

## **The complaint**

N, a limited company, complains that Metro Bank PLC ('Metro') won't refund the money it lost after it fell victim to a purchase scam.

Mr C, the director of N, represents it in its complaint.

## **What happened**

In April 2022, N made two payments totalling £445 to a seller on an online marketplace that it had previously successfully used – a payment of £285 made on 4 April 2022 and £160 on 5 April 2022.

N realised it had fallen victim to a scam when it noticed that the marketplace listing, and account had been removed. The seller was also uncontactable via the messaging app they'd communicated on. N raised the scam with Metro on 11 April 2022.

Metro investigated N's fraud claim and it issued its final response in April 2022 not upholding it. It says it provided an effective warning and N didn't validate the seller sufficiently. Metro attempted to recover N's funds from the receiving bank, however, no funds were recoverable.

N was unhappy with Metro's response and referred the complaint to this service. One of our Investigator's looked into the matter and upheld the complaint.

Metro didn't agree with the Investigator's view. Our Investigator considered Metro's further comments, however, their view remained unchanged. As no agreement could be reached, the complaint has been referred 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 not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.

I've carefully considered the bank's reasons for declining N's claim and its concerns around whether N had a reasonable basis for believing the transactions to be genuine and ignored an effective warning in relation to the payments being made.

But they do not persuade me to reach a different view. When weighing this up, I have carefully considered everything N has said and provided as well as the evidence submitted by the bank. But I am not persuaded there's enough to say that N failed to meet its requirements under the CRM Code for Metro to choose not to reimburse it.

I'm satisfied that Metro has not shown N lacked a reasonable basis for belief. I will explain why.

When N made the payments on 4 and 5 April 2022, this was to the same details provided for a seller that N had previously made payments to in March 2022. N has explained that it received a photo of the parcel the seller was going to post to it and that it received the exact items it ordered in March 2022, which N says it was pleased with. I note Metro has made comments about N moving away from the online marketplace platform and that N did nothing to validate the second purchase/transactions, but I'm persuaded the fact N received items from the earlier order would have contributed to its belief that it was making payments for genuine goods, that it was paying the person it expected to pay and that the person it was transacting with was legitimate. After all, it was only around a week prior to the April payments that N had made the previous order, received the items purchased and was happy with the goods it received.

It's not been possible to see the conversation between N and the seller that took place on the messaging app, which I don't think is surprising given that N told us the seller deleted their profile from this and the marketplace platform. Because of this, it means I only have limited information to go on now. It also means that I can't be sure how the items – mobile phones were presented to N over the messaging app (condition and faults) when N decided to go ahead and make the order. On balance, I've not seen enough to say N missed any obvious red flags.

I acknowledge N has commented at points that it was a little hesitant in making the payments by bank transfer and that it sent the funds across a couple of payments. N added the £445 was a large sum of money to it and so it had slight doubts about sending the amount in one payment. N also says it enquired about travelling to the seller to view the items in person, but the seller said they were too busy and due to go away. After some thought N proceeded with the payments. In thinking carefully about this point, I have thought about what it is realistic to have expected N to do when it was making the payment of £445 for the items/goods. Whilst I have not seen evidence myself, N has said it checked the feedback for the seller on the marketplace and this was excellent. This combined with the initial order in which N made payments to the seller and received the items/goods it says led to it trusting the seller would send the items. Overall, I don't think it is so implausible that N felt it could trust the seller when placing the second order.

Whilst I've not been able to see for myself exactly what was discussed or clear screenshots at the time of the items N was buying, given N's recollections explain that the items had faults which would require repairs to them and that they were of varying makes and models and ages, I'm not persuaded the price of the items were too good to be true. Given that N believed repairs would need to be made to the items, I don't think it was implausible for the seller to be offering the items at the price agreed.

The CRM Code is designed to give people that have fallen victim to an APP scam the confidence that they will be reimbursed if they have acted appropriately. For the reasons I have explained, I am satisfied, on balance, that N had a reasonable basis for believing the payee was the person it was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom it transacted was legitimate.

I've then gone on to consider whether Metro has established N ignored an effective warning at the time of making the payments. Metro says an effective warning was provided when N set up a new payee in March 2022 (when it made the initial payment to the seller). The CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. It sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not

doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

I've carefully considered the warning Metro says was presented at the time N set up the new payee in March 2022 and having done so, I'm not persuaded that the information that it says was shown to N was impactful enough in the context of this scam to meet the minimum requirements under the CRM Code. I say this because, the warning says if paying for a service, even from someone used before, to double check the payment information has come from them and not a fraudster. Here N was making a payment, to payment details it had used a week before for the seller. It wasn't the case that N had received details again for the new items it wished to buy, it was simply making further payments to the same seller for new items. Further, for a warning to be considered 'effective' under the CRM Code, it must also be 'timely'. In the circumstances of this case, I don't find the warning provided when N set up the new payee to the seller in March 2022 - around a week prior to the payments in April to be timely. It follows that I don't find Metro can rely on a warning previous given, to establish N later ignored an effective warning when making the payments on 4 and 5 April 2022. Overall, I'm not satisfied Metro gave an effective warning to N, nor do I consider that it ignored one.

For completeness, Metro says the transactions weren't out of character and even if it had contacted N it wouldn't have broken the spell. Based on what I've seen and been told, I agree, but this isn't the test here. As explained earlier, the CRM Code is designed to reimburse innocent victims of scams of authorised push payment scams like this one except in limited circumstances. And for the reasons I've explained above, I am not persuaded there's enough to say that N failed to meet its requirements under the CRM Code for Metro to choose not to reimburse it.

### **Putting things right**

I've decided that N ought reasonably to be refunded under the CRM Code.

To put things right, Metro Bank PLC should now:

- Reimburse the money N has lost to the scam - £445;
- As N has been deprived of the use of those funds, Metro should pay 8% simple interest per year from the date it declined N's claim under the CRM Code to the date of settlement.

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

### **My final decision**

I uphold N's complaint about Metro Bank PLC.

I direct Metro Bank PLC to pay compensation, as set out above, within 28 days of receiving notification of Mr C's acceptance on behalf of N of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 12 October 2023.

Staci Rowland  
**Ombudsman**

