DRN-2673489

The complaint

Mr S is unhappy that Metro Bank PLC didn't do more to prevent him falling victim to a scam.

What happened

Mr S was looking to purchase a new car and came across one he was interested in advertised online via a website. After speaking with the seller through email correspondence and over the telephone, he decided to purchase the vehicle which was being sold for £6000.

Mr S says that he had no concerns regarding the legitimacy of the seller as the website where he'd found it advertised appeared professional. He'd spoken with representatives of the website via an online chat and had communicated with the seller through email and telephone conversations. He'd also conducted his own checks on the car to ensure it wasn't stolen and had been sent a copy of the registration documents by the seller to verify their ownership.

Mr S proceeded to make three bank transfers to pay for the car totalling £6000; these were paid to the account details he was provided by the company where the car was advertised. Mr S made the payments via two transactions of £2500 and one of £1000 as his transfer limit on his mobile banking for new payees was £2500. But after he'd transferred the funds to the account, he didn't receive the car on the date he was expecting it to be delivered. He also received no response from either the seller or the company where he'd found the car when he tried to contact them. It was then that Mr S says that he discovered he'd been a victim of fraud and so he reported this to his bank.

Metro looked into Mr S's fraud claim but said it was unable to recover any of the funds he'd sent. It said that it couldn't help him any further and directed him to contact the beneficiary and report the matter to the authorities.

Mr S was unhappy with this response, so he made a complaint. But Metro declined to refund his money. It said that it'd checked the beneficiary account and the money had been removed prior to Mr S reporting the fraud, so it wasn't able to recover the funds. It also mentioned that the payments were made prior to the introduction of a voluntary code which it may have considered a refund under. It did however identify some service failings and offered to make a goodwill payment of £75

Mr S wasn't happy that Metro didn't agree to reimburse the funds lost, so he came to our service to look into the complaint further. An Investigator looked into the evidence provided by both parties and concluded that Metro could have identified and intervened in the fraud from the point Mr S made the second payment to the fraudster. She pointed out that whilst the first payment didn't appear out of character or suspicious, the second represented an increase in spending and multiple transactions being made to a new payee. As a result, she felt Metro should reimburse the second and third payments including interest.

Metro didn't agree. It provided a detailed response to the investigator's assessment pointing out the following:

- It disagreed that relevant considerations were applied to the Investigator's view; such as reference to the BSI PAS Code of Practice. It added that this code was created by a small number of financial institutions and is being incorrectly applied to the majority of the industry that had no involvement in the formation of what constitutes 'best practice'.
- It said that it's important to recognise that there is a balance between servicing its customer's instruction whilst protecting them from risk. It added that its risk appetite is in line with regulatory obligations.
- There isn't a statutory underpinning for the rationale regarding its payment screening requirements or regulatory obligation for businesses to profile payments for the purpose of fraud.
- It thought that the ombudsman service appeared to be attempting to take on the role of the regulator in dictating what payments should or shouldn't be flagged as suspicious. Whilst it acknowledged that our service considers what it deems fair and reasonable on a case by case basis, it should carefully consider and fairly place weight on what the actual obligations of banks are and what due diligence or prerequisite level of care the customer undertook to prevent themselves falling victim to a fraud. It felt this hadn't been considered in the circumstances of this complaint.
- It concluded that it remained of the view that it had acted correctly and fairly, and therefore couldn't be held liable for the losses suffered by Mr S.

As Metro disagreed with the Investigator's view, the matter was passed to me to make a decision.

Prior to issuing any findings, I contacted both parties for further information. I asked why Mr S had made three separate transfers rather than paying the amount in one transfer.

Mr S told our service that he had initially attempted to make a payment for the full amount but was blocked from doing so by the bank due to a £2500 limit for transfer. Metro initially denied any limits of transfer on the account, but when it looked at the payments again it discovered they were carried out via the mobile banking application. It then acknowledged that new payees set up via the mobile application were restricted in any initial payments to £2500; which coincided with Mr S's testimony.

Taking all the evidence into account, I issued my provision findings to both parties for further comment.

My provisional findings

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

It's accepted by both parties in this complaint that Mr S authorised the transactions made as a result of the fraud he fell victim to. Mr S utilised his online banking facility to authenticate the payments via his mobile; albeit under deception.

Broadly speaking, The Payments Services Regulations 2017 states that Mr S is liable for any transactions that he has authorised or consented to. So, although Mr S didn't intend the money to go to the fraudster, under the relevant regulations, and the terms and conditions of his account, Mr S is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that

Metro should fairly and reasonably:

- *Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*

- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*

- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

Having looked at Mr S's account activity prior to the above payments being made, I broadly agree with the Investigator's findings that the pattern and characteristics of the payments Mr S made did constitute a change in his usual account expenditure. I say this due to the quick succession of the three payments, the fact that they were to a new payee and that the amounts (two payments of £2500 followed by a payment of £1000) were quite a bit higher than the payments Mr S normally made from his account.

Having said this, I appreciate banks need to strike a balance in the extent to which it intervenes in payment, against the risk of unduly inconveniencing or delaying legitimate payment requests.

Keeping this in mind, it isn't unusual for customers to occasionally make a slightly higher payment than usual for higher value purchases. So I don't think that the first payment Mr S made for £2500 would go far enough to say that this represented such a risk that it would be fair or reasonable for Metro to have intervened. Whilst it was higher than the usual payments he tended to make, it wasn't so significant that it represented an obvious concern.

But Mr S then proceeded to make a further £2500 payment to this new payee within quick succession, and then a further £1000 following this. I think at the point Mr S made the second high value payment it represented not only a significant increase in spending—in comparison to his usual account activity—but an unusual pattern and behaviour when considering the above characteristics. So, I think it's fair and reasonable to conclude that this was the point in which Metro should have intervened and questioned Mr S regarding the purpose of the payments to ensure he wasn't at risk.

But had Metro intervened in the second payment that Mr S made, I'm not persuaded this would either have prevented him from making the payment or identified that he was victim to a fraud. I'll explain why.

Mr S had carried out a significant amount of due diligence checks prior to authorising the payments for the vehicle he was supposed to be buying. He'd carried out checks through an independent company to ensure that the vehicle wasn't lost, stolen or had credit associated with it. He also had the seller send a copy of the vehicle registration documents which appeared legitimate and held the information he expected to see.

In addition to the above, he found the vehicle himself after browsing the internet. The website where he found the car advertised appeared professional, and I can't see any reports at the time Mr S made the transactions of any adverse information relating to the company through open resource checks on the internet. Mr S also communicated with the *seller through email correspondence and via telephone calls; the latter being unusual in circumstances of fraud.*

Additionally, he contacted the company where the vehicle was advertised and was provided the account details for payment through a webchat facility on the website rather than directly from the seller. So, on the face of it, the only element of risk that was presented was the fact that Mr S hadn't seen the vehicle personally. But this isn't uncommon when making purchases online through websites. I think it likely that had this information been presented to Metro if it'd questioned him about the payments, it likely wouldn't have appeared suspicious in the circumstances. And when considering that Mr S has admitted to already being cautious about the purchase at the time of making it, I don't think any warnings regarding fraud of this nature would likely have been enough for him to not go ahead with the payment, as he'd already carried out a number of due diligence checks to mitigate this risk.

Mr S has argued that this may have prompted him to not go ahead with the payment regardless of his hesitation, but whilst I can't be certain, I find that it's more likely than not that he would have for the reasons I've given.

I appreciate that this may come as a disappointment to Mr S, but ultimately the fraudster is responsible for the loss he's incurred. And whilst I agree that Metro should have intervened in the payments and done more to make sure Mr S wasn't at risk of financial harm, I don't believe that this would have ultimately led to him not being defrauded. The fraud was complex, well engineered and convincing in its execution; and therefore, difficult to detect. It follows that it would be unreasonable to hold Metro liable for the transactions he'd made considering that any intervention wouldn't likely have changed the outcome.

Lastly, I've noted that there has been some mention throughout the duration of this complaint process of a voluntary code signed up to by Metro, referred to as The Contingent Reimbursement Model (CRM). The CRM code was introduced for fraud that took place on or after the 28 May 2019 and isn't being applied retrospectively. As this is a voluntary code and was applied after the date Mr S made the payments from his account, I can't consider the circumstances of this complaint under the CRM code.

Responses to my provisional findings

Mr S responded saying that both the Investigator and I have pointed out that Metro failed in intervening in the payment and potentially preventing the fraud from taking place. Whilst he thought that the findings were impartial and that Metro weren't liable to reimburse the full amount, he believed there should be a middle ground for recompense since the intervention hadn't taken place.

Metro responded saying that it had nothing further to add.

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.

As both parties have broadly agreed with the provisional findings I've outlined above, I won't go over these again. But Mr S has pointed out that whilst he understands the findings made, he believes that there should be some middle ground for recompense considering that Metro failed in its obligation to intervene in the payments. Whilst I appreciate the point Mr S has made, it isn't the role of this service to punish businesses for any general regulatory failings it's made. It is the role of this service to put the consumer back into the position they would have been in had any errors or failings not occurred. We also consider if it's fair and reasonable to award compensation for any distress or inconvenience caused as a result of this.

As I've already pointed out in my provisional findings, I don't think it likely that any intervention by the bank would have resulted in a different outcome due to the complexity and persuasiveness of the fraudster's method. So it would be unreasonable in these circumstances for me to direct Metro to reimburse—wholly or in part—any of the funds lost considering that any intervention would likely have failed in preventing the loss. It wouldn't be fair to expect Metro to compensate him given that I've found it wasn't the cause of his loss.

Considering the responses provided by both parties, I'm not minded to change the findings outlined in my provisional decision. I'm sorry to disappoint Mr S, but I hope my explanation as to how my decision has been reached goes some way to help him understand why it is fair in the circumstances.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 April 2021.

Stephen Westlake
Ombudsman