

The complaint

Mrs B complains that Metro Bank PLC did not refund a series of payments she says she did not authorise.

What happened

On 19 October 2022, Mrs B contacted Metro Bank as there were a series of payments on her current and credit card accounts that she says she did not authorise. The payments were to a dating company I'll call 'X'. Mrs B says that she signed up to X and did not dispute what she said was the initial payment on 1 August 2022 for £399. However, there were a series of payments after that point which she says she did not authorise and requested a refund.

Metro Bank informed Mrs B on 2 November that they were not upholding the fraud claim. They asked Ms B to send additional information so they could pursue a chargeback claim, but she sent the response after the 120-day time limit to raise a chargeback with the merchant. So, Metro Bank said they could not help her further.

Mrs B referred the complaint to our service and the Investigator issued an uphold based on the limited information available to them. Mrs B accepted this, however Metro Bank responded with additional comments and information for us to consider. They said that they could see Mrs B had authorised the payments as they required additional checks, she had signed up to the website, added her card details and talked with individuals on the website, so they didn't agree there was anything to raise with X. They showed that the terms and conditions for X state different services cost 'credits' which could be purchased on the website and felt Mrs B would have been aware of the costs. Finally, they said that as Mrs B appears to have received the intended service by X, there was most likely no breach of contract or misrepresentation for a successful Section 75 claim.

The complaint was passed to me, and I considered everything available to me. As a result, I issued a provisional decision in which I did not agree the complaint should be upheld. My provisional findings read as follows:

My understanding of X

There are many different kinds of dating websites, often with a monthly or annual subscription fee. Mrs B says that she knew there was a subscription fee for X, and that this was relatively expensive, but she was unaware of any other charges that would be applied.

Looking at the terms and conditions for X, it explains that there was a subscription fee that would allow access to the website. Looking at the pattern of payments across Mrs B's credit and debit card accounts, I think this is most likely the £299.99 that first appears on 1 June 2022, and not the payment Mrs B has said was the first payment two months later on 1 August 2022.

The terms and conditions also state that certain additional services would cost 'credits'. For example, a basic chat cost 1 credit per minute, a basic chat with video cost 2 credits per minute, mobile app messaging cost 1 credit per 160 symbols etc. The terms and conditions also state that you could purchase packages of credits with X. Online reviews for X show a number of users unhappy that the services cost so much money, even after paying a subscription fee. Considering this, it seems more likely the additional charges on Mrs B's credit and debit cards were for credits that could be used to speak with people on the website.

This is backed up by Mrs B's own testimony from her initial phone call with Metro Bank on 19 October 2022. In this, she says that she had been talking with a number of individuals on the website. As it says in the terms and conditions, speaking with individuals on the website, either by message, text or video chat, cost credits, and credits needed to be purchased before any contact could be made. So it's more likely the transactions on the account were as a result of additional credits being purchased by Mrs B in order to use the services on the website.

Were the payments authorised?

Mrs B has said that she did not authorise the payments to X. I've carefully looked over the evidence to see what I think is more likely in the circumstances.

Metro Bank has provided evidence that five separate payments from 1 August to 21 August, two of which were for £399 and therefore match the majority of the other payments on the debit card, were flagged for additional authorisation. This means Mrs B would have had to confirm that she gave her authority for the payments to be processed. In doing so, the amounts of the transactions as well as the merchant, in this case X, would have been clear. I've also considered that after she authorised these payments, Mrs B did not raise a query or complaint with Metro Bank about them. With this in mind, I think it's more likely Mrs B was aware of these payments and what they were for. And, as I'm satisfied Mrs B authorised these five payments, on balance I think it's more likely she also authorised the other payments to X.

I've also considered how X worked to see whether the payments were authorised or not. In order to begin speaking with individuals on X, you first have to purchase credits, as set out above, and then use those credits to interact with others. Mrs B mentioned in her phone calls with Metro Bank that she had been speaking with individuals on X. So I think it's more likely she purchased credits in bundles in order to do so, and I think on balance, she did so knowingly.

Finally, I've looked at the statements for Mrs B's credit and debit card accounts. And I can see that Mrs B did make some cash deposits into both accounts during the time she was making payments to X. These also tended to reflect the amount owed on the accounts either in the credit card balance or the overdraft on the current account. So I think it's more likely Mrs B was aware of the spending on the account and therefore the payments to X. In addition to this, Metro Bank has evidenced that Mrs B logged into her online banking a number of times during the period in question, so I think she could have seen the transactions via her online banking.

With the above in mind, I think it's more likely Mrs B authorised the payments to X. Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. Meaning Mrs B is liable for the authorised transactions in the first instance.

Should the payments have been flagged as unusual?

There are circumstances in which we would expect an account provider to intervene prior to a payment being processed, for example if it was particularly unusual or out of character for the account. I've therefore considered if Metro Bank should reasonably have intervened in any of transactions to X.

The value of the payments were not so significant that this on its own warranted a conversation with Mrs B prior to them being processed. However, I can see that she did make them in relatively quick succession and the pattern of the spending did appear to be suspicious after a few payments. I therefore think it would have been reasonable for Metro Bank to have had a conversation with Mrs B about the payments around the end of June 2022, at around the seventh payment on the credit card account to X.

I've then had to consider whether or not any intervention from Metro Bank would have made Mrs B change her mind about continuing to make the payments. Based on what I've seen so far, I don't reasonably think it would have done.

I would have expected Metro Bank to ask Mrs B what the payments were for. As I've set out above, I think its more likely Mrs B authorised the payments and that she was aware she was purchasing credit to use to speak with individuals on X. So, I think it's more likely Mrs B would have explained that this is what the payments were for. As X was providing a service in exchange for Mrs B's money, it's difficult for me to agree that a conversation with Metro Bank would have stopped her making future payments to X.

I've listened to the phone calls between Mrs B and Metro Bank from when she first raised the disputed transactions claim. In this, she mentioned that she had previously been paying X through her current account with a third-party that I will call 'L'. She said L had blocked the account and stopped the payments to X and this is why she added her Metro Bank cards to her account with X. However, when we asked her about this, she said that she had closed her account with L and this is why she added her Metro Bank cards.

Based on what Mrs B said on the phone call to Metro Bank, I think its more likely that L had concerns about the payments to X and blocked them, and this is why Mrs B added her Metro Bank cards to her account with X. With this in mind, I think that if Metro Bank expressed concern about the frequency of the payments to X, it's more likely Mrs B would have wanted to carry on with them, as this is what she had previously done in response to any concerns L may have had. I also have to consider that Mrs B carried on making payments to X for almost three months after this point, so I think it's unlikely any intervention at that stage would have made her change her mind about continuing to make payments to X.

Should a Chargeback claim have been raised?

Mrs B first raised a disputed transactions claim with Metro Bank on 19 October 2022 in which she stated she did not authorise the transactions and she felt it was fraud. What initially followed was a fraud investigation and Metro Bank sent Mrs B a letter on 2 November explaining they were not upholding the fraud complaint. They then sent letters to her on 13 and 30 November in which they asked for additional evidence showing that she had raised a dispute with the merchant first, as well as other documents. Mrs B finally responded on 26 January 2023 with the additional evidence.

Unfortunately, there are strict time limits for chargeback claims and in this case it would be 120 days from the date of purchase. Therefore, for the first transaction the claim needed to be raised by 29 November, and for the last payment, it had to be raised by 21 January 2023. Metro Bank required the information from Mrs B prior to raising the claim. As they received

Mrs B's evidence on 26 January 2023, his was after the final deadline for the last payment, so, there was nothing further they could to do try and recover the payments via chargeback.

Should a Section 75 claim have been raised?

Section 75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

It does not appear that Metro Bank meaningfully investigated the credit card transactions and instead they focussed on the debit card ones. I've therefore considered whether they should have refunded Mrs B the transactions under a Section 75 claim.

Firstly, it should be noted that only payments over £100 can be considered under section 75, so not all of the transactions Mrs B has highlighted can be considered. I've looked carefully at what has happened, alongside the relevant terms and conditions, and I can't see that there has been a breach of the contract or a misrepresentation. From my understanding of how X worked alongside Mrs B's testimony, it appears that X provided services as set out in the terms and conditions. Mrs B was able to talk with individuals on X but this came at a cost in 'credits' which had to be purchased. So I can't agree there would be grounds for a successful Section 75 claim and I don't think Metro Bank made an error when it did not process one.

Based on what I've seen so far, I currently think that it's more likely Mrs B authorised the payments so she is therefore liable for them in the first instance. While I do think Metro Bank should reasonably have intervened towards the end of June 2022, based on what I've seen I don't think this would have reasonably stopped Mrs B from continuing to make payments to X at that time. And I don't think Metro Bank has made an error when it did not process chargeback or a section 75 claim.

Summary

Based on what I've seen so far, I currently do not think Metro Bank need to provide a refund to Mrs B. I know this will come as a disappointment to her, but I hope this goes some way to explain my initial findings. I am open to any additional comments or evidence either party may have in response to my provisional decision.

Metro Bank did not provide a response to my provisional decision.

Mrs B responded and asked to see the code she was sent to authorise the payments, as she disputed receiving this. She also asked why Metro Bank did not question her when multiple transactions to X were made in a day.

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 have considered Mrs B's additional comments in turn, some of which have already been answered in my provisional decision.

Firstly, Mrs B has said that she would like to see any codes Metro Bank sent her to authorise payments. However, Metro Bank did not confirm that a code would specifically be sent to authorise the payments in question. They have evidenced that payments on 1, 11, 12, and

21 August 2022, went through additional authentication before leaving the account. They've provided an example of what that message would look like, and this shows a message displaying the name of the merchant and amount of the payment. It then asks if the transaction has genuinely been carried out online, with an option to confirm or decline.

Having carefully considered this, as well as the additional reasons set out in my provisional decision such as the fact Mrs B logged into her online account during the time the transactions were carried out and my knowledge of how X worked, I think Mrs B was aware of the transactions and that it's more likely she authorised them.

I've gone on to consider why Metro Bank did not question Mrs B when multiple transactions to X were made in a day. I confirmed in my provisional decision that the frequency of the payments was significant, and I think this did warrant further intervention by Metro Bank. But I explained my reasoning as to why I felt that even if Metro Bank had intervened, I did not think Mrs B, at that time, would have chosen not to carry on with the payments. So, I did not think Metro Bank should therefore refund the transactions.

On balance, Mrs B's comments have not materially changed the findings set out in my provisional decision and I still do not think Metro Bank needs to refund Mrs B. While I appreciate this is not the outcome she was hoping for, I hope this has provided a clear explanation as to why I've reached the decision I have.

My final decision

I do not uphold Mrs B's complaint against Metro Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 23 February 2024.

Rebecca Norris
Ombudsman