

The complaint

Miss M is unhappy because Metro Bank PLC ('Metro') did not reimburse the money she transferred to a fraudster.

What happened

Miss M says that for some months she had followed someone on a social media platform. I'll refer to this person as A. A posted something about an investment opportunity involving a payment of £600 and then A would complete trades and charge 20% commission on any profit. Miss M hadn't traded before but decided to go ahead. A said that Miss M could make £2,000 to £5,000 in 24 hours. There was also a promotional offer that meant that Miss M was guaranteed to get her initial £600 payment back.

A communicated with Miss M via a messaging platform and advised her of the profits she had made. The messages show that A told Miss M she'd made £722 within around 90 minutes. Profits continued to rise on the day the initial payment was made and A told Miss M that as her profits after commission had been deducted exceeded £5,000 (they were £8,720.09), she would need to pay a release fee of £2,375. 35% of the fee would be refunded later. Miss M was then asked to pay further fees that she was told would be refunded to her in full.

I have set out below the payments Miss M made to two named individuals that I have referred to as payee one and payee two.

| Payment | Date | Amount | Payee |
|---------|--------------|----------------|-------|
| 1 | 14/05/21 | £600 | 1 |
| 2 | 15/05/21 | £2,375 | 1 |
| 3 | 15/05/21 | £2,500 | 1 |
| 4 | 15/05/21 | £2,500 | 2 |
| 5 | 15/05/21 | £250 | 2 |
| 6 | 15/05/21 | £2,750 | 2 |
| 7 | 16/05/21 | £2,750 | 2 |
| | Total | £13,725 | |

Miss M realised she'd been the victim of a scam when she didn't receive her profit and A stopped communicating with her. She reported the matter to Metro on 19 May 2021. She's unhappy with Metro's decision not to reimburse her and with the service she has received.

Metro is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Metro says one or more of those exceptions applies in this case and so it hasn't provided a refund to Miss M. It says that Miss M ignored effective warnings it gave during the payment journey and she made the payments without a reasonable basis for believing that the payee was the person she was

expecting to pay, the payment was for genuine goods or services and/or the person or business she was transacting with was legitimate.

Metro was able to recover a total of £4.65 of Miss M's funds. In respect of the service it had provided, Metro said it didn't update Miss M as it should have. In recognition of this Metro initially paid Miss M £25 compensation but increased this to £75 when Miss M complained to this service.

Our investigation so far

The investigator who considered Miss M's complaint recommended that it be upheld in part. She said that under the CRM Code Metro should have provided an effective warning for the third and subsequent payments but didn't do so. But Miss M didn't have a reasonable basis for believing she was paying a legitimate payee for the following reasons:

- She didn't complete any checks on the trader or the investment even though she questioned whether the investment was legitimate
- The expected profits were unrealistic
- There was no investment agreement
- Miss M was asked to pay fees which weren't disclosed initially
- Miss M paid two different payees, neither of whom were the trader
- Miss M was told to lie to her bank about the reason for payment.

So the investigator recommended that Miss M receive 50% of payment three and of each subsequent payment. The investigator didn't award interest as the funds came from an account that didn't pay any.

Miss M accepted the investigator's view, but Metro did not. It said it provided an effective warning to Miss M. Metro went on to say that Miss M chose the wrong payment reason twice and it shouldn't be held responsible for this. As Metro didn't accept what the investigator said Miss M's case has been passed to me to decide.

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.

When thinking about what is fair and reasonable in this case, I've considered whether Metro should have reimbursed Miss M under the provisions of the CRM Code and whether it ought to have done more to protect Miss M from the possibility of financial harm from fraud.

There's no dispute here that Miss M was tricked into making the payments. But this isn't enough for her to receive a refund of the money under the CRM Code. The Code places a level of care on Miss M too.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- The customer made payments without having 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
- The customer has been grossly negligent

There are further exceptions outlined in the CRM Code that do not apply to this case.

Did Miss M have a reasonable basis to believe she was making legitimate payments.

Taking into account all of the circumstances of this case, including the characteristics of Miss M and the complexity of the scam, I think the concerns Metro has raised about the legitimacy of the transactions Miss M made are enough to support its position that she failed to meet her requisite level of care under the CRM Code for the payments she made. I don't think she had a reasonable basis for believing the payments were for genuine goods or that the person she transacted with was legitimate. This means that Miss M isn't entitled to a full refund of her loss under the CRM Code. I'll explain why I have reached this conclusion.

- Miss M was approached by someone she hadn't met on social media and decided to invest based on what she was told. Social media isn't a normal platform for legitimate investments and there was nothing to say the person Miss M communicated with was qualified to provide advice.
- The rate of return offered to Miss M was too good to be true and ought reasonably to have led her to be concerned and to take additional steps before making payments. A profit of £2,000 to £5,000 in 24 hours wasn't realistic and should have been a red flag to Miss M that something wasn't right.
- Miss M wasn't provided with any documentation about the investment. There was no identification process, no contract and nothing to say what Miss M had agreed with the individual she met on social media.
- Miss M didn't complete any checks to satisfy herself it was a legitimate investment opportunity. She didn't look into the broker, the company the scammer said she worked for or the investment itself.
- Although Miss M believed she was making an investment when she made payments she chose as the payment reason paying friends and family as she says this is what the scammer told her to say (because it would be quicker). Being asked to lie to her bank should have been a red flag to Miss M. If the investment was genuine there would be no reason to give a false payment reason.
- The payments Miss M made were to two named individuals and not to an investment company or even the trader/fraudster Miss M communicated with. She wasn't provided with an explanation for this and didn't question it.
- After she made the initial investment payment Miss M was asked to pay additional fees that weren't disclosed to her initially. It's clear from the messages Miss M exchanged with the scammer that she had concerns about making these payments but continued to do so. When she was asked for the first fee of £2,375 she checked whether that would be all and the scammer confirmed it would be. So I think Miss M ought reasonably to have been concerned about being asked to pay more and completed some checks before accepting what the scammer told her.

Did Metro meet its obligations under the CRM code?

Even though I don't think Miss M had a reasonable basis for belief when making the payments, she may still be entitled to a refund of 50% of the money she lost 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 authorised push payment (APP) scam risks in a payment journey, they should provide effective warnings to their customers. This should include appropriate actions for the consumer to take to protect themselves from scams like the one Miss M has fallen victim to.

I don't consider Metro needed to provide an effective warning in respect of payments one, two and five. Payments one and two were relatively low in value and an unusual pattern of spending hadn't emerged at that stage. Miss M transferred funds into her account and then

made transfers leaving the balance largely unaltered. The fifth payment was low in value and only the second payment to a new payee, so I don't consider Metro had any reason to be concerned that Miss M might be at risk of being scammed.

The position was different when Miss M made the third payment. Miss M was making a third payment to the same payee in the space of two days, so an unusual pattern of spending had emerged. The total amount transferred (including the third payment) amounted to £5,475. Miss M hadn't made payments of over £300 in the months before this, so I think Metro ought reasonably to have provided an effective warning under the CRM Code. I also think Metro should have provided an effective warning in respect of payments four, six and seven.

Effective warning

Metro has said that Miss M ignored an 'effective warning' that was presented to her on screen during the payment process when she set up new payees for payments one and four. Miss M chose paying friends and family as the payment reason and was provided with a warning specific to that payment reason. The warning said,

"If you're sending money to someone you've never met or don't know, they might not be who they say they are."

Things to remember

If you met them online, there's an even higher risk of them not being who they claim to be...

Don't make this payment unless you know your money is going to the right place."

Metro has said that its obligations under the CRM Code to share an effective warning are based on customer input and it shouldn't be held responsible if a customer hasn't accurately recorded the reason for the payment.

The CRM Code says.

"Effective Warnings should be risk based and, where possible, tailored to the APP scam risk indicators and any specific APP scam types identified through the user interface with which the Customer is initiating the payment instructions".

So I consider Metro provided a warning specific to the type of payment Miss M said she was making. But I don't consider the warning was effective under the CRM Code. The warning includes some helpful advice like the fact that someone a customer hasn't met before might not be who they say they are, and this is particularly so if a customer met them online. But the warning doesn't include information about the common features of this type of scam and doesn't explain the consequences of going ahead with the payment.

For the sake of completeness, even if Miss M had chosen the correct payment reason of "A financial opportunity", I'm not persuaded that the warning Metro says she would have seen would be effective under the CRM Code. I've seen this warning and it doesn't give any consequences of going ahead with the payment, which is a requirement for a warning to be effective under the CRM Code.

For the reasons I've explained, I'm not satisfied that the warning Metro gave an effective warning in respect of the payments that required one. It follows that Miss M didn't ignore an effective warning when making these payments so Metro can't rely on this exception to reimbursement. In the circumstances, Metro should be partially liable for these payments.

Should Metro have done more to protect Miss M?

In addition to its responsibilities under the CRM Code, when Miss M made the payments, Metro should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that she was at risk of fraud (among other things).

I'm satisfied that the third payment Miss M made was unusual and out of character and so Metro should have asked her questions about it to satisfy itself she wasn't at risk of financial harm. I think Metro should have asked Miss M the reason for the payment and then some questions about the investment like how she found out about it, the rate of return and what checks she'd completed. I'm persuaded that Miss M would have answered Metro's questions honestly and the scam would have come to light. Although the scammer asked Miss M to say she was paying friends and family when she made the payment online, she wasn't given a cover story and was only told to lie because the payment would go through more quickly.

But I also think Miss M should share responsibility for her loss. I say this for the same reasons I have set out above in relation to Miss M's reasonable basis for belief.

Overall, I consider Metro could have prevented the third and subsequent payments from being made so it should refund 50% of the third payment and all subsequent payments.

Interest

I am not awarding any interest as the funds were transferred from an account that didn't pay any interest.

Recovery

I've also considered whether Metro could have done more to try to recover the money once it had been told of the scam. We'd expect a business to take reasonable steps to try to recover the money from the bank it was sent to. Metro has shown that it contacted both receiving banks on the day the scam was reported so I don't think it could have done anything more to recover Miss M's funds.

Service

Miss M raised a scam claim on 19 May 2021 and didn't receive an outcome until 1 September. She made various calls and didn't receive promised return calls too. So I can understand why Miss M is unhappy with the service she's been provided with. But Metro did try to call Miss M on 21 July and left a message with a third party that I understand Miss M didn't receive. Taking everything into account I consider the offer of £75 is fair and reasonable and so I'm not recommending Metro pay any more.

Overall

For the reasons I've set out, Miss M didn't do enough in the circumstances. But Metro also didn't do enough in respect of payment three onwards, so liability should be shared between both parties.

My final decision

I require Metro Bank PLC to:

- Pay Miss M 50% of payment three onwards (amounting to £5,375);

- If Metro hasn't done so already, pay Miss M £75 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 29 September 2022.

Jay Hadfield
Ombudsman