

The complaint

Ms A is unhappy that following the closure of her account Metro Bank PLC (Metro) hasn't returned the balance in her account.

What happened

Ms A says that she had talked to a man I'll call J for a few years. J was in the army and was due to retire. Ms A was initially asked to buy mobile phones for J and entered into contracts for these. The last message Ms A received from J was in August 2021. After this she received a ransom message. Ms A contacted J's general who said he'd be able to get funds from friends and family and send them to Ms A who should then send them on as instructed to pay the ransom of £35,000. It's clear that Ms A received and passed on funds through her account from 1 September 2021. Metro became concerned when Ms A received and paid out £6,902.55 on 6 and £5,648.59 on 7 October 2021.

Metro told Ms A that on 13 October 2021 it became concerned about various credits to her account and restricted it while it investigated them. Ms A contacted Metro on 15 October as she was unable to use her debit card and was advised of the restriction and asked to send in evidence, which Ms A did. Metro contacted the sending banks and found that the funds were fraudulent.

On 10 November 2021 Metro wrote to Ms A giving her notice that her account would be closed on 17 November. Metro said this was in accordance with its terms and conditions. But Metro didn't load any fraud markers to CIFAS. When the account was closed, Metro sent Ms A the remaining funds in her savings account but said it couldn't give her the balance in her current account as the funds didn't belong to her.

Ms A is unhappy with Metro's decision not to return funds she considers to be hers, with the closure of her account and with the service she has been provided with. She was left with no access to funds to live on for a month, says she wasn't provided with any support and was treated like a criminal rather than a victim. As a result, Ms A has suffered financially and emotionally. Ms A also had to make numerous calls to Metro in relation to returning her funds and also went to one of its stores on the advice of Metro staff that proved fruitless.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld and asked Metro to return the remaining balance in Ms A's account and interest. She noted that Ms A was herself the victim of a scam and said that although Metro received a request to return funds paid into Ms A's account it was under no obligation to do so. The investigator also said that it wasn't fair or reasonable that Ms A should lose out financially in these circumstances.

Metro didn't accept the investigator's findings. It said that it had applied Clayton's rule that in essence says that the first funds to be paid in are the funds that are paid out first. The result is that the balance in Ms A's current account (which included Ms A's salary that was paid in at the end of September 2021) was returned to the sender of the £6,902.55 payment. Metro also said that in accordance with The Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) it doesn't ignore requests from sending banks to repatriate funds.

I considered Ms A's complaint and issued a provisional decision on 3 October 2022. In it I said:

"In making this decision I've taken into account Metro's own terms and conditions, relevant industry guidelines and good practice, regulations such as the Payment Service Regulations 2017 (PSRs), legislation such as the Consumer Rights Act 2015 (CRA); as well as what I consider to be fair and reasonable in all the circumstances of the case.

It's not in dispute that Ms A is the innocent victim of a cruel scam and that she received and passed on fraudulent funds unwittingly. Basically, she was a money mule who passed on funds received from other scam victims.

The CRM Code says that after receiving notification of concerns from a sending bank a receiving bank should respond in accordance with the procedures set out in the Best Practice Standards. The Best Practice Standards produced by UK Finance in October 2017 set out standards for sending and receiving banks to follow when processing a claim for an authorised push payment scam like this one. It sets out several relevant principles:

- The sending bank should notify their customer that because they authorised the transaction, the right to the funds is with the recipient. And that the outcome will depend on the receiving firm's investigation and whether any funds remain.*
- The receiving bank will need to find evidence that the recipient has obtained the funds fraudulently.*
- Following the receiving firm's investigation, identified funds should always be repatriated back to the sending firm at the risk of the receiving firm, subject to various exceptions. One of these exceptions is where there is a credible complaint or dispute from the recipient of the funds.*

So, whilst the normal practice is that fraudulent funds are returned to the sending bank this isn't always the case. The receiving bank should investigate whether its customer received the funds fraudulently and if this isn't the case there is no obligation to return them. Ms A provided a credible explanation for receiving the funds and passed on the whole amounts credited to her account almost immediately. She wasn't party to the fraud the senders of the funds were involved in and so Metro was under no obligation to return the funds.

I appreciate that in returning funds to the sending bank Metro wished to treat the scam victims who sent them fairly. But the result is unfair for Ms A, its own customer. In returning funds Metro has relied on Clayton's rule. The purpose of the rule in 'Clayton's case' is to enable the drawing of a legal distinction over ownership of combined funds that can't otherwise be easily identified. The situation can easily arise on a current account where, over time, there are multiple deposits and withdrawals. In simple terms, the rule states that if an account is in credit, the first amount deposited will also be the first withdrawn.

But the rule isn't absolute and in this case the origin of the remaining funds in Ms A's account is clear. She received her salary on 30 September 2021. Miss A then unwittingly received fraudulent funds which she almost immediately transferred out of her account. The transfers in and out were exactly the same and there was only one transaction by Ms A in between. So I don't think there's any question that the remaining funds are from Ms A's salary and it's clear Ms A hasn't benefited from the funds.

Metro has referred to its terms and conditions in not returning funds to Ms A. I accept that the terms and conditions allow Metro to debit Ms A's account. But I consider the term that allows this could be considered unfair under the Consumer Rights Act 2015 and so ought not to apply in the circumstances of this case where Ms A is herself the victim of a scam.

I also consider that Metro ought reasonably to have noticed the unusual transactions from Ms A's account and to have asked her questions about the reasons for them. If Metro had asked Ms A proportionate questions about the reason for the first of these larger transfers I

consider it more likely than not that the scam would have been uncovered and Ms A would have been prevented from making the payment meaning that the subsequent payments would also have been prevented. Whilst I wouldn't expect Metro to return funds to Ms A that weren't hers, I consider that if Metro had done more to protect Ms A the whole problem could have been avoided. In the circumstances, I don't consider Ms A should be the one that loses out financially.

Closure of Ms A's account

A bank is entitled to close an account with a customer, so long as it does so in a way that complies with the terms and conditions of the customer's account. The terms and conditions of Ms A's account – which both Metro and Ms A had to comply with – say that Metro can close Ms A's account in certain circumstances. Based on the evidence I've seen Metro was entitled to terminate its relationship with Ms A.

Service provided to Ms A

Ms A let Metro know that she was a scam victim herself soon after she was advised her account was restricted and Metro accepted this. Whilst Metro offered to raise a scam claim for the funds that belonged to Ms A that she lost in the scam, it hasn't provided a lot of sympathy and support.

I think that the service Metro provided to Ms A fell short in this case. Metro took too long to complete its investigation and return some funds to Ms A (from her savings account). Ms A first contacted Metro around mid-October and savings account funds were released a month later and Ms A was told at this point that the current account balance wouldn't be returned. I've also listened to the call recordings in which Ms A repeatedly asked about the return of funds. Ms A was promised return calls that didn't take place and was given false information when she was told that if she attended a Metro store her funds would be returned to her. Making calls to Metro was particularly difficult for Ms A as she could only do so in set breaks from work.

As I've set out above, I consider Metro should have returned Ms A's funds. I appreciate that its failure to do so made things difficult for Ms A financially and also added to the distress she experienced at a difficult time for her after discovering she was herself the victim of a long-running scam. Given all these points, I think Metro should pay Ms A £250 compensation.

Overall, for a number of reasons, I'm not satisfied Metro has acted reasonably in not returning the balance of Ms A's account and so I've provisionally decided it should return the closing balance to her with interest as set out below and compensation to reflect the distress and inconvenience it has caused."

Both parties acknowledged receipt of my provisional decision but didn't make any further comments.

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.

Both parties have acknowledged receipt of my provisional decision but neither has provided any additional points for me to consider. In the circumstances, I see no reason to depart from my provisional decision which I have reproduced above.

My final decision

I require Metro Bank PLC to:

- Pay Ms A £1,368.98;

- Pay interest on the above amount at the rate of 8% simple from the date Ms A's account was closed to the date of settlement;
- Pay Ms A £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 16 November 2022.

Jay Hadfield
Ombudsman