

## **The complaint**

Mr K complains that Metro Bank PLC ('Metro') won't refund the money he lost when he bought a car.

## **What happened**

Mr K says that he made two payments totalling £19,000 (£2,500 and £16,500) to buy a car which the seller said had been modified so that it was ULEZ compliant. A few months later he discovered this wasn't the case. Mr K returned the car to the seller and was told he'd get a refund within seven days, but this hasn't happened.

Mr K is unhappy because he says that prior to buying the car he called Metro to see if he would have the same protections he would if paying by card when making a transfer. He says he was told that as he was buying from a registered company (although I note the company was a property management company not a dealership), he'd be safe to make a bank transfer. Mr K says Metro should either raise a scam claim or pay him £19,000 compensation as he wouldn't have gone ahead and made the payment if he hadn't been reassured by Metro.

Metro concluded that this is a buyer/seller dispute and advised Mr K to contact the seller. Mr K was unhappy with Metro's response and referred his complaint to this Service.

### *Our investigation so far*

When the complaint was brought to this Service Metro said it hadn't provided the service it should have in not raising a scam claim and offered Mr K £50 compensation.

The investigator who considered this complaint didn't recommend that it be upheld. He said Metro acted reasonably in not refunding Mr K as Mr K wasn't the victim of a scam and instead had a civil dispute with the seller. The investigator noted that Mr K had the car for about a month and that the seller offered to refund him but hadn't done so.

Mr K was unhappy with the investigator's findings and brought a complaint to this Service. In summary, he said:

- He's been unable to get a response from the seller.
- Mr K provided a screenshot of a call he made to Metro prior to purchasing the car. He says he was told that if he was unable to pay by card because he was paying a private seller then a bank transfer would be the next best thing, implying that paying by this method offered the same level of protection.
- He rejected Metro's offer to pay £50 compensation and questioned whether this offer represented an admission of liability by Metro.

The complaint has been passed to me to decide.

## **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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm sorry to hear that Mr K has lost money in these circumstances and of the impact of this on him. Under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code), the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

*"This Code does not apply to: (b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier".*

The CRM Code isn't a general protection for consumers and only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

*"...a transfer of funds...where*

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

So, the CRM Code doesn't apply unless it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met. This goes beyond misleading Mr K about whether the car was ULEZ compliant. I don't have any evidence to persuade me this is most likely what happened here.

Mr K received the car he paid for but was dissatisfied with it. He explained to Metro that the car was missold. This comes within the definition of a civil dispute and so the CRM Code doesn't apply. In any event, I have no evidence of criminal intent to defraud on the part of the seller and I do not have the power to compel the seller to testify to his version of events or instruct a police investigation into the matter. Instead, I'm restricted to considering what I think is more likely than not based on the evidence available to me.

I consider the £16,500 payment Mr K made was unusual and out of character given his previous account activity so Metro should have discussed the payment purpose with him. But had it done so, I don't consider Metro would have had any concerns about the payment and so it would have been processed. Metro would have asked questions about the make of the car, whether Mr K had viewed it in person and the checks he had completed. Mr K's responses would have satisfied Metro that he wasn't at risk of fraud, particularly as Mr K viewed the vehicle he was buying in person.

Mr K also says that prior to making the transfer he called Metro and the advice given implied that a bank transfer offered the same protection as a card payment. This Service gave Metro the details provided by Mr K in the screenshot he provided from his phone records, but Metro has been unable to locate a call. Metro says that if Mr K didn't get through to an agent the call wouldn't show on its records as it doesn't record waiting times. Metro also checked its customer contact notes and found no record of a discussion with an agent on 12 October 2022. I've seen evidence from Metro of its other communications with Mr K though.

I also find it highly unlikely that Metro would provide the advice Mr K says he was given. It is widely known in the banking sector that the protections that are offered when a customer pays by card aren't available to bank transfers.

Metro has offered Mr K £50 as it says it didn't raise a scam claim and attempt to recover Mr K's funds on a best endeavours basis. But as Metro deemed this to be a civil dispute it

wouldn't have been able to recover Mr K's funds so I'm not making an award. If Mr K now wishes to accept Metro's offer, he should contact Metro about this directly.

Overall, whilst I'm sorry to hear that Mr K hasn't received a refund for the car he bought, I can't reasonably ask Metro to refund him.

**My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 November 2023.

Jay Hadfield  
**Ombudsman**