

The complaint

Mrs H complains that Metro Bank PLC took money out of her account after she became caught up in a scam.

What happened

Mrs H was caught up in a money mule scam. She received an email from a company who claimed she was entitled to a PPI refund. In order to receive the refund, Mrs H was told she needed to pay legal fees. As she was unable to provide these fees in cash, the scam claims company told her they would transfer the money into her account, and she would need to purchase vouchers for an online retailer and provide them with the claim codes by scratching off the back of the card.

Mrs H was sent £420 on 8 December 2020 and two further payments of £324 and £495.10 on 9 December 2020 from the scammer. As instructed, she went on to purchase a total of £1,225 in vouchers at a supermarket – spread over eight transactions.

Metro received information that the funds she had received on 8 and 9 December 2020 were part of a fraudulent arrangement. So, it returned £819.10 of these funds to the remitting bank on 14 December 2020.

Mrs H believed she was going to get a PPI refund, when in fact she was used to transfer fraudulent funds obtained from someone else. Metro accepts that Mrs H was unwittingly caught up in a scam and had no fraudulent involvement herself.

Mrs H complained because she had been duped and feels she has suffered a loss as a result. She told Metro that some of the money it had taken was hers, and not proceeds of the scam. But Metro believes it has acted fairly.

Our investigator upheld the complaint and asked Metro to refund the money it had taken from Mrs H's bank account. Metro didn't agree primarily because it thought Clayton's rule should apply and it had a duty to return the fraudulent funds.

I issued my provisional decision on 11 February 2022 explaining why I was thinking of the same outcome as the investigator, but proposed Metro put things right in a slightly different way.

Mrs H accepted my provisional decision and Metro confirmed it has 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 neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

In making this decision I've taken into account Metro's own terms and conditions, relevant industry guidelines and good practice, regulations such as the Payment Service Regulations 2017 (PSRs), legislation such as the Consumer Rights Act 2015 (CRA); as well as what I consider to be fair and reasonable.

It's not in dispute that the transfers Mrs H received were the result of fraud. So, I understand why Metro may think it reasonable to refund the senders using the money available from Mrs H's account. But it is also not in dispute that Mrs H was an innocent party to the fraud and all but £14.10 of the funds received, she transferred out as instructed, so there was little benefit to her. So, I'm satisfied Mrs H is also a victim of the fraudsters and has been used as an unwitting money mule.

All the payments into Mrs H's account were Authorised Push Payments (APP). These payments were also from scammed victims. The APP Voluntary Best Practice Standards produced by UK Finance in October 2017 sets out standards for sending and receiving banks to follow when processing a claim for an APP scam. Although not all banks were party to this, I consider the guidance to have been good industry practice at the time.

There are several relevant principles here:

- The sending bank should notify their customer that because they authorised the transaction, the right to the funds is with the recipient.
- The receiving bank will need to investigate and establish (to the extent it is able) whether the account is fraudulent and if funds remain.
- The receiving bank will need to find evidence that the recipient has obtained the funds fraudulently.
- Following the receiving firm's investigation, identified funds should always be repatriated back to the sending firm at the risk of the receiving firm, subject to various exceptions. One of these exceptions is where there is a credible complaint or dispute from the recipient of the funds.

Therefore, good industry practice at the time said the receiving bank should investigate whether their consumer had received the funds fraudulently. If they haven't, the receiving bank is under no obligation to return the funds to the sending bank. In this case, Mrs H had a credible complaint. She played no part in the scam that had defrauded the senders, so didn't receive the funds as a party to the fraud. It follows then that Metro weren't under an obligation to return the funds to the sending banks.

In any case, I think Metro's actions – although arising from a desire to help genuine victims of fraud – lead to an unfair outcome for Mrs H. She acted in good faith in accepting and passing on the funds and hasn't benefitted from most of the money paid to her. I say most as there was a surplus of £14.10 – which represented the difference between what was deposited in her account (£1,239.10) and what she spent in vouchers (£1,225). Metro were under no obligation to return all the funds to the sending banks. In effect Metro have indemnified themselves using Mrs H's money, without any prior agreement to do so, which I don't find to be fair or reasonable.

Metro hasn't sought to rely on the account terms and conditions to overcome the PSRs. But looking at the terms I can see, and I acknowledge, that the account terms and conditions, on the face of it, might allow for Metro to debit the account. But the term, when applied in Mrs H's circumstances, could be considered unfair under the Consumer Rights Act 2015 (CRA) and so in my view ought not apply. This term creates a significant

imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. It might be fair to rely on this term where, for example, there was sufficient evidence to show the account holder was a fraudster. But that wasn't the case here. Instead, Mrs H was also the victim of a scam.

In response to the investigator's view, Metro referenced Clayton's Rule, but I don't agree that this affects Mrs H's complaint. This rule relates to the order in which credits are paid into an account and the subsequent order in which the funds are then allocated/drawn out. Each withdrawal is presumed to be a return of all or part of the oldest deposit. The result is that the oldest deposit is withdrawn first, or the oldest debt is paid first.

In this case I can't see a basis for Clayton's Rule to be engaged as Metro hasn't established to my satisfaction that Mrs H acted fraudulently or that it was entitled to take the funds out of Mrs H's account in the first place. Therefore, I don't consider it's fair and reasonable for Metro to return the funds to the sending bank and Clayton's Rule doesn't affect that.

Ultimately, I don't think Metro has acted fairly and reasonably taking the money out of Mrs H's account – therefore it should put Mrs H back in the position she would've been in by refunding her.

However, I do think Mrs H shouldn't benefit from the scam she was caught up in, which is why it remains fair that the surplus of £14.10 shouldn't be returned to her. But Metro should return the money that was otherwise Mrs H's; along with interest from the date the payments were made to the date of settlement. As Mrs H hasn't been able to use her money, I think 8% simple interest per annum is the appropriate rate of interest to use to reflect the cost of Mrs H being deprived of this money.

Metro accepts Mrs H was an unwitting participant also a victim of fraud. But despite this, it doesn't seem Metro treated her with sympathy or care. Instead, they have held her responsible for losses she's neither caused nor benefited from (but for £14.10). So, I can see why she feels distressed and upset by Metro's actions. I therefore think it appropriate for Metro to pay Mrs H compensation for the upset and trouble she was caused, I consider the amount of £250 is fair in the circumstances of this complaint.

Putting things right

Metro must put things right for Mrs H as follows:

Refund the money taken from Mrs H's account (£819.10) less that Mrs H retained from the transfers (£14.10). I make this to be £805.

Add 8% simple interest to this amount from the date the money was taken from her account to the date of settlement.

If Metro considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Pay Mrs H £250 compensation to reflect the distress it caused her.

My final decision

My final decision is I uphold the complaint and require Metro Bank PLC to put things right for

Mrs H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 29 March 2022.

Kathryn Milne
Ombudsman