

The complaint

Mr G complains that Metro Bank PLC (Metro) won't refund money he lost in an impersonation scam.

What happened

What Mr G says:

Mr G says he went online to book two flight tickets to Jamaica – to travel on 6 January 2023. These were booked over the phone on 19 December 2022. Mr G paid £536.60 and £745.00 using his Metro Mastercard:

| Date | Payment | Amount |
|------------------|------------|------------------|
| 19 December 2022 | Mastercard | £536.60 |
| 21 December 2022 | Mastercard | £745.00 |
| | | £1,281.60 |

Mr G got a confirmation from the email address but didn't get the tickets - and communications with the 'booking agent' broke down. He re-booked the flights to Jamaica using his partner's credit card.

He submitted a chargeback claim to Metro. The bank placed a temporary credit for £1,281.60 to his account on 22 March 2023. But the merchant showed evidence that a flight was booked to Pakistan, and this took place on 31 December 2022; and it was boarded by two persons (not Mr G and his partner). The chargeback claim failed and Metro re-debited Mr G's account early in May 2023.

Mr G complained. He said he had been scammed by a fake website/ email and his money taken. The email from the flight agent proved to be a fake, or an impersonation. He said Metro should refund the money. Because of the money he lost, he was now having to pay it back and this meant he was in financial difficulty.

What Metro said:

Metro treated the claim as a chargeback claim. The bank provided a temporary credit while they investigated and looked at the evidence. But, as part of the process, they received evidence that the flights were boarded and therefore, the service / products bought by Mr G were provided by the merchant.

Metro asked for further evidence from Mr G to show he hadn't boarded the plane but didn't get anything more to support the claim. So, the chargeback claim failed and Metro re-debited Mr G's account.

Our investigation so far:

Mr G brought his complaint to us. Our investigator considered it was a scam, and not a chargeback claim. She said there wasn't any evidence that the company existed and said Metro should refund the amounts paid by Mr G.

Metro didn't respond to her view and so as part of our process, because of that, Mr G's complaint has come to me to consider afresh.

I issued a provisional decision which didn't uphold Mr G's complaint:

There are two aspects to Mr G's complaint:

- The chargeback claim.
- Claim for refund as a scam.

Chargeback claim:

The chargeback process is a voluntary one – customers are not guaranteed to get money refunded, and there are strict scheme rules in place by the card schemes (in this case - Mastercard) which govern chargebacks. In general terms, the chargeback can provide a refund where a customer has bought goods or a service which isn't provided or is not what was advertised. So – that isn't the case here, as the flights were taken.

This was an authorised payment made by Mr G and I can see that Metro did what they could (via the card scheme, Mastercard) to get a refund. In these cases, evidence is taken from the merchant who received the payment – the flight company. And they showed that two people boarded the flight bought by Mr G, albeit apparently on a different date and to a different country to what Mr G thought he bought.

So, given that evidence, I can see why Mastercard said a refund couldn't be made under chargeback rules – as far as they could see, the service or goods that Mr G bought had been provided.

Metro asked Mr G for more evidence that he didn't board the plane to Pakistan, but he didn't provide that, and so the bank closed the claim and re-debited Mr G's account.

Scam claim:

So, setting the failed chargeback claim aside, I went on to consider if this is a case where Metro should've intervened at the time and stopped the payments that Mr G was making – as they must do if they are considered to be unusual or so out of character as to be suspicious.

Under the guidance the banks must follow, if that were the case (and Metro didn't intervene and contact Mr G and/ or provide relevant warnings), then Metro can be asked to refund the money to Mr G. This is called 'Authorised Push Payments' (APP) rules and guidance and operate where a customer is tricked into making payments to someone who has no intention of providing the goods or services – a scammer.

So, looking at what happened under the APP guidance: it's not in question that Mr G authorised and consented to the payments in this case. So although he didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Metro should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Metro acted fairly and reasonably in its dealings with Mr G when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to 'faster payments' made to a UK beneficiary – and in this case, the payments were made by Mastercard.

The first consideration is whether the payments were unusual. I looked at Mr G's account. And, neither of the payments were particularly significant in value or were very different to others he had made. For example, there were other payments:

August 2022: £195; £386; £269.
June 2022: £280.

And also - there's a balance to be made: Metro has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In short, the value of the two payments was too low to expect Metro to look them.

On balance, in this case, I think Metro acted reasonably in processing the payments.

Therefore, in summary I can't hold Metro liable to refund the payments under the rules operating for APP scams.

I'm sorry to disappoint Mr G - I accept he's been the victim of a cruel scam, but I can't reasonably hold Metro reasonably responsible for his loss.

Responses to the provisional decision:

Neither Metro or Mr G made any comments.

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 neither Metro or Mr G made any comments; my final decision is unchanged from the provisional decision.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 June 2024.

Martin Lord
Ombudsman