

The complaint

Mr C is unhappy that Metro Bank PLC hasn't refunded him all of the money he lost after he fell victim to an Authorised Push Payment ("APP") scam.

What happened

The details of this complaint have been laid out in detail by our Investigator and are well known to both parties, so I won't repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

In May 2022, Mr C was contacted about an investment opportunity. After discussing the opportunity with, who he thought, was a portfolio manager and believing everything to be genuine, Mr C decided to invest. He went ahead and made the following faster payments from his Metro account;

24 October 2022	£20,000
26 October 2022	£10,000
6 December 2022	£2,500
7 December 2022	£2,500
14 December 2022	£16,500.58

But unknown to him at the time, Mr C was dealing with fraudsters and had sent his money to accounts the fraudsters controlled.

On realising he'd fallen victim to a scam Mr C raised the matter with Metro. Metro is a signatory of the Lending Standards Board Contingent Reimbursement Model (the "CRM Code"). The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. Metro looked into Mr C's complaint and issued its final response in January 2023, upholding it in part.

In summary, it said it didn't consider itself liable for the first four payments Mr C had made as it thought it had provided an effective warning. It also didn't think Mr C had taken reasonable steps to check if the payments were being made towards a genuine investment opportunity. However, it didn't consider the fifth payment Mr C made, for £16,500.58, was in line with the activity on Mr C's account, so it felt it ought to have raised further questions. In view of this, it reimbursed Mr C with half of this payment, being £8,250.29.

Unhappy with Metro's response, Mr C brought his complaint to this service. One of our Investigator's looked into things and didn't think Metro needed to do any more. In summary, our Investigator thought there was enough going on that Mr C ought to have reasonably had some concerns about the payments he was making. She added that even if Metro had provided Mr C with further warnings, she didn't think it would have made a difference as Mr C was adamant he was going to make the payments towards the investment.

Mr C didn't agree with our Investigator's view. As agreement couldn't be reached, the complaint has been passed over 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.

I'm aware in his submissions Mr C has referred to other people who he said had fallen victim to the same scam who had been refunded by their banks. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of Mr C's complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Having done so, I have reached the same conclusions as those of the Investigator. I'm extremely sorry to hear about what happened to Mr C. I can understand entirely why he feels so strongly that his money should be returned to him. It's important to clearly acknowledge that it is not in dispute here that Mr C has been the victim of a crime and I can understand how losing this money has impacted him, and I'm sorry to hear of the difficult time he's been going through.

But I can only compel Metro to refund Mr C if it is responsible for the loss incurred. Having carefully considered the circumstances of this complaint, I can see no basis on which I can fairly say that Metro should be held liable for the remainder of the money Mr C has lost. I will explain why.

The starting principle of the CRM Code, that I mentioned earlier, is that a firm should reimburse a customer who is the victim of an APP fraud except in a small number of circumstances. The exceptions to reimbursement relevant to this case are:

- 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.
- The customer ignored an effective warning in relation to the payment being made.

Unfortunately, I think the evidence suggests Mr C didn't have a reasonable basis for believing he was dealing with a legitimate financial business when he made the transfers. I say that because prior to sending payments from his Metro account, Mr C had made payments from accounts he held with other providers and had been told by the fraudster to lie about the purpose of the payments. I don't think a legitimate investment firm would have any good reason to tell a client to lie to their bank.

Alongside this, I'm also mindful that the first bank Mr C made payments from had raised concerns with him about the potential of this being a scam. Following this, Mr C became uncomfortable with lying and the fraudster told him to open an account with another bank. Mr C did that, but after payments were stopped and his account was frozen, he opened an account with Metro. I think the concerns and actions of his other banks stopping his payments ought to have given Mr C cause for concern.

As well as this, by the time Mr C was making payments from his Metro account, he's said he had been guaranteed a return of six times his investment, being a minimum of £900,000. I

think those levels of return ought to have stood out to Mr C as being improbable, to the point of simply being too good to be true. I don't think delivering such a profit is plausible and I'm not persuaded Mr C was provided with a persuasive answer as to how this could be possible. I've also seen that none of the payments Mr C made, to multiple different payees, to fund the investment were being made to accounts in the name of the company Mr C believed he was investing in. Which again, I think ought to have stood out to Mr C as being unusual.

I can understand how in isolation any one of these things may not have prevented Mr C from proceeding. But when taken collectively I think there were sufficient unusual factors here that Mr C ought to have acted far more cautiously than he did. I'm satisfied, therefore, that Mr C didn't have a reasonable basis for believing he was making a payment for a legitimate investment, so Metro isn't required to provide him with a full refund under the CRM Code.

I've also considered whether Metro met its standards under the CRM code in terms of the warnings it provided to Mr C when making the payments. The code also says;

SF The assessment of whether a Firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the APP scam that took place

In the circumstances of this case I don't think better warnings or intervention by Metro would have made a difference here, and I'm persuaded there is convincing evidence to support this finding.

I don't think any further probing or questioning would have likely led to Mr C undertaking any further research or would have led him to suspect he was being scammed. Where Metro, and Mr C's other banks, did intervene and discuss the payments with Mr C, he was determined to make the payments and often gave false information regarding the purpose of the payments, albeit I accept under the instructions of the fraudster.

When making the first payment from his Metro account, for £20,000, Mr C told it that the money was towards building work, that he'd seen the work that had been carried out and that he'd be making future payments to the same company. This seemed like a plausible reason for making the payment, especially given Mr C had told Metro works had been completed. It also isn't surprising that Metro weren't concerned by the second payment, to the same company for £10,000, given Mr C had already told it he would be making further payments in the future.

On the balance of probabilities, if Metro had questioned Mr C further about the subsequent payments, I think it more likely than not he wouldn't have deviated from this story. But even if he had, for reasons already explained, he seemed determined to make the payments and I think that's what he would have done irrespective of any further warnings or questioning. So, even if Metro had provided effective warnings, on balance and for the reasons explained, I'm not persuaded it would have had a material impact on preventing the scam.

Metro did agree to refund 50% of the final payment Mr C made. I think that was a fair and reasonable offer to make in the circumstances and I can't fairly or reasonably ask it to do anymore.

Finally, I've also considered whether Metro could have done more to try to recover the money once it had been told of the scam. We'd expect a business to take reasonable steps to try to recover the money from the bank it was sent to. Metro did try and recover the funds Mr C had made by faster payment, but unfortunately no funds remained.

I do have a great deal of sympathy for the situation that Mr C finds himself in and it is unfortunate that he has lost money to this cruel scam. But for the reasons I've explained I'm not persuaded it would be fair or reasonable for me to ask Metro to refund Mr C the remainder of the money he lost.

My final decision

My final decision is that I don't uphold this complaint against Metro Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 March 2024.

Stephen Wise
Ombudsman