

The complaint

Ms E is unhappy that Metro Bank PLC didn't refund her money after she fell victim to a fraud.

What happened

Ms E decided to invest in mini bonds through a third-party business (Q, a limited company) after a friend recommended the investment as having successful returns and finding positive reviews online.

Ms E initially invested £20,000 in January 2020 via a bank transfer to Q. And after receiving a number of monthly 'returns', invested a further £10,000 in June 2020; these were paid via a business account in the name of N, a limited company.

In July 2020 Ms E received a letter from another company claiming that Q had entered into liquidation. Ms E began carrying out research and discovered negative reviews of the business online. She eventually found a number of other investors online that claimed the investment was in fact fraudulent. So, Ms E reported the fraud to Metro.

Metro investigated Ms E's claim but found it wasn't liable for the two payments made. It pointed out that it did intervene in the first payment of £20,000 made to Q and warned Ms E that the business wasn't regulated by the Financial Conduct Authority (FCA). It said that it provided sufficient warnings surrounding the potential of the investment being a fraud and directed Ms E to carry out research on the business before making the payment. It also informed Ms E that if she continued to go ahead with the payment, it wouldn't be liable for it if it did transpire to be a fraud. As such, it didn't think it was liable for the payments made.

Ms E remained unhappy with the decision reached by Metro, so she referred her complaint to our service for an independent review. An Investigator considered the evidence provided by both parties and concluded that Metro should have reimbursed the money lost. In summary, they pointed out that Metro was a voluntary signatory of the Contingent Reimbursement Model (CRM Code). And the starting position within this code is that Miss E should be reimbursed unless certain exceptions applied.

The Investigator considered if Ms E had a reasonable basis for believing she was paying a legitimate company and if she ignored any effective warnings given by Metro as part of the payment journey. They concluded that neither of these exceptions applied and therefore that Metro should provide full reimbursement of the funds lost including 8% simple annual interest from the date it decided to decline the claim.

Metro disagreed. It pointed out that it provided numerous warning to Ms E prior to processing the payment around unregulated investments and their links to common frauds. It also prompted her to carry out additional research and warned her that once the payment was processed, it wouldn't be liable for it. It also made further submissions that as the second payment was made to a regulated financial business, and not directly to the fraudster, it didn't fall under the scope of the CRM code.

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

On 20 October 2022 I issued a provisional decision setting out my thoughts on the complaint and how I was minded to resolve it. The provisional decision read as follows:

'In deciding what is fair and reasonable, 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.

Under the relevant regulations, and in accordance with general banking terms and conditions, banks have an obligation to execute an authorised payment instruction without undue delay. In consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam.

But that isn't the end of the story. Where a customer made the payment as a consequence of the actions of a fraudster, I consider it may sometimes be fair and reasonable for a bank to reimburse its customer even though that customer authorised the payment.

In particular, Metro is a signatory to the CRM Code, which provides additional protection to the victims of authorised push payment (APP) scams. However, Metro argues that the CRM Code should not apply to the second payment Ms E sent. It does not believe Ms E is afforded the additional protection of the CRM Code and does not believe it is liable to reimburse her for the loss.

In considering this, I have carefully reviewed the relevant material surrounding the scope of the CRM Code in relation to this type of payment. That includes the wording of the CRM Code, as it stood at the time in question, and its subsequent publications clarifying its position on interpretations of the scope.

The CRM Code defines under its scope customers undertaking payment journeys as part of an APP scam. This is defined as a transfer of funds executed across faster payments, CHAPS or and internal book transfer, authorised by the customer for what they believed to be legitimate purposes, but which were in fact a scam.

Metro has treated this matter as a scam and there is no dispute that the transaction was made via faster payment and was authorised by Ms E.

The Code further stipulates that the payment journey should be between GBP-denominated UK-domiciled accounts, by any channel of push payment available to the customer, such as branch, on the phone, or online. Again, this criterion has been met.

Ms E transferred the second payment of £10,000 via faster payment to a UK based account held in the name of a business that was regulated by the FCA at the time: N. This business has since entered into liquidation. At the time Ms E made the payment, N was an intermediary for payments between investors and Q. It had an agreement with Q to receive payments on its behalf, which were then almost immediately forwarded on by faster payment to a UK based bank account in the name of Q.

Ms E never held an account or customer relationship with N, she was merely instructed by Q to make payment to it. So, once Ms E made the payment, the funds left her control and subsequently fell into the control of the fraudster.

I don't find that this elongation of the payment journey excludes the payment Ms E made from the CRM code. The code is specific in the types of payments it covers, and as I've highlighted above, these have been met.

The points I've made above persuade me that the payment made by Ms E from her Metro account are covered under the scope of the CRM Code.

Has Metro demonstrated that one or more of the exemptions for reimbursement applies?

The starting position under the CRM Code is that the victim of an APP scam should be reimbursed unless certain exceptions apply. These exceptions include the customer ignoring an effective warning, by failing to take appropriate action in response, and, the customer having made the payment without a reasonable basis for believing it was legitimate.

Having considered the arguments made, and the evidence provided, I don't consider Metro has been able to establish that any of the CRM Code exceptions to reimbursement can fairly be applied here.

Ms E was initially introduced to the investment by a trusted friend who had given positive feedback on their experience and assured her that they were receiving regular returns. This was clearly a compelling and persuasive factor in Ms E's basis for believing the investment was genuine.

Additionally, Ms E describes her introduction to the company as professional. She was sent a welcome pack containing professional looking documentation, merchandise and returns information: of which I don't find to have been too good to be true.

When Ms E was convinced to begin investing, she attempted to make a £20,000 payment to Q, but this was blocked by Metro and contact was made with Ms E. Having listened to the call between Ms E and the Metro representative, I can't agree Ms E ignored an effective warning for a number of reasons.

During the call, the representative asked Ms E why she was making the payment. Ms E responded honestly and told the representative that she was investing in high-risk bonds. She also disclosed the name of the business she was investing in. The representative did cover off some warnings regarding investment scams. They asked Ms E if she'd checked Q against the FCA register to ensure they were regulated. Ms E answered that she'd not and the representative advised her that she should carry out some research before she made the payment to ensure the company was legitimate.

Ms E didn't ignore this warning. She agreed that she should carry out more research before making the payment, asked the representative to reverse the payment and the call was terminated.

Ms E has told our service that she then went away, looked up reviews of the company, of which all were positive, and found the company registered on Companies House. Ms E acknowledges that Q wasn't regulated, but not all investments are. So, I don't think this on its own is enough to say Ms E didn't have a reasonable basis of belief or that she ignored Metro's warnings. Ms E had carried out a number of diligence checks to ensure Q was legitimate and had a recommendation from a trusted friend who had already seen the returns promised.

Moving on the second payment of £10,000. Ms E has explained that between her first payment in January 2020 and the second payment made six months later, she herself

was receiving monthly interest payments from Q; a common feature of investment scams used to gain a victim's trust. This was broadly in line with the payments she'd expected over the period and set out in the documentation provided to her when investing. I'm persuaded that this further reinforced Ms E's belief that she'd invested in a legitimate business.

Considering the above information, I'm not persuaded that Metro has been able to demonstrate that one of the exceptions to reimbursement applies here.'

Both parties were given until 3 November 2022 to provide any further comment or evidence in response to the provisional decision. As that deadline has now passed, I'm in a position to issue my final 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.

Both parties have responded to my provisional decision. And both parties have said they have no further comment or evidence to provide in relation to this complaint.

As no further comment or evidence needs to be taken into consideration here, I don't intend to depart from the directions, and reasons for these directions, set out in my provisional decision.

Putting things right

Metro should have reimbursed the funds Ms E lost, minus the monthly interest payments she was receiving from Q between January and June 2020. I've calculated these as follows:

2020

31.01 - £14.25

28.02 - £61.06

16.03 - £43.62

01.04 - £61.06

30.04 - £61.06

15.05 - £45.12

04.06 - £61.06

Total = £347.23

I don't think Metro would have been able to prevent the payments from taking place considering the complexity and persuasiveness of the fraud. So, it should pay the interest rate from the saving account where Ms E paid the funds from—given as 2.23% per annum—from the date it rejected the claim rather than the date of the payments.

My final decision

For the reasons I've given above, I uphold this complaint and direct Metro Bank PLC to:

- Refund Ms E the two payments made – minus the monthly payments she received in “returns” between January and June 2020 (£347.23).
- Pay 2.23% simple annual interest on the sum lost from the date Metro rejected Ms E's claim to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 28 November 2022.

Stephen Westlake
Ombudsman