

The complaint

Mr O complains that Metro Bank PLC won't reimburse him after he fell victim to a scam.

What happened

Both parties are aware of the circumstances surrounding this complaint, so I won't repeat them in full here. But briefly, both parties accept that in March 2023, Mr O made a payment of £3,905, believing he was purchasing two vehicles that he had won on an online auction site. Unfortunately, unbeknownst to Mr O at the time, the website was fraudulent, and it had no ownership of the vehicles it was purporting to sell – having taken the photos displayed on its site from other websites.

Prior to making the payment, Mr O made a call to Metro about an unrelated query. Towards the end of the call, he explained he was about to make a payment, but wanted to ensure the payee was legitimate first. Mr O was transferred to another department, but unfortunately the signal on the line was poor and the call was eventually terminated. Mr O then went on to make the payment without speaking further with Metro advisors.

When making the payment, Metro has stated that Mr O was asked to confirm the payment purpose and that, following this, he would have been provided with an on-screen warning. Metro has provided copies of the warnings that were in use at the time that Mr O made his payment, but has not been able to confirm which of these specifically Mr O would have seen.

When the cars Mr O had purchased didn't arrive, he realised he'd been the victim of a scam and contacted Metro to raise a fraud claim.

Metro investigated Mr O's claim and considered its obligations to provide him with a refund. Metro is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code, which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Metro says one or more of those exceptions applies in this case.

Metro has said Mr O didn't have a reasonable basis for believing he was making a legitimate payment. Metro also said Mr O ignored an 'effective warning' when making the payment to the fraudster.

Mr O remained unhappy and referred his complaint to our service. An investigator considered the complaint and upheld it in part. He didn't think Mr O had a reasonable basis for believing the payment he made was legitimate. However, he also didn't consider Metro had evidenced that it had provided an 'effective warning'. He therefore considered both parties should share liability, with Metro refunding Mr O 50% of the payment he made.

Mr O accepted the investigator's view, but Metro didn't provide a response. As Metro didn't reply to the investigator's view, 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.

As Mr O has already accepted the investigator's view to share 50% liability, I won't cover Mr O's basis for believing the payments were legitimate in too much detail, except to say I agree with the findings of the investigator on the basis that:

- I consider the price Mr O paid for the vehicles was too good to be true and ought to have caused concern for Mr O. While Mr O wasn't provided with specifics of the vehicles, like their condition and vehicle registration to get a more accurate price estimate, based on the models of the cars he was purchasing it appears he was paying only around 20% of even the cheapest prices I've seen this vehicle model advertised for elsewhere. I understand Mr O believed these cars had been seized by Police, and this was why they were cheaper, but I don't think this would still warrant this drop in price, and why the demand for vehicles sold in this way wouldn't be greater.
- Mr O was asked to make a payment to an individual's account, rather than a business account in the name of the site he believed he was purchasing from. I think this should also reasonably have been a red flag for Mr O as it's an unusual payment process for a business to use.
- Mr O appeared to have some concerns prior to making the payment, as he asked Metro if it was able to verify the payees' legitimacy. However, when the line between Mr O and Metro failed, Mr O made the payment without making further checks. I think this demonstrates that Mr O had concerns prior to making the payment, but chose to proceed in spite of this.

I therefore agree that there were elements of the scam that ought to have caused concern to Mr O and that he reasonably ought to have conducted further checks before proceeding with the payment. On this basis, I agree it's fair he shares 50% liability for the payment he made to the fraudster.

I've considered the warnings Metro has provided to decide whether I consider it provided an effective warning, prior to Mr O making the payment. Under the terms of the CRM Code, if relying on an exception of the Code to not reimburse a customer, it is the responsibility of the firm to evidence that the exception can be fairly applied. In this case, Metro has stated it provided an effective warning, but has failed to evidence what that warning was. I therefore don't think it's fair for Metro to rely on this exception. Based on the value of the payment Mr O was making, I think it's fair to say that the payment did pose a higher risk of fraud in comparison to Mr O's typical account spending, and therefore Metro ought to have provided an effective warning prior to the payment being made.

As Metro has failed to evidence it did provide an effective warning, I think Metro should also be partially liable for Mr O's losses, by reimbursing him 50% of the payment made.

I've considered whether I also think Metro should've done more, after the call Mr O had in part with Metro querying whether he was making a legitimate payment – but I don't think it was required to. Based on the information that was obtained in the early stages of this call, Mr O had advised he was purchasing a car via an online auction and wanted to confirm it was legitimate. There are a number of legitimate car auctions online, so I don't think this information Mr O provided was so concerning, that Metro should have blocked any further payments until it had spoken further with Mr O.

Once it was made aware of the scam, Metro contacted the beneficiary bank to see if any funds remained. Metro has been unable to confirm specific details of when it contacted the beneficiary bank, or when Mr O made contact to raise the claim. However, the beneficiary bank provider has confirmed that after Mr O made the payment, his funds were removed from the account within minutes. Therefore, any delay on Metro's part wouldn't have impacted the recovery of Mr O's funds.

For the reasons I've explained above, I think it's fair for Mr O and Metro to share liability of Mr O's losses equally, by Metro refunding 50% of the payment he made.

My final decision

My final decision is that I uphold Mr O's complaint in part. I require Metro to refund Mr O:

- 50% of the £3,905 payment Mr O made to the fraudster (totalling £1,952.50)
- Apply 8% simple interest, from the date Metro declined Mr O's claim under the CRM Code, to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 May 2024.

Kirsty Upton
Ombudsman