

## **The complaint and what happened**

Mrs Y complains Think Money Limited won't fully refund transactions she didn't make or otherwise authorise.

The full details of this complaint as well known to both parties, so I won't repeat them in full here. Instead, I'll recap the key points and focus on giving reasons for my decision:

- In February 2021, Mrs Y was contacted by someone purporting to be her internet provider, about making her internet connection safe and secure. The caller was in fact a scammer. Mrs Y was required to help the caller run through some tests and she was told not to access her account for 48 hours. She says she was also told she would be sent texts and that she'd need to read out any codes – but the texts weren't real, it was part of the testing procedure. Unbeknownst to Mrs Y a number of transactions were made from her account.
- It was a couple of days later that Mrs Y noticed some transactions had gone out of her account, which she didn't know about. So she reported the matter to Think Money. It agreed to refund all bar one of the transactions – as she had responded to a text about the transactions with a 'Y' and so it considers she authorised it.
- Our investigator upheld the complaint; he wasn't persuaded Mrs Y authorised the transaction or otherwise consented to it. And as the payment was for a distance contract the provisions in relation to a failure with intent or gross negligence didn't apply. But that even if they did, he didn't find that had been met. He also found Think Money ought to pay £100 compensation for the inconvenience caused by not refunding the amount sooner.
- Think Money doesn't believe the distance contract regulations apply as Mrs Y didn't conclude or intend to conclude the contract. It also believes she acted beyond reasonable carelessness by providing all of the card details needed to carry out the transaction, and responded 'Y' to a text message about recognising it.

## **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 investigator for the following reasons:

- In-line with the Payment Services Regulations 2017 (PSRs), Mrs Y isn't liable for payments she didn't authorise unless she failed with gross negligence, or intent, to comply with the terms of the account, or keep her personalised security details safe.
- Under sections 77(4)(d) of the PSRs, except where a payer has acted fraudulently, the payer isn't liable for any losses incurred in respect of an unauthorised payment transaction where the payment instrument has been used in connection with a distance contract. A distance contract means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer subject to some exclusions (as per regulation 5 of the Consumer Contracts (Information,

Cancellation and Additional Charges) Regulations 2013. There isn't any provision within the PSRs which holds Mrs Y liable for the transaction if it was unauthorised, even if she acted with gross negligence or intent.

- Think Money doesn't think this applies where the consumer – Mrs Y – didn't conclude or intend to conclude the contract. I have considered this, but if that were the case, I would question the inclusion of section 77(4)(d) – it seems to me the intention was to expressly cover this situation, otherwise there would be no need for it.
- All of the transactions, including the one remaining, were on-line payments. As the payments instrument was used in connection with a distance contract, gross negligence (or a failure with intent) isn't a factor for my consideration. Under the PSRs, Think Money can only hold Mrs Y liable for it, if she either authorised the transaction or she acted fraudulently. There is no persuasive evidence, nor has Think Money sought to argue, that she acted fraudulently. Therefore my consideration is solely in relation to whether Mrs Y authorised the transaction.
- Think Money refers to Mrs Y responding with a 'Y' to say she recognised the transaction. I accept she did so, but authentication is only part of the process of a payment being authorised. Under section 67 of the PSRs, a payment transaction is regarded as having been authorised if the payer consents to it ((1)(a)) and that consent *must* be given in the form, and in accordance with the procedure, agreed between the payer and its payment services provider ((2)(b)).
- The terms and conditions, although setting out on what basis Think Money will treat a transaction has authorised, hasn't set out the form and procedure required for on-line transactions. The investigator made a reasonable assumption this included entry the card number, the expiry date and the CVV code. As neither party has disputed this, I proceed on the same basis.
- I accept Mrs Y responded 'Y' to a text from Think Money in relation to the transaction. But it wasn't Mrs Y who completed the initial steps required for authorising the payment (the inputting of the payment details) and it doesn't appear she was aware or realised what was happening. And she only replied 'Y' as she was under the mistaken belief the text was a test text. It follows that I'm not persuaded she authorised the transaction herself, nor provided any authority for it to be carried out on her behalf. Therefore Think Money can't hold her liable for the remaining transaction and it needs to put that right.
- Under section 76(1) and (2) of the PSRs, a payment service provider must refund the amount of an unauthorised transaction and that should be done as soon as is practicable. Think Money didn't do that and so I uphold this complaint.
- Mrs Y has been caused inconvenience by Think Money not refunding the transaction as soon as it ought to – despite it accepting all of the other transactions carried out by the same party were fraud. So not only has Mrs Y been without those funds for longer than she ought to have been, she has been put to the time and trouble of pursuing this matter further. I agree with the investigator that £100 compensation is a fair reflection of the impact of that.

### **My final decision**

For the reasons given, my final decision is that I uphold Mrs Y's complaint. I require Think Money Limited to:

- Reimburse £2,133.96 to Mrs Y's account; and
- Add 8% simple interest to the above sum, from the date Mrs Y initially disputed the transaction to the date of settlement; and
- Pay Mrs Y £100 compensation for the inconvenience this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or

reject my decision before 5 September 2022.

Claire Hopkins  
**Ombudsman**