

## **The complaint**

Miss B complains that Metro Bank PLC won't refund money she lost after she fell victim to an authorised push payment ("APP") scam.

## **What happened**

The circumstances which led to this complaint are well-known to both parties. So I won't repeat them in detail here. But, in summary, I understand them to be as follows.

On 23 April 2022, Miss B was tricked into making a Faster Payment from her Metro account. She did so in the belief that she was paying a deposit towards leasing a vehicle, from a company on a social media platform, that had been recommended to her by a friend. But unknown to her at the time, she was dealing with fraudster's and had sent her payment to an account they controlled.

Miss B has said she's a single mother and, at the time of the scam, she had a new-born baby and another child under thirteen months old. She's told us that, a few months before the scam, she was diagnosed with borderline personality disorder and is prescribed medication for this.

Miss B has said she was (and still is) in financial difficulties and has not had a car for some time. She's told us due to her having a bad credit rating, she's not been able to lease a car before and the last car she had was sold by an ex-partner. She's explained that as well as the challenges with her health and bringing up two small children, her mother also suffers with a heart condition, which means she sometimes has to get to her mother at short notice.

She's told us that having a car meant everything to her, and she was excited when the lease company was recommended to her, as it said it catered for people like her, who had a poor credit rating. Miss B has explained that her life without a car is difficult, as her medical condition makes her worry about leaving the house, but the car would have given her a 'safe bubble' to do so without having panic attacks. Alongside this, it would mean she is able to get to her mother quickly when needed.

Miss B has explained that she is not in a privileged position, where she can just go and buy or lease a car, it was hard for her to save the deposit. At the time, she's said she did research the firm on Companies House and asked them if this was a scam outright, but she's said she just believed it was genuine. Miss B has said, she told Metro about her circumstances when she visited one of its branches to report the scam and I have no reason to doubt this.

Miss B began to suspect something wasn't right, when shortly after making the payment she was blocked from the company's social media platform, and she was unable to contact them anymore.

She raised the matter with Metro. Metro is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the "CRM Code"). The CRM Code requires

firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

Metro looked into Miss B's complaint and issued its final response, not upholding it. In summary it said Miss B had not carried out enough checks and that it had provided an effective warning. Overall Metro did not consider itself liable to refund Miss B the money she had lost. It added that it contacted the receiving bank (the bank to which the money was sent) to try and recover the money, but unfortunately hadn't been able to recover any of the money that had been lost.

Unhappy with Metro's response, Miss B then brought her complaint to this service. One of our investigator's looked into things and thought the complaint should be upheld. In summary he thought Miss B's circumstances at the time, meant she should be considered as a vulnerable customer under the CRM code. So he thought Metro should refund Miss B the money she lost, along with interest.

Metro disagreed with our investigators view. In summary it did not consider Miss B's vulnerability to be applicable to the scam.

As agreement couldn't be reached, the complaint has now been passed to me for a 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.

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 at 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 consumer made the payments 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 transactions.

This was an 'authorised payment' even though Miss B was the victim of a scam. Miss B made the payments herself. So, although Miss B did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of her account, Miss B is presumed liable for the loss in the first instance.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code), to which Metro is a signatory.

The CRM Code requires firms to assess whether a customer was vulnerable to the APP scam they fell victim to at the time it occurred. The relevant sections state:

*"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.*

*This should be assessed on a case-by-case basis.*

*In these circumstances, the Customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the Firm had previously identified the Customer as vulnerable. [...]*

*Factors to consider include:*

- (a) All Customers can be vulnerable to APP scams and vulnerability is dynamic. The reasons for dynamics of vulnerability may include: the personal circumstances of the Customer; the timing and nature of the APP scam itself; the capacity the Customer had to protect themselves; and the impact of the APP scam on that Customer*
- (b) A Customer's personal circumstances which lead to vulnerability are varied, may be temporary or permanent, and may vary in severity over time*
- (c) APP scams may include long-running APP scams or in the moment APP scams."*

Here, Miss B was the victim of a reasonably sophisticated scam and it is apparent that she was going through a challenging time. She had recently had a baby, and already had a small child under thirteen months old; she had been diagnosed with a health condition; was in financial difficulty and had the added concern of her mother who was unwell.

I'm mindful that, taking any of the individual factors above in isolation, Miss B *may* not have been so taken in by the scam. But when considering Miss B's personal circumstances collectively and given how important it was for her to try and get her own form of transport, I'm persuaded her personal circumstances were such that she was more vulnerable and susceptible to this type of scam.

While I acknowledge that Miss B was able to recognise some risk, and took some steps to protect herself, overall I am persuaded that her perception of the possible risks (and of the steps she could take to address them) was significantly and adversely affected by her personal circumstances at the time.

On balance, I consider that those circumstances mean that Miss B did meet the above definition at the time. In short, I don't consider it would be reasonable to expect Miss B to have protected herself against the scam she fell victim to.

With this in mind, I think it fair and reasonable that, under the provisions of the CRM Code, Metro is responsible for reimbursing Miss B with the money she sadly lost.

### **Putting things right**

For the reasons outlined above, Metro Bank PLC, should now;

- Refund Miss B the £500 payment, she lost as a result of this scam.
- Pay 8% simple interest per year on that amount calculated from the date Metro Bank PLC originally declined Miss B's claim until the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint against Metro Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 22 December 2022.

Stephen Wise  
**Ombudsman**