

The complaint

Ms F complains that Metro Bank PLC ("Metro") won't refund money she lost, which she believes was as a result of a scam.

What happened

The circumstances which led to this complaint are well-known to both parties, so I won't repeat them in detail here. But, in summary, I understand them to be as follows.

On 6 September 2021 Ms F found a hire removal company. She told us she had a long telephone conversation and exchanged emails with the company – for ease I'll refer to as W. Following this, she was quoted a price of £1,000 for the removal and storage of her items/possession.

Ms F proceeded to make a bank transfer for £1,000 on 11 September 2021 to the details given to her. The payee Ms F made the payment to was in the name of another removal company – I'll refer to as KR. Ms F was told that W was a 'side arm' that operates side by side with KR but that it didn't subcontract work to KR or other companies. Ms F was told that W would be doing the move.

On 13 September 2021, Ms F told us the van that arrived was small and dirty and wasn't adequate to hold all the items/possessions due to be moved and stored. Ms F says she believes W had subcontracted out the work, despite what she'd been told, and that it was KR who turned up.

Ms F explained to us that on the day, she was told she'd need to pay additional costs due to her wanting items/possessions moved that were not stated on the inventory. Ms F raised this with W, as she told us she'd not completed the inventory form. Following this, she was then told she'd incur charges for late loading. Ms F commented that W in its contact with her at this time, were aggressive and rude with her. Having lost faith in W, she decided not to proceed and asked for a refund of the money she'd paid.

Ms F raised the matter with Metro on 13 September 2021. It looked into things but considered the case to be a civil dispute rather than a scam. In brief, this was on the basis that a service was attempted by the merchant and it attended the pickup arrangement, albeit with poor service, which Ms F declined.

Unhappy, Ms F brought her complaint to this service. One of our Investigators looked into things. In summary, the Investigator thought the matter was a civil dispute and not a scam. She explained that having looked at all the information she thought this wasn't a scam but more a case of poor service from the removal company. She noted the merchant arrived at Ms F's address as arranged, but Ms F hadn't proceeded due to a number of factors, such as, the size and condition of the van, the company asking her for more money and her loss of faith in them. She added that Metro was unable to raise a chargeback, as Ms F had paid by bank transfer and not a card payment.

Ms F didn't agree with our Investigator's view. In summary, she strongly maintained that she'd been the victim of a scam. Ms F also raised that our Investigator hadn't addressed her concerns about Metro's handling of the complaint she raised.

Our Investigator responded to Ms F about the level of service Metro had provided. She acknowledged Ms F had called the bank a number of times. She said businesses have to strike a balance with the speed of response provided to customers. She recognised Ms F was upset and that she would've liked more contact from Metro, but she didn't think it had deliberately not contacted her.

As an agreement couldn't be reached, the complaint has now been passed to me for a 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

There is no disagreement here that Ms F authorised the payment and so, under the relevant legislation, she's considered liable for it in the first instance. However, Metro is a signatory to the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Under the terms of that code, the starting position is that a customer who has fallen victim to a scam should be reimbursed. However, it specifically excludes *"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."*

When considering whether a dispute such as this should be considered a civil dispute or a scam, I need therefore to look at the intention of the supplier and whether it's clear that they set out with a criminal intent to deceive or defraud the customer.

There's clearly a significant dispute between Ms F and W about the van that arrived on the day of the removal, particularly about the size and condition that it arrived in. I also recognise Ms F's comments that W subcontracted out to KR, which is whom she says arrived on 13 September 2021. But these factors don't in and of themselves mean that she's a victim of a scam or fraud that would meet the criminal threshold.

It's clear the agreement with W didn't go as Ms F expected it to and I can understand entirely why Ms F feels so strongly about what has happened based on what she's shared with us. But having considered everything that's been given to us, I'm not persuaded, from what I've seen, that there is enough evidence to safely say W set out with the intention to defraud Ms F from the outset.

Ms F has provided online negative reviews about W in support of her case. I also recognise her dissatisfaction with W referring to an inventory which she's told us she didn't complete as a means to apply additional charges. There may well have been sharp practice in terms of how W operated and ran its business, but that isn't the same as willingly and intentionally acting fraudulently or deliberately setting out to scam Ms F at the time.

Questionable trading practices are not enough for me to be as sure as I would need to be that W acted dishonestly and deceitfully, by taking payment from Ms F in circumstances where it had no intention of fulfilling its side of the bargain – especially in light that a removal van did arrive at Ms F's address and on the day agreed. I don't doubt that some of what happened here suggests very poor business practice. But I don't think I can safely say that this would meet the criminal threshold of an APP scam.

As part of my investigations, I've seen confidential information from KR's bank (whom Ms F made the payment to). I can't share any details with Ms F, but the information doesn't lead me to think it's more likely than not that KR's account was being used fraudulently. I think it's also significant that KR's bank has also said there were no other allegations of fraud made to the bank. Had the removal company scammed multiple people, I would've expected some of them to have contacted their own bank and alleged fraud, as Ms F did. I think the fact that this doesn't appear to have happened supports the argument that Metro had made that this is a civil dispute.

All things considered, I can't safely say this meets the high legal threshold and burden of proof for fraud. Rather, this appears to be a case of W not providing the level of service in line with Ms F's agreement with W as she reasonably expected, signs of W not operating well and a possible breakdown in communication and loss of faith between Ms F and W.

It follows that, on balance, I can't fairly or reasonably say that, based on what I know, W set out with the intent to defraud Ms F. This being the case I'm satisfied the CRM Code doesn't apply. And I can't ask Metro to refund the money Ms F has lost.

I'm also satisfied that there wasn't anything else Metro could have done to either prevent the loss or recover the funds. I say this because I don't think the payment was remarkable enough or out of character to such an extent whereby I would expect it to have concerns about it and intervene. And as the payment wasn't made by debit or credit card the various schemes available that offer protection to those methods of payments weren't available to Metro or Ms F either.

I've also carefully considered Ms F's dissatisfaction with the service she received from Metro. Ms F says the bank never addressed her complaint. Ms F referred to the complaint she raised with the bank on 16 September 2021 via an online complaint tool. She also provided us with the initial reply she received through the online complaint tool from 21 September 2021 in which Metro advised it had forwarded her request onto the relevant department. Ms F told us she reached out to Metro again around 30 September 2021 and received a response from the bank, which again said her request had been sent onto the relevant department.

Our Investigator referred Ms F to a letter dated 16 September 2021 from Metro in which it provided a response to the customer service concerns she'd raised. However, Ms F says she didn't receive this letter. I recognise it will have been disappointing for Ms F not to have received the letter Metro says it sent to her. Ms F maintains she didn't receive a letter about the outcome of the claim. I've thought carefully about this, but I'm mindful from calls I have listened to between Metro and Ms F that she was told by the bank that it declined to reimburse her for the payment she'd made. In a call on 13 September 2021 (appears to be a call made by Ms F after her initial call to raise the fraud claim), she was told the bank considered this a civil dispute and the agent mentioned Citizen's Advice and a small claims court to Ms F. I also have to keep in mind that in the absence of Ms F receiving anything in writing, this has not prevented her from bringing her case to this service.

I do realise that my decision will be disappointing for Ms F and I don't say any of this to downplay or diminish what she has been through which must have been an extremely difficult and frustrating experience for. She had paid in good faith for what should have been an acceptable service from a removal firm and what was provided fell far short of her reasonable expectations. She's been unable to recover her money which has made matters far worse. I sympathise with Ms F for the impact all of this has had on her and I know she will be disappointed by my decision. However, for the reasons I've said above, I'm not persuaded Metro can fairly be held liable for her losses in these circumstances, I simply can't safely conclude based on the evidence that this was an APP scam.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 28 July 2023.

Staci Rowland
Ombudsman