

The complaint

Mrs M is unhappy that Metro Bank PLC has refused to refund all the money she lost after falling victim to a scam.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

- Mrs M fell victim to an impersonation/safe account scam in early 2021. Her money was moved between various accounts and she ended up losing more than £150,000 from the Metro account, which was set up as part of the scam.
- Metro refunded two debit card payments totalling £1,300. But it refused to refund the £151,507 worth of bank transfers. So, with her nephew's help, Mrs M referred a complaint to this service.
- Our investigator thought the scammer had made all of the payments from Mrs M's account without her authority and she hadn't been negligent with her security information. So he recommended that Metro should refund all of the transfers with the exception of the first one (which was for £2). Metro didn't reply to the investigator's view.
- I told Metro earlier this month that I thought it was more likely than not Mrs M had authorised the payments and Metro ought to have reimbursed her under the provisions of the Contingent Reimbursement Model Code (the Code). But Metro disagreed and said Mrs M wasn't aware, and didn't authorise, the disputed payments. It said the Code does not apply in this case and responsibility for Mrs M's losses should rest with the bank from which money was sent to her Metro account

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 still think Metro should reimburse the majority of Mrs M's losses, for much the same reasons that I've previously explained.

As I've already said to Metro, this has been a somewhat challenging case to decide because Mrs M seems quite confused about what happened and doesn't seem to remember events occurring in the way that her other bank's and Metro's evidence suggests. I don't think Mrs M is being deliberately difficult or dishonest. I think the scammer managed to convince her they were genuinely trying to help and the scam continued for such a long period of time, involving lots of different financial service providers that things have become confused in Mrs M's memory. I also note Mrs M has suffered serious ill-health since these events transpired and her nephew (who has been acting as her representative) says she is now experiencing some memory problems.

Should Metro Bank be held liable for the losses Mrs M has suffered?

It's not unusual these days to see this type of multi-step fraud where the scammer persuades the victim to send money between accounts held in their names with other banks before sending it on to an account that the scammer controls and/or has access to. This technique is a deliberate one that scammers employ to help evade the banks' fraud detection and prevention systems.

In this case, I think the evidence suggests that Mrs M was persuaded either to set up a new account with Metro herself, or to share sufficient details and supporting documents with the scammer which allowed them to set it up. Money was then moved from an account she held with another bank to the Metro account and on to the scammers. There's been no suggestion that Mrs M held accounts with the cryptocurrency platforms to which the transfers from her Metro account were made.

Metro says Mrs M didn't set up the Metro account or authorise any of the subsequent bank transfers. It's referred to the phone calls she made when she reported the scam and its records which show that AnyDesk was in operation at the time the transfers were made. But I've listened to the call recordings and think it's clear Mrs M is somewhat confused about exactly what has happened and her confusion remains, to this day. She does say that she has no knowledge of the Metro account and didn't open it herself. But I think it's more likely that not she has some awareness, at the time, that it was being opened as she had to provide a considerable amount of information about herself to enable it to be opened. It's also clear all of the documentation and the debit card relating to the account was sent to her at her home address. And one-time passcodes were sent to her mobile phone number relating to the transfers out of her account.

I accept Metro's records indicate that AnyDesk was used. But I think that suggests the scammer was using this to oversee or take control while Mrs M was logged on to her own computer and, I think it's safe to assume, watching (and, thereby, authorising) what was going on. I have no doubt she did so thinking the person who was operating AnyDesk was genuinely trying to help protect her money.

If the scammer wasn't involving Mrs M in this way then they need not have used AnyDesk at all. Mrs M had no relationship with Metro prior to setting up this account – that and the subsequent payments in and out were all completed as part of this scam. So Metro had no prior knowledge of Mrs M with which to compare the scammer's activity for fraud detection and prevention purposes. So the scammer could, just as easily – if not more easily – have simply set up the account and undertaken the transfers from their own computer, without using AnyDesk.

In all the circumstances, I think Mrs M authorised the disputed payments into and then out of the Metro account.

With the above in mind, Mrs M money wasn't yet lost when it left her account with her other bank. The loss occurred when it left the Metro account. So I'm satisfied I can fairly consider a complaint against Metro with regards to what action it took, or ought to have taken, in relation to these transactions in line with Metro's obligations to protect Mrs M and prevent fraud.

Mrs M fell victim to a scam and the disputed payments were all sent from her UK sterling account to other UK sterling accounts not held in her name or under her control. As a result I remain satisfied that Metro ought to have considered the payments under the provisions of the Contingent Reimbursement Model Code (the Code).

Should the disputed transactions be refunded?

I have already explained to Metro why I don't think it has done enough to establish that any of the exceptions to reimbursement that come under the Code apply in this case. I will repeat my findings here, for Mrs M's benefit.

Very soon after Mrs M's account was opened, large sums of money were paid in and fairly rapidly moved out to accounts held by cryptocurrency platforms and to another UK bank account. When the £3,000 payment on 23 February 2021 was attempted, I think Metro ought to have realised this type of activity was fairly typical of fraud – in other words it ought to have identified a fraud risk and intervened by giving effective warnings to Mrs M.

I can't see that Metro provided any warnings relating to any of the disputed payments. I've seen the messages it sent with the one-time passcodes, but these don't mention the situation Mrs M found herself in – an impersonation/safe account scam which involved being advised to set up new payees and move her money around, including to cryptocurrency platforms, to protect it from fraud.

Mrs M was entirely caught up in the story fed to her by the scammers. And I think the scammers were able to convince her of their authority not least given her age, relatively poor understanding of technology and her ongoing isolation from friends and family due to the pandemic. It's arguable those circumstances made her vulnerable. Metro disagrees on that point. But I also don't think, given her particular circumstances, that Mrs M ought to have realised she should conduct any checks before complying with the scammer's requests. In effect, I think she had a reasonable basis for believing that the payee was the person she was expecting to pay and the person or business with whom she transacted was legitimate. And, as I say, she wasn't given any effective warnings that she ignored.

Metro didn't engage with these findings so I see no reason to depart from the conclusions previously reached. I think Metro should reimburse the £3,000 payment that left Mrs M's account on 23 February 2021 and all subsequent transfers out.

Putting things right

For the reasons outlined above, I think Metro Bank PLC should:

- Refund to Mrs M the disputed transactions totalling £151,505.
- Add interest on the above refunds calculated at 8% simple per year from the date each individual payment was made to the date settlement is made.

If Metro considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mrs M how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that Metro Bank PLC should settle this complaint as set out above.

Metro should settle the matter within 28 days of receiving notification of Mrs M's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 April 2023.

Ruth Hersey
Ombudsman