

The complaint

Mrs T is unhappy that Metro Bank PLC hasn't reimbursed her for her loss after she was the victim of a scam.

What happened

On 27 March 2021 Mrs T received a call from scammers claiming to be calling her from the supreme court. They knew her name, that she was a student and in the UK under a student visa, and where she worked. They told her they'd been assigned her case and provided a case number. They explained she'd committed fraud as she hadn't paid the correct amount of income tax and told her she was going to be arrested. Mrs T had recently moved to the UK, so the prospect of police involvement and the impact this might have on her visa added to the pressure she felt during the conversation.

Mrs T knew her employer was responsible for arranging the payment of her income tax and said this to scammers. But she was aware she'd recently changed the amount of hours she worked which might've impacted this. Mrs T asked why she hadn't received any letters and was told the delivery of a letter had been attempted but as she wasn't home it was returned undelivered because it was confidential. Mrs T questioned the number the scammers were calling from and they directed her to the Queen's Bench Division of the High Court website and told her they'd call her back on the number given on the site, which they then did.

Mrs T was told her outstanding tax liability was £989 which she paid across two payments of around £499 and £490. She paid this, but was then told she was liable for a further £1,572 for court fees. She was told this money would be refunded if judges found in her favour but she had to pay it in order to demonstrate she was innocent. She was then asked for a further £2,500 to remove her details from the court system but this payment was blocked by her bank as she'd reached her transaction limit for that day. Mrs T paid this amount from her husband's account. I won't be considering this payment under this complaint as it didn't come from Mrs T's Metro Bank account.

The name of the account she was asked to pay ended in 'QBD' which she understood stood for the Queen's Bench Division and was consistent with who she thought she was speaking to. The scammers continued to ask Mrs T for money, which she was unable to pay. She asked a family member for help and the scam was uncovered when they spoke to scammers.

Mrs T reported the matter to Metro Bank which upheld her complaint in part. It said it hadn't provided Mrs T with any effective warnings as it felt it should've, but it didn't feel she'd met her requisite level of care because she didn't do enough to check the payments were genuine. So it felt she shared 50% of the responsibility.

Our investigator upheld the complaint. They felt Mrs T had a reasonable basis for believing what she'd been told by scammers. As Metro Bank didn't accept this the complaint has been passed to me to make 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.

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.

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, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Metro Bank should have reimbursed Mrs T in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect them from the possibility of financial harm from fraud.

There's no dispute here that Mrs T was tricked into making the payment. But this isn't enough, in and of itself, for Mrs T to receive a refund of the money under the CRM Code. The Code places a level of care on Mrs T too.

THE CRM CODE

Metro Bank has signed up to, and agreed to adhere to, the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which 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.

It is for Metro Bank to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made.
- The customer made the payment without 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 further exceptions within the CRM Code, but they do not apply in this case.

Metro Bank feels it ought to have provided Mrs T with effective warnings in relation to these payments and has said it didn't do so in this case. Because Metro Bank has already reimbursed Mrs T 50% of her loss in relation to this exception, I haven't considered it any further.

So, what's left for me to decide is whether I think Mrs T had a reasonable basis for believing what she was told by the scammers when she made the payments she did.

Did Mrs T have a reasonable basis for believing what she was told by the scammers?

Having considered Mrs T's testimony and Metro Bank's points very carefully, overall, I'm satisfied that Mrs T did have a reasonable basis for believing what she was told by scammers. In reaching this conclusion I've taken the following into account.

- Mrs T doesn't currently have permanent residency in the UK, so her ability to live and work here is dependent on her current visa. The scammers threatened her with court and police action because of unpaid tax. I think for any reasonable person this likely would've been worrying, but in this case, being in trouble with the law would've likely impacted Mrs T's visa and right to continue her studies in the UK. So I think she had much more at stake than an average person might and this would've added to the panic and pressure she felt during the call.
- The scammers knew Mrs T's name, that she was a student in the UK and studying on a student visa and where she worked. They proceeded to present themselves as the Queen's Bench Division, told her she had a case officer and provided her case number. When Mrs T challenged the number they were calling from, they directed her to the Queen's Bench Division website and called her back from the number given on the website. So I think the scammer had enough information and did enough to reasonably convince her the call was legitimate.
- Mrs T works in the UK and she's aware that usually her employer handles her tax for her. So when the scammers initially told her they were calling about unpaid tax she challenged this and was told there had been a mistake. And although she did know her employer would've been at least in part responsible, she also knew she'd recently changed the amount of hours she was working. So she thought it was possible this might've caused some kind of problem and I think this is reasonable.
- I think Mrs T asked reasonable questions challenging what she'd been told by the scammers and they provided plausible explanations throughout the call. As well as questioning her liability and the phone number scammers were calling from, she asked why she hadn't received any written communication about the tax and court action. She was told a letter had been sent but had to be delivered only to her and as she wasn't home it was returned. Given the scammers claimed it was court paperwork, rather than regular post, I think it's reasonable she accepted this.
- The payments were made to an individual that the scammers told Mrs T was her caseworker and the account name included the initial's QBD, which she thought confirmed they were working with the Queen's Bench Division. So although Metro Bank has questioned why she wasn't paying HMRC directly, given that Mrs T had been told the situation was being handled by the court I can see why she accepted this at the time.
- Metro Bank has raised concerns about the payments Mrs T was asked to pay the judge as a show of good faith or to prove her innocence. It's said this essentially sounds like a bribe and ought to have concerned Mrs T. And I agree this payment and its description sounds unusual. But Mrs T has explained that where she's from, it is sometimes the case families will make payments to the courts in order to resolve a situation sooner. So in her experience, and with her cultural frame of reference, this wasn't an obvious indication of a crime. And it doesn't appear Mrs T had any genuine court experience in the UK to compare to. When considered alongside everything else I've mentioned I don't think this detail ought reasonably to have alerted her to

the scam in light of the other plausible and persuasive information she'd been given.

It seems Mrs T tried to challenge the scammers, but they were prepared with plausible answers to her concerns. I think her visa status in the UK left her more vulnerable to the pressure and emotional manipulation of this type of scam and I think in this particular case the scam itself seems to have been executed in a convincing and sophisticated way. Overall, I think Mrs T had a reasonable basis for believing what she was being told.

For this reason, I think Metro Bank needs to refund the remaining 50% of the payments Mrs T made to the scammers.

Could Metro Bank have done anything to prevent the payments being made?

Like the investigator, I agree that given Metro Bank ought to have been on the look out for obvious indications of fraud in its customers' accounts, it ought to have thought it unusual that Mrs T made a succession of payments to the same, new payee in such a short space of time. By the time she made the third payment of £1,572 I think it ought to have intervened in order to check the payment was genuine.

As Mrs T clearly believed what she'd been told by scammers, I can't see any reason she wouldn't have told Metro Bank she thought was paying outstanding tax if asked. If it had sufficiently questioned her as I would've expected, I think it's likely the scam would've been uncovered before the payments were made given what Metro Bank should know about common scams like this one.

Putting things right

- Metro Bank should refund the remaining 50% of the payments Mrs T made to scammers.
- Interest should be added to this amount at a rate of 8% from the date of payment until the date of settlement.
- Metro Bank should also pay 8% interest on the 50% it refunded to Mrs T from the date of payment to the date of reimbursement to reflect that it could've prevented her from making the payments and she wouldn't have been deprived of the funds during this time.

My final decision

I uphold this complaint. Metro Bank PLC now needs to pay Mrs T the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 10 June 2022.

Faye Brownhill
Ombudsman