

The complaint

Mrs D complains that Metro Bank PLC ("Metro") won't refund the money she's lost when she was a victim of a scam.

What happened

The details of this case are well-known to both parties, so I don't need to repeat them at length here. Based on the submissions of both parties I understand it to be as follows.

In September 2022, Mrs D received a message through an instant messaging service app from someone claiming to be one of her children. They told Mrs D that they had broken their phone, so this was a new number. Mrs D replied and asked specifically if it was one of her son's by name. To which they replied 'yes'. The person said they'd gotten themselves into a situation and needed Mrs D's help. He said his bank had blocked his account because he tried to link it too many times to the new phone. Because of this, he told Mrs D his account had been blocked and he needed to pay for something that day and if he didn't it would increase.

As Mrs D believed the messages were coming from her son, on 12 September 2022, she proceeded to make a payment of £1,350 to the details she'd been sent. The person claiming to be her son then asked if she could help with another payment. After Mrs D asked her son if they could pay her back and they said 'yes', she went ahead to make a second payment of £1,150 to the new account details she'd been given. Following this, they then came back to Mrs D to say they'd seen they had another payment that needed to be made and could she help with this. Mrs D explained she didn't have the amount they'd asked for available but, said she had £1,000. Mrs D proceeded to make another payment of £1,000 to the account details for the second payee. Mrs D believed her son would be paying her back the following day. She sent a message the following morning asking if her son had her money. Unfortunately, we now know the messages were coming from a scammer.

Mrs D then received a call on 13 September 2022 from Metro bank in relation to the payments she'd recently made. It said the receiving bank had been in contact about the payments and they wanted to check they were genuine. Mrs D initially confirmed they were but after speaking about the payments, the bank's agent informed Mrs D that they thought she'd been the victim of a scam. At this point, she was told a scam claim would be raised. Mrs D told us she attended a Metro bank later that day and reported the scam.

Metro investigated and said it felt it had sufficient fraud prevention measures in place and that Mrs D could have been more careful and carried out more checks before making the payments. So it didn't agree to refund her. Metro was able to recover £1,350 (the initial payment Mrs D made) from the bank the money was sent to. Mrs D wasn't satisfied with Metro's response, so she referred a complaint to our service.

One of our Investigators looked at Mrs D's complaint. They said Metro couldn't evidence which payment purpose Mrs D selected when she made the payments and so it has been unable to say which warning she would've seen. Our Investigator in her view commented that Mrs D thinks she likely would've chosen the 'paying family or friends' payment purpose

– and so, she considered Metro's friends or family scam warning. Having done so, she didn't think Metro had established Mrs D had ignored an effective warning under the Contingent Reimbursement Model Code (CRM Code), to which it is a signatory. She also didn't think it had established Mrs D didn't have a reasonable basis for believing she was making payments on behalf of her son. So, she felt Metro should refund the remaining money Mrs D had lost (not been recovered).

As Metro disagreed with our Investigator, the complaint has now been passed to me for a 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.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, Metro should have refunded the money Mrs D lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances Metro should fairly and reasonably refund the money Mrs D lost.
- The money was taken from the consumer's current account. As she has been deprived of the use of these funds, Metro should also pay interest on the money it should have refunded at 8% simple per year from the date it declined under the CRM Code to the date of payment.

I've carefully considered Metro's representations about the warning it gave and whether Mrs D had a reasonable basis for believing the transactions were genuine. But they do not persuade me to reach a different view. In particular I'm not persuaded Metro has demonstrated that it can choose not to reimburse Mrs D under the terms of the CRM Code. I'll now explain why.

In this case I'm satisfied that the requirements of the effective warning exception were not met because:

- I'm mindful Metro argues that the bank provided Mrs D with one of a list of effective warnings, although it is unable to say which payment purpose Mrs D chose. Because of this, it doesn't know which warning Mrs D would've seen when making the payments. Metro doesn't consider this bears any weight in this particular case, given that it says effective warnings were presented to Mrs D and she couldn't proceed to either setting up a new payee or make an initial payment until she'd passed this stage in the payment journey. I don't agree with Metro's stance on this point. In the absence of it being able to evidence which payment purpose Mrs D selected and therefore, which scam warning she would've seen when making the payments, I cannot say Metro has established that Mrs D ignored an effective warning.
- I do note within our Investigator's view and correspondence with Metro that there has been discussion and comments made about the payment purpose '*paying family or friends*' and Metro's scam warning for this. This was on the basis that when Metro spoke with Mrs D after the scam and asked her what payment purpose she selected, she replied to say she would have thought it was '*paying family or friends*' and so our Investigator set out why she didn't consider this scam warning to be an effective

warning under the CRM Code. However, having listened to the particular call between Mrs D and Metro I note Mrs D said she couldn't remember and she provided a guess as to what she thinks she might have selected at the time of the payments. However, she reiterated that she couldn't remember. So, in light of this and the point above, I'm satisfied Metro hasn't established that Mrs D was given an effective warning and that she failed to take appropriate action in response to an effective warning. Because of this, I will not be specifically commenting on the 'paying family or friends' warning – as Metro hasn't evidenced this is what Mrs D saw.

I've then considered whether Metro has shown that Mrs D lacked a reasonable basis of belief when making the payments. Having done so, I'm not satisfied that Metro has established this exception applies under the CRM Code because:

- These types of scams are particularly cruel and play on the trust and emotive nature of the relationship between a parent and their child. Mrs D has said she believed the messages were coming from her son and that she believed he needed her help.
- Metro has raised numerous factors which it says ought to have been red flags to Mrs D when making the payments. For example, that Mrs D received a request from an unknown number, that she made payments to two different beneficiaries, she asked several times whether her son could pay her back – which Metro considers meant her son didn't have access to such funds and, that she's said she never received a request for a number of payments for such amounts previously. I've thought carefully about Metro's representations, but I don't agree. Whilst Mrs D, in her contact with Metro following the scam, notices some anomalies in the communications from the scammer, I'm satisfied that these were identified with the benefit of hindsight and not at the time of making the payments. I'm persuaded, based on the information provided by both parties that it is more likely than not at the time that Mrs D believed the message she received was from her son and that she had a reasonable basis for this belief at the time.
- In this case, Mrs D has told us that due to her son's job, it wasn't uncommon for him to have different numbers, and or to be using a different phone. Looking at a copy of the messages that have been given to us, I'm persuaded that this is more likely than not to be the case given that on receiving the initial message Mrs D reply and asked if this was one of her son's by name specifically. Here, Mrs D received a message from whom she believed to be her son telling her their phone was broken and this was a new number. Mrs D had no awareness of this type of scam and in the absence of such knowledge, I don't find it unreasonable that Mrs D believed this was a plausible explanation and that the messages were from her son.
- Monzo has raised that Mrs D had never received a request for a number of payments, that were for such large amounts. Mrs D told us that she'd helped her son out with money in the past. Whilst the request might have been slightly different from previous requests, I don't think this in and of itself means that Mrs D didn't have a reasonable basis for belief at the time she made the payments. I say this because, in this situation Mrs D was told her son's account had been blocked by their bank and she was asked to make payments before the amounts increased. On balance, based on what I've seen, I'm not persuaded the somewhat difference in payment request from previous experience, was so unreasonable that Mrs D missed such an obvious red flag here. Nor do I think the request ought fairly and reasonably to have caused her concern or that it wasn't her son that was reaching out to her.
- I think its important to highlight that under the CRM Code Mrs D's basis for belief

doesn't have to be absolute. But whether Mrs D's had a 'reasonable' basis for belief when making the payments at the time considering all the circumstances – including the characteristics, complexity and sophistication of the authorised push payment scam and the characteristics of the customer. With the specific circumstances in mind, I'm satisfied Mrs D had a reasonable basis for belief at the time she made the payments. I've already explained why I think Mrs D was reasonable to believe the messages had come from one of her children. And in this case, I'm mindful Mrs D received a message from her son asking for help with payments otherwise the amounts would increase, after their account had been blocked by their bank. Whilst Mrs D had attempted to call her son on the number and hadn't been able to get through, the messages from the outset set out that they couldn't call at the time. Mrs D also told us that due to her son's job it wasn't uncommon that he couldn't call or that it was difficult to get through to him by phone in the past. With everything I've seen and been told in mind, combined with the factors I've explained above (Mrs D not having an awareness of these types of scams), I don't think she missed any obvious red flags here.

- For completeness - as I set out earlier, in this case Metro hasn't evidenced that it provided Mrs D with an effective warning under the CRM Code. Therefore, I can't say the warning Mrs D saw ought to have caused her significant concern as, I don't find Metro provided an effective warning.
- Metro says there are limitations to what the banks can do to help prevent scams from occurring and it doesn't feel our Investigator's view of this complaint took into account Mrs D's own responsibility to have carried out any due diligence of her own. I've thought carefully about this point but, the CRM code doesn't require Mrs D to do checks, unless there are warning signs or anything that may indicate the payments aren't legitimate. But from what I've seen, there wasn't anything that should've suggested to Mrs D that these payments weren't legitimate at the time she was making them.

All in all, I'm not satisfied Metro have evidenced that Mrs D didn't have a reasonable basis for belief when making these payments under the CRM Code.

In summary

I'm not satisfied Metro has shown an exception to reimbursement under the CRM Code applies to the payments Mrs D made. Therefore, Metro should refund Mrs D in full under the CRM Code (minus any funds recovered) and pay interest on that refund at 8% simple interest per annum. I consider 8% simple interest to be fair and reasonable in this case as Mrs D has been deprived of the use of these funds.

My final decision

For the reasons set out above, I uphold this complaint and require Metro Bank PLC to:

- Refund the remaining money Mrs D lost as a result of this scam (I calculate this to be £2,150)
- Pay 8% simple interest on this refund from the date it initially rejected Mrs D's claim

under the CRM Code until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 29 March 2023.

Staci Rowland
Ombudsman