

The complaint

Ms M complains that Metro Bank PLC won't refund her the funds she lost when she fell victim to a scam.

What happened

Ms M says that she was contacted by someone on a social media platform I'll refer to as C in this decision. Ms M and C started to talk daily and then moved on to video calls. A relationship developed and C told Ms M he wanted to come to the UK to visit her for Christmas. C then told Ms M that he had a very important business trip abroad coming up but when he landed C told Ms M that customs had seized his goods and he needed to pay a fee of \$13,000 to release them. C couldn't afford to pay the customs fees and said he'd asked his business partner but was still short of funds. Ms M says she offered to help but told C she didn't have the full amount. She says that C threatened suicide if he couldn't get the matter sorted.

Ms M agreed to help, and C gave her the details of a UK bank account to transfer funds to, saying that customs had a UK account to speed things up. Ms M says she didn't think to question this at the time.

I have set out in the table below the payments Ms M made on C's advice. All payments were made to a UK bank account to an unknown third party:

| Date | Amount |
|--------------|------------------|
| 26/10/22 | £1 |
| 26/10/22 | £1,299 |
| 27/10/22 | £865 |
| 18/11/22 | £1,262 |
| 25/11/22 | £1,241.82 |
| Total | £4,668.82 |

C told Ms M the fees had been paid and he'd received the goods but needed to hire out a warehouse to store them. Ms M also received messages from C's business partner saying C was in difficulty. She became concerned and completed online checks which revealed C was using someone else's profile and had scammed others. She contacted Metro to report what had happened on 26 November 2022.

When Ms M contacted Metro she gave a different version of events. She referred to buying jewellery from abroad and said that her cousin and friend provided the details. In the same call though, Ms M also discussed the details set out above.

Metro considered Ms M's complaint in accordance with the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and said that it warned Ms M of the risk of scams and that one of the exceptions to reimbursement applied. Metro also said Ms M's payment requests weren't unusual, so its systems didn't flag them.

Ms M was unhappy with Metro's response and brought a complaint to this service. She said Metro should have intervened as, after the first payment of £1, the payments were unusual, and that had this happened the scam would have been uncovered. Ms M also referred to the CRM Code and to Metro's obligations under it.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said that Metro acted fairly in relying on an exception to reimbursement set out in the CRM Code. This was because Ms M didn't have a reasonable basis for believing the payee was genuine for a number of reasons, including the fact she hadn't met C and didn't complete any research to establish whether he was who he said he was. The investigator also said that Metro had tried to recover Ms M's funds but hadn't been successful.

Ms M didn't agree with the investigator's findings. She said the view lacked humanity and referred to the huge effect this scam has had on her in terms of her health and finances. Ms M went on to say that Metro didn't do enough to protect her funds or to recover her final payment when she reported the scam, and she was entitled to a refund. She says she believed that as she was paying a UK bank her funds were safe. Finally, Ms M raised points about the service she was provided with, and the fact Metro closed complaints without her consent.

The complaint has been passed to me to issue 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 sorry to hear that Ms M has been manipulated by a cruel scammer and of the consequences of this. She has been let down by someone she believed she was in a relationship with.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The starting point for my considerations is that, under the Payment Services Regulations 2017 and the terms of her account, Ms M is liable for transactions she has carried out herself. But Metro has signed up to the CRM Code and also has a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate its customer is at risk of financial harm from fraud.

There's no dispute here that Ms M was tricked into making the payments. But this isn't enough for her to receive a refund under the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

There are other exceptions that do not apply to this case.

Taking into account all the circumstances of this case, I think the concerns Metro has raised about the legitimacy of the transactions Ms M made are enough to support its position that it can choose to rely on an exception to reimbursement. I don't think Ms M had a reasonable basis for believing C was legitimate and will explain why.

- Ms M received unexpected contact from C via social media. She says that she has been contacted by others in this way in the past and has blocked suspicious accounts. I think this shows Ms M was aware that not everyone who contacts her on social media can be trusted.
- Ms M never met C and hadn't communicated with him for long before agreeing to send payments at his request. In doing so, she placed a lot of trust in C and accepted what he said at face value.
- Ms M had no reason to believe that the payments she was sending were being used for the reasons stated by C. She didn't see any documentation or other proof that fees needed to be paid or that her funds were used for the reasons she was given.
- I think Ms M ought reasonably to have had concerns about paying a UK bank account in the name of an individual for customs fees abroad. The explanation provided (that there was a UK account to make payments easier) wasn't plausible.
- Ms M didn't complete any research into C before agreeing to send payments to help him. When she later had concerns and looked into things, she found that C was using a fake profile and had scammed others.
- Once customs fees had been paid C said he needed to hire a warehouse to store the goods. If C was genuine he must have known he'd encounter such costs before going abroad so I think Ms M ought reasonably to have questioned this.

Overall, I'm not persuaded Ms M had a reasonable basis to believe C was who he said he was or that the payments were for genuine goods or services.

The CRM Code sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement may be fairly applied (as I am satisfied Metro can establish here). Those requirements include the provision of what the CRM Code defines as an Effective Warning when a firm identifies an APP scam risk in relation to a payment.

In this case, I don't consider Metro ought reasonably to have identified an APP scam risk when Ms M made the payments to the scammer. They were relatively low in value and were spread out over a period of a month. The transactions also didn't stand out as unusual given Ms M's previous account and payment history. Ms M had made payments of similar value in the twelve months before the scam. For example, in February 2022 Ms M made a faster payment of over £1,200 – which is a very similar amount to the highest value transaction she made as part of the scam.

So I don't consider Metro ought reasonably to have recognised that Ms M was at risk of being scammed and provided Effective Warnings. Metro has said though that it provided relevant warnings to Ms M at the time, although it hasn't demonstrated which payment reason she chose, or which warning was shown. But as I don't consider Metro needed to provide an Effective Warning under the CRM Code this doesn't influence the outcome of this complaint.

Ms M has referred to the service she received from Metro. I can see that she spoke to Metro's fraud department on 26 November 2022 and that Metro emailed her on that date and set out the next steps, including that it would provide an update by 10 December 2022. Ms M called Metro on 9 December for an update and Metro communicated its claim

response on 12 December 2022. I'm satisfied this was within the timeframe set out in the CRM Code and that Metro acted reasonably.

Ms M has also complained that Metro chose to close her complaints when she didn't agree to this. Closing a complaint is an internal process I can't comment on. But I can see that Metro closed the first complaint after it had issued a final response. The second complaint was closed following Metro's response to Ms M's representative in which Metro reiterated the right to refer a complaint to this service. So when Metro closed the first complaint it had exhausted its complaints procedure and referred Ms M to this service, and when it closed the second complaint it had responded to the points raised and reminded Ms M of her right to refer her complaint here. In the circumstances, I can't say Metro acted unreasonably.

I've considered whether Metro did enough to try to recover Ms M's funds after she reported the scam. I can see that immediately after Ms M's call to report the scam Metro got in touch with the bank that received her funds in an attempt to recover the funds. This is what I'd expect Metro to do. As is often the case, no funds remained to be recovered, but I can't hold Metro responsible for this.

Overall, whilst I'm sorry to hear about this cruel scam and about the impact of it on Ms M, I can't reasonably ask Metro to reimburse her loss.

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 Ms M to accept or reject my decision before 6 February 2024.

Jay Hadfield
Ombudsman