

The complaint

Mrs W is unhappy that Metro Bank PLC (Metro) won't refund money she lost after falling victim to a scam.

What happened

In July 2021, Mrs W received a call from a company claiming she was entitled to a PPI refund – I'll refer to this company as U. Mrs W says she wasn't expecting a PPI refund and the call came out of the blue. The scammer asked Mrs W to download the banking app for another bank, but Mrs W didn't hold an account with that bank. So, they asked Mrs W if she had online banking for another bank. Mrs W confirmed she had it for her Metro account.

Mrs W was guided to set up two new payees on her Metro account (who I'll refer to as K & S) and made six payments in quick succession. These payments were all made on 14 July 2021 within an hour and, in the order the payments were made, were for: £800, £900, £900, **£500**, £900, £900 – totalling £4,900.

Mrs W says she believed she had set up the new payees so that her PPI refund could be paid into her account, however after sending the last payment had concerns that she might've paid money out of her account. She checked her online banking while on the phone to the scammers and immediately realised that she had paid money out of her account. Mrs W told the scammers she was going to call the bank to stop the payments. The scammers told Mrs W not to do that, saying they would call back the next day and replace the funds taken out of her account. Mrs W ended the call with the scammers and called Metro to report the scam.

The following day, 15 July, the scammers called Mrs W back and told her they would refund her money. Mrs W says she downloaded an app as directed by the scammers and thought they were putting money into her account. In fact, Mrs W made an additional eight payments totalling £12,500. Most of these payments were made to S, but Mrs W also set up another new payee.

The following day 16 July, the scammers called Mrs W again. This time they told Mrs W that if she paid £2,000, all of her funds would be returned - so she made the payment.

Metro investigated Mrs W's fraud claim for all the payments (totalling £19,400) but declined to refund her. They said Mrs W had ignored an effective warning they'd given her, therefore they weren't liable to refund her. Metro were able to recover £1,896.73 from one of the beneficiary bank accounts and paid it into Mrs W's account.

Mrs W wasn't happy with Metro's response, so she brought a complaint to our service.

An investigator considered Mrs W's complaint and recommended that Metro refund 50% of the payments Mrs W made, from the fourth payment onwards (which was for £500 and is shown in bold above). The investigator explained that Metro didn't provide Mrs W with an effective warning as required under the CRM Code, which should've happened when she made the fourth payment – so they were liable to refund Mrs W. But, the investigator felt

Mrs W should've done more checks to make sure the company she was dealing with was legitimate, so should share the responsibility with Metro. Meaning their overall recommendation was that she got a 50% refund of those payments.

Mrs W disagreed with the investigator's opinion saying Metro told her they'd blocked her account when she first reported the scam, so they shouldn't have allowed any further payments to leave her account. Mrs W also feels Metro haven't done enough to protect her.

As Mrs W disagreed with the investigator's opinion, the case was passed to me to review.

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.

The Lending Standards Board's Contingent Reimbursement Model (the CRM Code) requires banks to refund customers like Mrs W who have been the victim of an APP scam, in all but a limited number of circumstances. It sets standards that must be met by both Metro and Mrs W.

So, I've considered whether both parties met the standards set for them under the CRM Code.

Have Metro met the standards set for them under the CRM Code?

Under the CRM Code, Metro are expected to take reasonable steps to protect their customers from APP scams. This should include procedures to detect, prevent and respond to APP scams. And, where they identify an APP scam risk, they should take reasonable steps to provide their customer with effective warnings.

In this case, I think Metro should've been concerned Mrs W may've been at risk when she made the fourth payment and should've provided an effective warning. I say this because Mrs W had only used her account for minimal payments prior to the scam. She had two direct debits set to come out of the account for less than £50 per month, with no other regular payments out of the account. On 14 July, Mrs W made six payments within the space of an hour, to two new payees she'd just set up. This activity was highly unusual and out of character for her account, so Metro should've been concerned that she might be the victim of a scam.

Metro have provided seven warnings which they say Mrs W would've seen. I'm not satisfied that Mrs W would've seen all of these warnings. But, regardless of which warning/s Mrs W was presented with, I'm not satisfied that any of the warnings are effective – as defined by the CRM Code.

Most of the warnings relate to different scam scenarios than the one Mrs W had fallen victim to. As they weren't specific to Mrs W's scam, they wouldn't have been impactful.

The seventh warning is the closest to the scenario Mrs W was experiencing, however I'm still not satisfied that it meets the definition of an effective warning. That warning talks about *"something else... if you weren't expecting to make this payment, or you've been asked to send money before receiving a refund, inheritance, lottery win or anything similar, it's likely to be fraud. A scammer will often guide you through the process and tell you what options to press. Don't make this payment unless you know your money is going to the right place"*.

This warning doesn't tell Mrs W how she can protect herself in these circumstances and it doesn't give any guidance with regards to checks she could or should do. Also, it suggests she shouldn't proceed if she doesn't know the money is going to the right place – but she did know it was going to the right place. So, I'm not satisfied that this warning brought to life the features of the scam Mrs W was a victim of.

Therefore, I'm satisfied that Metro haven't met the standards set for them and should refund Mrs W for all of the payments made, from the fourth payment onwards. But I also have to consider if Mrs W met the standards set for her, as it'll affect whether she is entitled to a full refund of those payments.

Did Mrs W meet the standards set for her under the CRM Code?

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

- 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

* there are further exceptions outlined in the CRM Code, but they don't apply to this case.

So, I need to be persuaded that Mrs W had a reasonable basis for believing that U was operating legitimately. Which I'm not in this case, for the following reasons:

- Mrs W wasn't expecting a PPI refund and had received the call out of the blue. Also, Mrs W says the scammer didn't know any details about her and initially asked her to download another bank's banking app – even though she doesn't bank with them.
- The scammer told Mrs W that she was entitled to a PPI refund, but required her to set up a new payee on her Metro account which wouldn't be required in order for Mrs W to receive funds into her account.
- Although Mrs W was expecting to receive funds, she made payments out of her account. I appreciate that Mrs W says she didn't realise she was transferring funds out of her account, but she told the bank (when reporting the fraud) that the scammers asked her to send money to their account. And this matches with what Mrs W did for the subsequent payments after reporting the fraud. Each time she was told that the scammers would refund her, but they talked her into making further payments out of her account.
- Mrs W didn't complete any checks on the company the scammers were calling from despite receiving a call out of the blue. Also, Mrs W says she questioned the name of the first payee she set up, which suggests she had some concerns about what she was being told.

I think all of these points highlight red flags which should've caused Mrs W concern that she might not be dealing with a legitimate firm and should've resulted in her doing checks to verify what she was being told. So I'm not satisfied that Mrs W had a reasonable basis for belief in making the payments, and hasn't met the standards set for her. On that basis, I think Mrs W should share the responsibility for her loss with Metro, and Metro should only refund 50% of the payments, from payment four onwards.

Recovery of the funds and whether Metro should've done more to protect Mrs W

From what I've seen Metro took the steps I'd expect in trying to recover the funds for Mrs W from the beneficiary bank. In this case, they were only able to recover £1,896.73.

As Metro and Mrs W are sharing responsibility for the loss, Metro should calculate the total value of the payments they're being asked to refund, deduct the recovered funds and then calculate 50% of the remaining balance – which will be the amount they're required to refund.

Mrs W has raised a point about Metro telling her they had blocked her account, and why they allowed payments to go out of her account despite this block. However, having listened to the call when Mrs W reported the fraud, I didn't hear Metro tell her they would block her account. While I appreciate that Mrs W was the victim of a scam, I wouldn't expect Metro to automatically block her account as a result in the circumstances of this case. Metro have told us that they blocked her account on 18 August, which was removed on 20 August but say they have no record of blocking either of her accounts prior to this. Based on what I've seen I'm not satisfied that Metro has done anything wrong with regards to blocks not being placed on Mrs W's account when she first reported the fraud. So I can't fairly ask that they refund Mrs W any more than I've already recommended based on her concerns.

The interest award on the refund Metro are being asked to make

From what I've seen the money Mrs W sent to the scammers, was sitting in an account and had been for the prior six months. So, I think it's most likely that had she not fallen victim to the scam, the funds would've remained in that account. On that basis, I think the fairest award with regards to interest is that Metro pay interest at the account interest rate, applicable to the account Mrs W made the payments from.

Putting things right

To put things right Metro Bank PLC should:

- Refund Mrs W £7,451.64. Being the total value of the payments from the fourth payment onwards (£16,800), less the funds they recovered for Mrs W (£1,896.73) and applying 50% shared responsibility.
- Pay interest on that refund at the account interest rate, applicable to the account Mrs W made the payments from.

My final decision

My final decision is that I uphold this complaint against Metro Bank PLC and require them to compensate Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 November 2022.

Lisa Lowe
Ombudsman