mr Z complains that Metro Bank PLC have unfairly refused to reimburse money he lost as part of a scam.

What happened

The details of this complaint are well known to both parties so I will not repeat everything again here. In summary, Mr Z fell victim to a scam where he gave remote access to his online banking to a scammer purporting to be from his broadband company Sky. The scammer knew his name and details and said they were calling to test the speed of his connection.

The scammer said that Mr Z was due a refund due to his sub-par connection speed. He was instructed to download remote access software on his mobile and access his online banking so the refund could be verified. However, Mr Z was unaware that by doing this, he had allowed the scammer access to his online banking, where the following payments were then made from his account without his knowledge:

Date	Event	Amount
18/03/2021	Outward SWIFT Payment gopinathan nair jayasankar SW- INGBPLPW	€1990.00 +€20 transaction fee
18/03/2021	Outward SWIFT Payment gopinathan nair jayasankar SW- INGBPLPW	€1970.00 +€20 transaction fee
18/03/2021	Outward SWIFT Payment gopinathan nair jayasankar SW- INGBPLPW	€1965.00 +€20 transaction fee
18/03/2021	Outward SWIFT Payment gopinathan nair jayasankar SW- INGBPLPW	€1969.00 +€20 transaction fee
18/03/2021	Outward SWIFT Payment gopinathan nair jayasankar SW- INGBPLPW	€1900.00 +€20 transaction fee
	Total (including transaction fees)	€9,894.00

Metro offered to refund the transaction fees Mr Z was charged, but declined to refund the money he had lost to the scammer, as it believes that Mr Z initiated and authorised the payments, even though he was duped into doing so, such that he is liable for loss.

Our investigator upheld the complaint. He didn't think Mr Z had likely authorised the transactions, and neither did he think he was grossly negligent in allowing the payments to be made. Metro Bank disagreed, so the matter 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 and have decided to uphold it.

Metro Bank are aware of the relevant considerations and approach this service takes to unauthorised scams and its obligations under the Payment Services Regulations 2017 ("PSRs 2017"). It has had several decisions setting this out in the past, so I do not intend to repeat it all again here.

Metro submit that Mr Z authorised the payments that were made from his account on 18 March 2021. But in order for a payment to be regarded as 'authorised' it is necessary for Mr Z to have given his *consent* to the execution of the relevant payment transactions. And, according to Regulation 67 of the PSRs 2017, consent "*must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider*".

In this instance, the scammers asked Mr Z to input a series of 'codes' into his phone. It turns out that these codes were in fact payment amounts being entered into his online banking for the payments to be made. But Mr Z was unaware that he was inputting details for a transaction to be made from his account. He was told that the codes would allow the refund to be paid to his account once the digits had been entered. Metro has also said itself that it was part of the scam to mislead Mr Z into believing he was following a process rather than making a transfer. So, it follows that he can't have given his *consent* to the execution of the payment transactions, as he was under the impression that money would be paid into his account, not being transferred out of it.

The payment services directive itself (which the PSRs 2017 implement) states that "*in the absence of such consent, a payment transaction shall be considered to be unauthorised*". Therefore, given I don't consider Mr Z provided his consent for these payments to be made from his account, I'm satisfied they are to be considered as 'unauthorised' for the purposes of the PSRs 2017.

I note that Metro has cited certain provisions of the Contingent Reimbursement Model (CRM Code). However, the CRM Code only applies to *authorised* push payments where the customer has given *consent* for a payment to be made. As outlined above, I do not consider there was any consent given in this instance, so the payments cannot be regarded as authorised, meaning the CRM Code does not apply. Even if these payments could be considered as authorised, the Code would not apply in any event given Mr Z's account was not denominated in GBP. So, I've therefore considered these payments as unauthorised in line with the regulations set out in the PSRs 2017.

Did Mr Z act with intent or gross negligence – particularly taking into account the terms and conditions of his relationship with Metro Bank and the obligations set out in the PSRs 2017?

I don't think Metro Bank have suggested that Mr Z failed to comply with his obligations under Regulation 72 of the PSRs with *intent*, and neither have I seen any evidence that would suggest this either. So I do not intend to explore this point any further.

However, I have considered whether the actions Mr Z took fell so far below the standard of a reasonable person that he could be said to have failed with gross negligence to take all reasonable steps to keep his security information safe or to comply with the terms and conditions of his account.

Gross negligence is not an abstract concept. It's important to take into account all the circumstances when considering whether an individual's action amount to gross negligence. Scams such as the one experienced by Mr Z are very sophisticated, and it's likely the fraudster used a range of social engineering techniques to trick, deceive and manipulate him into following their instructions and inadvertently allowing access to his internet banking and confidential security information.

Mr Z has explained that Sky is his broadband provider. So, when they contacted him to test his connection speed and explained that he was due a refund, he didn't think he had any reason to doubt the legitimacy of the person he was speaking to, particularly as they already knew his name when they contacted him. Mr Z had also said that the scammer sounded very convincing, and that it sounded like they were in a real call centre. I don't think it was entirely implausible for Mr Z to think he might be due a refund if his connection speed was operating below an acceptable standard. And it was all of these circumstances combined that led Mr Z to trust the person he was speaking to, and to follow their instructions to download the remote access software and input codes in order for his refund to be 'processed'.

So, while I appreciate Mr Z followed the fraudster's instructions and downloaded the apps to his phone that likely allowed them to take control of his device, I don't think he knew this software would allow the fraudster to do this. And given Mr Z thought he was dealing with a business he knew, trusted, and had dealt with before, I think a lot of people would have believed what the scammer was saying.

So, I think it's most likely that Mr Z thought the apps he was downloading and the codes he was inputting were to assist him in obtaining the refund he thought he was due from Sky. It was in this context he took the steps that he did, and I think a lot of people in a similar position would've behaved in a similar way in those circumstances. It therefore follows that I don't think the actions Mr Z took fell so far below the standards of a reasonable person, such that he failed with gross negligence to keep his personalised security details safe or to comply with the terms and conditions of his account. And so I conclude that it would be fair and reasonable for Metro Bank to provide a full refund to Mr Z's account.

My final decision

For the reasons given above, I uphold this complaint and direct Metro Bank PLC to refund the full amount Mr Z lost to the scammer, including any associated transaction fees. Metro Bank should also add 8% simple interest per year on this amount from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 29 August 2022.

Jack Ferris
Ombudsman