

The complaint

Mr C complains that Metro Bank PLC – as the recipient bank, didn't do enough to prevent his loss.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here. Mr C says he fell victim to a scam in July 2020. He transferred £10,000 from his bank account with 'S' to a third-party account held with Metro Bank. The payment was for the purchase of shares in a company I'll refer to as 'N'. Mr C had previously invested in a five-year bond with N. In 2021 N entered administration. Mr C believes he's been the victim of authorised push payment (APP) fraud as his name was not on the shareholder listing and the broker who'd introduced him to the "*discounted share investment*" ceased communication. He asked both S and Metro Bank to refund his loss. S refunded 50% of Mr C's loss. Metro Bank did not agree to a refund.

Mr C said Metro Bank, as the recipient bank, should refund his remaining loss under the rule changes that were introduced by the Financial Conduct Authority (FCA) in January 2019 as it could've done more to prevent it. The matter was referred to our service. Our Investigator explained the changes Mr C refers to, are about our powers to investigate complaints – it does not mean that an automatic refund is available in all alleged APP cases. And the relationship under which we could consider Mr C's complaint, that being DISP 2.7.6R(2B), only applies in relation to a complaint concerning an act or omission which occurs on or after 31 January 2019. She also explained as the recipient account was opened and the associated know your customer checks were completed before 31 January 2019, a complaint about this matter would fall outside the scope of our jurisdiction. And for what we could consider, she didn't recommend the complaint should be upheld.

Mr C disagreed and asked for an Ombudsman to review his complaint. He still thinks full recovery of his losses is owed to him under the Lending Standards Boards Contingent Reimbursement Model ('the CRM code'), and that he has a right to seek repayment from Metro Bank, as they were managing the account of a "*scammer*". He feels that Metro Bank could not have known their customer as well as what would have been expected. Mr C argues the "*legitimate N's*" bank account was held with another bank therefore it is his belief that Metro Bank failed to notice that the recipient account holder was a "*clone*" of a legitimate firm, and that it failed to monitor the recipient account effectively.

Now that I've issued a jurisdiction decision setting out the extent of the issues I can consider. I've shared below my thoughts on the aspects of Mr C's complaint I do have the power to investigate.

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'm not upholding this complaint. I appreciate the outcome will be disappointing for Mr C, and I'm genuinely sorry to hear about his loss, but I can't fairly and reasonably ask Metro Bank to refund this. I'll explain why.

Firstly, the regulatory changes that the FCA made in January 2019 that Mr C references, were to extend the Financial Ombudsman Service's jurisdiction. They did not place a requirement/responsibility on a bank/payment service provider (PSP) involved in the transfer of funds to automatically refund victims of alleged APP fraud. These changes were brought about to provide victims of alleged APP fraud access to dispute resolution through the Financial Ombudsman Service for complaints against banks/PSPs who receive payments relating to the alleged fraud. They are not a mandatory reimbursement scheme and aren't as Mr C interprets them to be – *"superior protection to the CRM Code"*.

So for me to fairly uphold this complaint, I'd need to be satisfied that there was a failure that took place between 31 January 2019 and the point at which Mr C's funds were spent AND but for that failure, Mr C's loss would have been prevented. It isn't enough just for there to have been a failure, I'd need to be able to conclude that the failure fairly and reasonably caused the loss of the funds Mr C is seeking to recover. Likewise, if the CRM Code was applicable, I'd still need to conclude that Metro Bank didn't meet the standards required of it as a 'receiving firm' under the CRM Code and its act or omission (within the context of what falls within my jurisdiction) resulted in Mr C's loss.

I've taken on board Mr C's comments about how the events unfolded, including the actions of the broker involved and the information about N which has since come to light. But to be clear my role here is limited to deciding whether, in the circumstances of this complaint, it would be fair and reasonable to ask Metro Bank to refund Mr C's outstanding loss. I note Mr C has made detailed submissions in support of why he believes he's been the victim of a scam. But in the circumstances of this complaint, I don't think I need to make a finding about this point to reach what I think is a fair and reasonable outcome.

I say this because even if I were to accept Mr C has fallen victim to a scam. From the information Metro Bank have shared, I'm satisfied, that any checks Metro Bank ought to have completed on or after 31 January 2019 as part of its ongoing monitoring and due diligence wouldn't have resulted in the prevention of Mr C's loss. I say this for the following reasons:

- Simply because N held an account with another bank, doesn't prevent it from holding accounts elsewhere. In fact, it isn't uncommon for a company like N, who were publicly listed to hold multiple accounts. I've not been presented with any evidence that persuades me that the account which received Mr C's funds was as he alleges a *"cloned firm"*.
- The recipient account was established (for several years) and appears to have been operating without any concerns prior to the arrival of Mr C's funds.
- I can't fairly say Metro Bank did anything wrong when crediting Mr C's payments to the recipient account or in allowing the funds they represented to be paid away without taking any further steps. I say this because against the backdrop of how the account was being operated; its general pattern of use; and the prior account activity. The arrival and spending of Mr C's funds wasn't in any way unusual or suspicious.
- Ultimately, I've not seen anything that persuades me that there has been a failing by Metro Bank in the monitoring of its customer's account which has caused a loss to Mr C.

Finally, by the time Mr C's scam claim was received I'm satisfied his money had already been utilised. So, there wasn't much Metro Bank could do to prevent Mr C's loss in this way either. Crucially, Mr C's claim was received after the appointment of liquidators, so even if any funds had remained in the recipient account Metro Bank couldn't have removed and returned these, as it would have required the Insolvency Practitioners' authorisation. Therefore, it follows, that I can't say that Metro Bank didn't respond appropriately to notification of the alleged APP fraud, or that its actions meant that Mr C recovered less money than he otherwise would've done.

Both S and Metro Bank are signatories of the CRM Code. Mr C says ultimately, S has agreed that he's been the victim of a scam (in relation to this payment), and it has given him a 50% refund under the CRM Code. A complaint about S' actions is being considered by our service separately. To be clear I make no finding on this point, but even if I were to accept that the CRM Code applied here, it would not necessarily follow that Metro Bank would be liable to reimburse any money to Mr C under the terms of the CRM code. That would require there to have been material fault on the part of Metro Bank (within the context of my jurisdiction). And for the reasons I've explained above it can't be said that Metro Bank hasn't met the standards required of it under the CRM Code nor failed to meet its general responsibilities in relation to the monitoring of the recipient account. As I'm satisfied, that at the time, Metro Bank couldn't have done anything more to have prevented the loss of Mr C's money, and that it responded appropriately once notified of the alleged fraud. It follows that I don't consider it to be fair and reasonable, in this case, to ask Metro Bank to reimburse Mr C's remaining loss under the CRM Code or otherwise.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 March 2024.

Sonal Matharu
Ombudsman