

## **The complaint**

Y, a limited company, represented by its director, Mr I, complains that Metro Bank PLC won't refund money it lost to a scam.

## **What happened**

Mr I found an advert for a digger on a popular online marketplace. Coincidentally the digger in the photos was exactly the same digger as he'd previously operated for his former employer. The digger did not appear to have been used since the last time he saw it – as it was still attached to the same trailer. He contacted the seller who claimed to represent a plant hire and sales company. The seller directed him to the company website, where he could see more information about the digger.

A sale price of £4,000 for the digger and £125.40 for delivery was agreed. Mr I was told to pay an account in the name of the 'accounts administrator'. He made two payments totalling £4,125.40 by way of bank transfer from his Metro account. Delivery was due to take place within a couple of days, but when the vehicle didn't arrive, Mr I became concerned and contacted Metro.

Metro looked at Mr I's claim under the Contingent Reimbursement Model ("CRM Code") which requires signatories like Metro to reimburse victims of APP scams in all but a limited number of circumstances. In this case, it said that Mr I hadn't undertaken appropriate due diligence before making the payment. It said that he'd ignored various red flags – such as the fact he'd paid a personal, rather than business, account and hadn't seen the vehicle in person or over a video call. It also argued he ignored an 'Effective Warning' it had provided.

Mr I referred the matter to our service and one of our Investigators initially upheld his complaint in part. They thought that Mr I should have had concerns about the price of the digger but as Metro couldn't show which warning Mr I would have seen, it couldn't demonstrate that it had provided an Effective Warning, as it was required to do under the CRM Code. So they recommended that Metro refund 50% of Y's losses. But, after further consideration of the evidence, particularly about the price of the digger, the Investigator decided that the complaint should be upheld in full.

Metro disagreed, it argued that it had shown that an Effective Warning had been provided and if Mr I chose the correct payment reason he would have seen it. If he did not choose the correct payment reason, then it cannot be held responsible for his loss.

## **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 law Mr I is responsible for payments he's authorised himself. But, as noted, Metro are signatories to the CRM Code. So, I need to consider whether it fairly relied on any of the exceptions to reimbursement when it declined Y's claim.

Metro argue that Mr I ignored an Effective Warning but is unable to demonstrate which payment reason Mr I chose when making the payment. It says that Mr I thinks he chose the payment reason 'shopping', but it is for Metro to demonstrate that this warning was provided and ignored and it is unable to do this. But, for the sake of completeness, even if Mr I did select the payment reason 'shopping' I do not consider this to have been effective in the circumstances of this complaint. Although the warning advised to check the average price, be wary of deals that are too good to be true and suggested viewing the product in person, as I'll come onto explain, some of these suggestions weren't relevant (I don't think the price was too good to be true) and there were other very specific reasons for Mr I to believe that the sale was genuine and he didn't need to see the digger in person. So, I don't think that the warning would have been impactful for him and, if he did see it, it wasn't unreasonable for him to move past it. But, in any case, the test is whether Mr I ignored an effective warning. Metro cannot demonstrate that he did, so it cannot rely on this exception to reimbursement.

Metro also seek to rely on R2(1)(c):

*In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that:*

- (i) the payee was the person the Customer was expecting to pay;*
- (ii) the payment was for genuine goods or services; and/or*
- (iii) the person or business with whom they transacted was legitimate.*

I agree with the Investigator's view that the price of the digger, considering its age, while cheap, does not appear too good to be true. I recognise that it's less easy to compare the price of a specialist vehicle of this nature than it might be to compare the price of other, more common, vehicles, particularly given the potential for significant variability in condition.

But it's also important to note a rather unusual feature of this scam – Mr I said that he recognised the digger as the very same one that he'd previously used. He said that he'd transported the digger to (and back from, a year later) another country. And, as far as I understand, when he left his old job, the digger had been in the possession of his ex-employer. He also says that he knew that the condition of the digger was unlikely to be very good – as it hadn't been the last time he saw it and it didn't appear to have moved from the trailer that he'd loaded it on to.

I think Mr I made a few big assumptions here – that the digger had been sold by his former employer, that its condition was poor (he doesn't appear to have asked the fraudster) and that the assumed poor condition explained both why the price was at the lower end of what might be expected and why the digger hadn't moved from where he left it.

But the fact Mr I was familiar with the actual digger made him more, rather than less, confident in the legitimacy of the sale. I think he failed to appreciate the actual risk here and put a lot of weight on the fact that the digger existed. He clearly didn't consider the possibility that the fraudster was simply pretending to have possession of it. But I think that as someone who appears to have had little appreciation of that risk, that's understandable. I've thought about whether there were other aspects to the sale which ought to have caused him concern.

I can also see that the seller directed Mr I to a website and, while I haven't been able to view that website myself, I can see why it might have added a degree of plausibility to the sale.

He also says he spoke to a representative of the company over the phone (and evidence of such a conversation exists within the messages I've seen) and through its chat service. He's mentioned hearing background noise which suggested a busy working environment.

The seller also offered alternative methods of payment, but made those options very unattractive. While it's not clear to me why VAT would be added to card payments and not bank transfers, I can see why Mr I may have held the impression that he was choosing to make the payment via bank transfer rather than the reality – that this was almost certainly the only option actually available.

Contrary to some of Metro's submissions, it appears that Mr I received an invoice prior to making the payment. That invoice provided its own explanation for why the account Mr I had to pay was in the name of an individual – it was supposedly the name of the 'accounts administrator'.

I accept it would have been sensible for Mr I to have viewed the vehicle in person before transferring any money or, if that wasn't possible, he might reasonably have asked for more evidence that the seller had possession of it. But, as already set out, Mr I seems to have been convinced by his personal connection to the digger. He doesn't seem to have appreciated that a photo of the digger might have ended up on the internet to be misused by a fraudster. Instead, he believed that the photo was evidence of possession. In these specific and quite unusual circumstances, I don't think it was unreasonable for Mr I to believe that.

So, while I accept this is a finely balanced point, I've decided that Mr I did hold a reasonable basis for believing that the seller and sale were legitimate.

That means Y should be refunded in full under the provisions of the CRM Code. Metro should also pay interest at 8% simple per annum from the date it declined his claim under the CRM Code to the date of settlement.

### **My final decision**

I uphold this complaint and instruct Metro Bank PLC to pay Y:

- the amount lost £4,125.40, less any amounts already recovered or returned.
- 8% simple interest per annum on that amount from the date Metro declined his claim under the CRM to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Y to accept or reject my decision before 23 November 2023.

Rich Drury  
**Ombudsman**