

## Complaint

Miss N is unhappy that Metro Bank PLC didn't reimburse her after she fell victim to a scam. She has brought this complaint with the help of a representative, but for simplicity's sake I'll refer only to Miss N throughout the decision.

## Background

Miss N wanted to buy a car. She needed to arrange finance to purchase one. A friend of hers recommended a broker who would help her find a suitable car and arrange the associated finance. Unfortunately, that broker wasn't legitimate and turned out to be a fraudster.

He contacted Miss N and told her that he'd found a suitable car. He told her the make, model and price. The price (£60,000) was broadly in line with what Miss N was expecting. She was shown photos of the car which were consistent with the description she'd been given. The fraudster told Miss N that she needed to pay a deposit of £375 to reserve the car. She was then told that she needed to make a further payment of £5,700 to the same account. She was assured that she'd be sent documentation relating to the finance in due course and that, once the finance company had sorted out the formalities, she'd be free to collect her vehicle.

She waited several weeks, but there was no contact. She messaged the fraudster and requested a refund. This request was ignored. In January 2023, around two months after she thought she'd made a deal to purchase the car, she told Metro Bank that she thought she'd fallen victim to a scam. It looked into things, but it didn't agree to refund her. It said that Miss N hadn't carried out proper checks before agreeing to transfer her money. It also argued that it had displayed an effective warning during the payment process and that Miss N had ignored this.

The Investigator upheld Miss N's complaint in part. The crux of her argument was that the second payment should've been identified as having a higher fraud risk associated with it. She thought that, before allowing it to be processed, Metro should've contacted Miss N and asked her about the circumstances of the payment to satisfy itself that she wasn't at risk of financial harm due to fraud. If it had done so, she was persuaded that Miss N could've been prevented from making the second payment.

However, the Investigator also thought that Miss N could've done more to protect herself here. She thought that Miss N shouldn't have agreed to make payments relating to the car when she hadn't carried out any checks on the alleged seller, had only seen one photograph of the car and didn't carry out any checks on the car itself, for example to ensure that it had a valid MOT certificate and wasn't subject to finance.

She also thought Miss N should've been concerned that there was no proper explanation given as to why she needed to make the second payment. She'd already paid £375 in the belief that it was to reserve the car and so it wasn't clear why she then needed to make a payment of £5,700. For these reasons, the Investigator was persuaded that it was fair and reasonable for Metro to make a deduction of 50% from the compensation she recommended it pay Miss N. She recommended it pay Miss N £2,850 and add 8% simple interest per

annum to that sum.

Miss N responded to say that she accepted the Investigator's view. Metro Bank didn't respond. Because no agreement has been reached between the parties, the complaint has been passed to me to consider and come to a final decision.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines and that we may:

*...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;*

And that:

*If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.*

I've therefore concluded that, in the absence of a response from Metro Bank, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of its failure to reply to the Investigator's opinion.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. Good industry practice required that Metro be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

The Investigator concluded that the second payment was the point at which Metro ought to have intervened and I agree with that conclusion. It was significantly larger than other payments from the same account in the preceding months and was to a relatively new payee. The risk was sufficiently clear that it required more than the displaying of a warning during the payment process – I think an employee of the bank ought to have called Miss N to discuss the payment. If that had taken place, I think it's more likely than not that she'd have been persuaded to carry out further checks. These ultimately would've prevented her from making that second payment.

However, I also agree with the Investigator that it's fair and reasonable that Miss N be considered partially liable for her losses here. I think she ought to have been more cautious in the circumstances and so Metro should be free to deduct 50% from the compensation due.

## Final decision

For the reasons I've explained above, I uphold this complaint in part. If Miss N accepts my decision, Metro Bank PLC needs to pay her:

- 50% of the second payment she made in connection with the scam
- 8% simple interest per annum on that sum calculated to run from the date the payment was made until the date any settlement is paid to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 28 December 2023.

James Kimmitt  
**Ombudsman**