

The complaint

Ms B complains that Metro Bank PLC hasn't refunded her after she fell victim to a scam while trying to buy a second-hand horsebox.

What happened

I've discussed this complaint and the outcome in depth with both parties. As such there's no need for me to go into extensive detail here as both Metro and Ms B are aware of the circumstances of the complaint. In summary:

- Ms B found an advert for a horsebox on a legitimate website that allows sellers to post classifieds for equestrian related items.
- Ms B contacted the seller to discuss the horsebox. Unfortunately, she was communicating with a scammer and the sale was entirely fictitious
- The scammer provided Ms B with additional information about the horsebox and more photos of it. Ms B carried out a DVLA check which showed no issues with the horsebox. The scammer explained they were looking for a quick sale as they'd moved out of the country. And so a price of £13,000 was agreed.
- The scammer explained that they'd contracted the services of a business (which I'll refer to as C) that would manage the sale and delivery of the horsebox. Ms B was given the details for C which she was able to check online. She was told that she could either go and see the horsebox in person at C's premises or have it delivered and inspect it then.
- Ms B found C on Companies House and could see it was a genuine business, established for several years. Its business purpose seemed to relate to the services the scammer had said it offered. C also had a website which Ms B was able to look at and which seemed legitimate. But all the genuine details of C had been copied from a legitimate company, and the website had been set up by the scammers.
- For the sale to go through, and for Ms B's protection, it was explained that she'd pay the money for the horsebox to C. It would then hold on to the money whilst the horsebox was delivered, and Ms B had a chance to inspect it. The funds would only be released to the scammer once Ms B confirmed she was happy with the purchase.
- Once the sale was agreed C was in direct contact with Ms B. It sent her an invoice which confirmed the sale and the details of where payment should be sent. Ms B proceeded to send an initial payment of £6,500. Once C confirmed receipt and said the horsebox was out for delivery, she sent the remaining £6,500.
- When Ms B made the first payment Metro blocked it for a fraud check. After answering some questions the payment was allowed to go through.
- Ms B realised something was wrong when the horsebox wasn't delivered as promised. Some further investigation online revealed the genuine details for C. Ms B got in touch and the staff there explained it didn't offer the services Ms B described and it had no idea who she was.
- Ms B reported the scam to Metro and it considered whether it ought to refund her

under the Lending Standards Board's CRM Code, of which it is a signatory. It declined to do so as it felt it had given Ms B an effective warning when she was making the payments. It also said Ms B hadn't carried out enough checks and so lacked a reasonable basis of belief. Specifically, it said she'd not seen the horsebox before agreeing to buy it.

- One of our investigators looked into Ms B's complaint after she brought it to our service. The investigator said the complaint ought to be upheld on the basis that:
 - whilst Metro had given some warnings (in the form of written warnings on its app and the phone call with Ms B at payment one) they didn't meet the Code's requirements for an effective warning;
 - Ms B had a reasonable basis of belief given that there appeared to be no issues with the horsebox and C seemed to be a legitimate business that would be managing the sale.
 - she recommended Metro refund Ms B's loss in full. She said it should add interest calculated at the originating account rate, from the date Metro declined the claim to the date of settlement.
- Metro agreed to refund Ms B 50% of her loss, accepting it hadn't provided an effective warning. But it still felt Ms B had lacked a reasonable basis of belief. And so the case has come to me for a final decision.
- I've since discussed the complaint with both parties and explained why I consider it ought to be upheld. As Metro has continued to disagree, I'm issuing this 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.

As I've discussed the detail of my findings with each party it's only necessary for me to summarise my reasons for upholding the complaint here.

Ms B authorised the payments to the scammer and so the starting position in law is that she is responsible for them, as per the Payment Service Regulations 2017 and the terms and conditions of her account. But that's not the end of the story.

Metro is a signatory to the CRM Code which is in place to protect the victims of fraud from financial harm. The Code sets out that a signatory firm should refund victims of APP scams – like Ms B – in all but a limited range of circumstances. It is for a firm to show that a consumer has failed to meet their requisite level of care under the Code. In doing so a firm must demonstrate that one or more exceptions to reimbursement apply.

Metro has said at least one of these exceptions apply. It originally argued that Ms B ignored an effective warning. But it's since accepted the warning it gave didn't meet the requirements of the Code under the standards for firms. That being the case, I won't go on to make further findings on this point given liability on Metro's part is already established and accepted. It's why it has offered a refund of 50%.

The remaining argument Metro is relying on to decline a full refund is that Ms B didn't do enough to ensure the sale was genuine and didn't view the horsebox first. The exception to reimbursement here, set out in the Code, asks the question as to whether Ms B had a reasonable basis for believing the goods she was looking to obtain, and the party she sought to obtain them from, were legitimate.

I'm not persuaded that Metro has shown this exception to reimbursement fairly and reasonably applies. In summary:

- Ms B found the advert for the horsebox on a legitimate website;
- The content of the advert and the details for the horsebox were more likely than not stolen from an otherwise genuine advert and contained a lot of convincing information. It appeared altogether genuine;
- The correspondence from the scammer raised no suspicions and the emails were well crafted, complete with genuine sounding reasons for the sale and with further vehicle history being provided;
- Ms B checked the details for C to make sure it was a genuine company. She found it on Companies House and it had a legitimate looking website. Correspondence from C came from legitimate looking email addresses, convincing invoices were provided, and the services offered were clearly explained to Ms B.
- Metro has said an HPI check wasn't carried out but has provided nothing to suggest such a check would have made a difference here; *and*
- Ms B was offered the opportunity to view the horsebox before purchasing it. She was unable to do so because of the distance between her and the horsebox. But the services being offered by what appeared to be a legitimate business (C) gave understandable comfort that she'd be protected.

I'm satisfied these points cover all objections made by Metro and it's put forward no further substantive arguments to support its position. As such it hasn't demonstrated that an exception to reimbursement can be fairly applied. This isn't to say there's nothing else Ms B might have done before proceeding with the sale. But that isn't the question to be answered. It's whether her basis of belief at the time was reasonable. And I find it was.

Metro ought to have refunded Ms B when she raised the scam and so it's fair and reasonable it compensates Ms B to that effect now.

Putting things right

Metro should now:

- refund the £13,000 Ms B lost to the scam;
- pay interest on that amount using the applicable account rate and calculated from the date the claim was declined to the date settlement is paid.

My final decision

I uphold this complaint against Metro Bank PLC.

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

Ben Murray
Ombudsman