

Complaint

Ms M is unhappy that Metro Bank PLC didn't reimburse her after she fell victim to a scam.

Background

Ms M says that she received a communication on a popular messaging app that said *"Hi Mum, I've smashed my phone and now have a new number, text me back ..."* She thought the message might have come from her son and so she responded by saying *"Is that [son's name]?"* and received a reply confirming that it was. Unfortunately, they hadn't been sent by Ms M's son but a fraudster.

An exchange of messages took place and Ms M was asked for a loan. From what Ms M told us, her son had been dealing with the breakup of a serious relationship with the mother of his children. He had suffered significant financial and psychological difficulties as a result. She had been attempting to contact him on his authentic number but hadn't been able to do so. She was concerned about his welfare and so was relieved when she received a message that appeared to be from him. She says that this persuaded her that the messages had been sent by her son.

She used her Metro account to transfer £1,409 and £950 to an account controlled by the fraudster. The name of the payee was not familiar to her, but the fraudster explained that it was someone who her son owed money to.

Once she realised that she'd fallen victim to a scam, she notified Metro. Although it argued that she had ignored a warning displayed during the payment process, it agreed to refund 50% of the money she lost to the scam. However, it thought that Ms M had ignored several red flags and so it would be fair and reasonable for her to be considered partially responsible for her own losses.

Ms M was unhappy with that response and so she referred her complaint to this service. It was looked at by an Investigator who upheld it. She was satisfied that Ms M had a reasonable basis for believing that the messages had genuinely been sent by her son and so didn't think Metro could hold her partially liable.

Metro Bank disagreed with the Investigator's opinion. It argued that Ms M had fed the scammer information which enabled them to impersonate her son. If she had instead sought confirmation that it really was him, the scam wouldn't have got anywhere.

It pointed out that the scammer's profile on the messaging app didn't have a profile picture of her son and it considered that she should therefore have been more sceptical than she was. Finally, during the exchange of messages, her "son" mentioned a specific name of a person. That name was unfamiliar to Ms M, but she didn't question or challenge it.

Because Metro Bank disagreed, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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, that isn't the end of the story. Metro Bank is a signatory to the Lending Standards Boards Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, like the one Ms M fell victim to, in all but a limited number of circumstances.

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made; or
- 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: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

There are further exceptions within the CRM code, but they don't apply here

Metro Bank has already reimbursed 50% of Ms M's losses. However, it continues to argue that the second exception set out above is applicable to this case – i.e. that Ms M made these two payments without a reasonable basis for believing they were legitimate. I've considered its arguments carefully, but I'm not persuaded on this point.

The Code says that, when assessing whether a customer's belief was a reasonable one, consideration should be given to the circumstances at the time and the characteristics of the customer. I'm not persuaded that the red flags identified by Metro would've been quite so obvious to someone in the same set of circumstances as Ms M. She gave us a detailed explanation of her son's circumstances around the time this scam took place. He'd found himself in a difficult set of personal circumstances, including some financial hardship. As a consequence, Ms M responded to the content of the messages she received from a perspective of concern and care, rather than doubt and scepticism.

Metro points out that the scammer didn't need to have any specific knowledge to persuade Ms M that it was really her son who had contacted her. Instead, it says that she fed the scammer information by responding "*is that you, [name]?*" rather than saying "*who is this?*" But I think there's significant hindsight bias at play here. She was not anticipating receiving a message from someone impersonating her son and, while responding in the way Metro Bank has suggested would be more effective at rooting out potential fraudsters, I don't find the way Ms M responded to this initial message to be careless.

Overall, I'm satisfied that a reasonable customer in the same set of circumstances as Ms M would be equally likely to miss the warning signs and so I'm not persuaded that the exception to reimbursement applies.

Final decision

For the reasons I've set out above, I uphold this complaint. If Ms M accepts my decision,

Metro Bank PLC should refund the remaining 50% of the money she lost to the scam. It should also add 8% simple interest per annum to that sum calculated to run from the date it declined her claim under the CRM until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 30 November 2023.

James Kimmitt
Ombudsman