

The complaint

Ms D complains that Metro Bank PLC won't refund all the money she lost when she was the victim of a scam.

What happened

Ms D was called by someone claiming to be from HMRC. She was told she hadn't paid the correct amount of tax between 2017 and 2019 and that, if she didn't pay the outstanding amount immediately, she would be arrested. Ms D says she was convinced the caller was from HMRC as they knew her name, sounded like they were calling from a call centre and appeared to be calling from a genuine HMRC number. So she made a series of payments over the next few days from a number of her accounts, including one with Metro, to account details given to her by the caller. Ms D made 30 payments from her Metro account, most for just under £1,000, totalling £27,965. Unfortunately, we now know the caller was a scammer.

The scam was uncovered after a few days when another bank Ms D was making payments from called her and explained she had been the victim of a scam. Ms D then reported the payments to Metro and asked that they be refunded.

Metro is a signatory 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 scams like this, except in limited circumstances. Metro investigated Ms D's case and said she had made the payments without a reasonable basis for belief that they were genuine and so wasn't entitled to a full refund under the CRM code. But it did accept it could have done more to advise her about the risk of scams for the first 26 payments, so refunded 50% of the money she lost on those payments. Ms D wasn't satisfied with Metro's response, so brought a complaint to our service.

One of our investigators looked at Ms D's complaint. They said Ms D had a reasonable basis of belief when making the first four payments, so Metro should refund these in full. But they said Ms D should bear some responsibility for the payments made after this and so Metro only needed to refund 50% of the remaining payments. Ms D disagreed with our investigator, so the complaint has been passed to me.

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 in 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

customer 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 customer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Metro should have reimbursed Ms D under the provisions of the CRM code and whether it ought to have done more to protect her from the possibility of financial harm from fraud. The CRM code places a level of care on Ms D too, so I've also considered whether she met this.

The CRM code

As I mentioned above, Metro is a signatory to 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. And it is for the firm to establish that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM code.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- 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 these don't apply here.

Did Ms D have a reasonable basis for belief?

Ms D was called by someone claiming to be from HMRC. She says the caller knew her name and details of the business she ran, and that the noise in the background of the call made it sound like they were calling from a call centre. And she says she asked the caller to verify they were calling from HMRC and was directed to a page on the UK Government website and told to check that the phone number showing on her phone matched the one on the website, which it did. I've not seen anything to suggest Ms D was aware scammers could spoof phone numbers in this way.

Ms D also says she was told she had paid the incorrect amount of tax between 2017 and 2019. And as she is self-employed and had changed accountants several times in the past few years due to problems she'd had with them, she found this story to be plausible and assumed one of her previous accountants had made a mistake. She was also told the outstanding amount was around £1,000 plus solicitor's fees and court costs, which doesn't seem like an unreasonable amount to have under-paid her tax by. So I think it's reasonable that these factors all convinced her the call was legitimate.

Metro has said Ms D could have hung up and called HMRC back to check the person she was speaking to was legitimate. But I can understand why Ms D, who isn't familiar with banking processes, didn't think to do this at the time – particularly as she'd checked and the phone number appeared to be for HMRC. The caller also put pressure on Ms D by saying her case had been passed to the Supreme Court and threatening her with immediate arrest if she didn't pay the amounts they said she owed straight away. So I don't think it would be fair to say Ms D lacked a reasonable basis for belief because she didn't carry out further checks.

And so I think Ms D did have a reasonable basis of belief when she made the first four payments out of her account. But as the scam went on, I think Ms D should have had more concerns about what was happening and what she was being told by the caller.

Ms D says, after she made the initial payments, the caller kept coming back to her with reasons why she needed to pay more money. But I think it's reasonable to expect that HRMC would know exactly how much it was pursuing her for – particularly if the case had gone to court. And, after the first few payments, Ms D had paid back significantly more than the around £1,000 she was initially told she owed. So I think this should have caused Ms D significant concern.

Ms D was also asked to make payments to different bank accounts at several different banks, which I wouldn't expect HRMC to ask her to do. She was called a number of times over several days, told the payments all had to be under £1,000 as HMRC couldn't process payments larger than this and that she shouldn't tell her bank the payments were for HMRC, which I think should all have raised concerns. The documents she was sent by the caller as proof of what she owed were also poorly written and had some details, such as her name, incorrect. And the longer the scam went on, the more time Ms D would have had to stop and think about what was happening, to check what she'd been told or to ask someone else about it.

So I think as the scam went on Ms D should have had increasing concerns about what was happening and what she was being told. And, after she'd made the first four payments, I think these concerns should have been significant enough that I no longer think she had a reasonable basis for belief when she was making the payments from this point on.

Did Metro meet its obligations under the CRM code?

Even though I don't think Ms D had a reasonable basis for belief from the fifth payment onwards, she may still be entitled to a refund of 50% of the money she lost as a result of these payments if Metro didn't meet its obligations under the CRM code – one of which is to provide effective warnings.

The CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. It sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

As the individual payments weren't for particularly large amounts, I don't think Metro needed to provide effective warnings for the first four payments. But by the fifth payment, Ms D had made a series of payments within an hour and a half, all for amounts just below £1,000 and to two new payees. So I think Metro should have recognised this pattern of payments as similar to those often used in scams, have identified that Ms D was potentially at risk and provided effective warnings from the fifth payment onwards.

Metro has accepted that it didn't provide Ms D with an effective warning when she was making the first 26 payments. So it's offered to refund 50% of the money she lost as a result of these. But it's said it called Ms D before the 27th payment and gave her an effective warning at that point. So it didn't offer to refund any of the last four payments.

I've listened to this call and I don't think Metro made it clear to Ms D what this type of scam could look like – that scammers could spoof numbers and would pose as trusted organisations and put pressure on people for immediate payment. And it didn't explain any steps she could take to avoid falling victim to this type of scam – such as hanging up and

calling the organisation back. So I don't think this call Metro had with Ms D was clear or impactful enough to be an effective warning in these circumstances.

And as Metro accepts that no effective warning was provided to Ms D at any other time, I think it failed in its obligations under the CRM code to provide an effective warning in relation to all the payments Ms D made, from the fifth payment onwards.

Overall then, I think Ms D had a reasonable basis for belief when making the first four payments, but not when making the payments after that point. And I think Metro failed to meet its obligations under the CRM code by not providing an effective warning to Ms D from the fifth payment onwards. So I think the correct outcome under the CRM code is that Metro should refund the first four payments in full, and 50% of the remaining payments.

Should Metro have done more to protect Ms D?

In addition to its responsibilities under the CRM code, when Ms D made these payments, Metro should fairly and reasonably 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).

As the payments Ms D was making weren't for particularly large amounts, I think it's reasonable that Metro didn't identify that she could be at risk of financial harm from fraud as a result of the first few payments. But after the fourth payment, Ms D had made a series of payments in a relatively short period of time, all for just below £1,000, and to two new payees. And as this kind of pattern of payments is often associated with scams, I think Metro should have identified at this point that Ms D could be at risk of fraud and so carried out further checks before processing the fifth payment.

Due to the number of payments Ms D had made in a short period of time and the total amount of money she'd sent at this point, I think it's reasonable to expect these further checks to have included questions about the purpose of the payments and why they were being sent in this kind of pattern.

Metro did call Ms D about one of the later payments and she told it the payments were related to her business. And I think it's likely she would have given similar answers if Metro had called before the fifth payment too. But as she seemed evasive on the call and said several times that the payments were urgent and needed to be sent immediately, I don't think Metro's questions went far enough and it should have asked further questions about exactly what the payments were for and why they needed to be made so soon and in this pattern.

Ms D hadn't been given a cover story by the caller and was only told not to mention HMRC. So if Metro had asked these further questions before the fifth payment, I don't think Ms D would have been able to provide a convincing or coherent explanation. Metro should then have identified that she was likely the victim of a scam and explained this to her, as the other bank did when it later called her and the scam was uncovered.

And so if Metro had carried out further checks before processing the fifth payment, as I think it should have done, the scam would have been uncovered at this point and Ms D wouldn't have sent any further payments as a result of the scam. So I think Metro should bear some responsibility for the payments Ms D made, from the fifth payment on, as a result of not taking sufficient steps to protect her. And as Ms D has now been without that money for a period of time, I think Metro should pay her compensatory interest at the rate of 8% simple a year, from the date of the payments until the date of the refund.

Did Ms D's actions contribute to her loss?

While I think Metro failed to take sufficient steps to protect Ms D, I also need to consider her own actions and whether she should bear some responsibility for the money she lost. And having done so, I think I should make a deduction to the refund to reflect this.

I accept this was a sophisticated scam and that the number spoofing and information the caller had about her convinced Ms D the call was genuine. But I have concerns about how plausible the scam was as it continued.

As I explained above, the scammer kept calling Ms D with new reasons why she needed to pay more money, she was asked to make payments to a number of different accounts, told HMRC couldn't process payments over £1,000 and asked to lie to her bank. The documents she was sent by the caller were poorly written and she continued making payments to the caller, even after Metro called her with concerns about the payments.

So in the circumstances, I think Ms D must bear some responsibility for her loss. And I think it would be fair to reduce the refund by 50%.

Recovery of funds

I've also looked into whether Metro could have done more to recover Ms D's funds once it was made aware of the scam. But Metro's notes show it contacted the other banks the payments were sent to on the same day Ms D told it about the scam and has been communicating with them about possible recovery. So I don't think Metro could have done more to recover Ms D's funds.

My final decision

For the reasons set out above, I uphold this complaint in part and require Metro Bank PLC to:

- Refund 100% of the money Ms D lost as a result of the first four payments – for a total of £3,690
- Pay 8% simple interest on this first refund from the date it initially rejected Ms D's claim until the date of settlement

- Refund 50% of the money Ms D lost as a result of the remaining payments – for a total of £10,292.50
- Pay 8% simple interest on this remaining refund from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 12 May 2022.

Alan Millward
Ombudsman