

The complaint

Mrs S has complained that Metro Bank PLC won't refund the money she lost after falling victim to a scam.

What happened

In late 2023, Mrs S was cold called by a scammer from a UK number she didn't recognise. The scammer sounded like a family member of hers from Asia, so when she asked if that was them, they said they were. They said they were in police custody in North America, and that they needed £5,000 to be released. They put Mrs S in touch with someone claiming to be a lawyer. They persuaded Mrs S to withdraw £6,000 in cash from a Metro branch, then send it to an Asian account via a money transfer service. They asked for more money and declined to video call Mrs S, so she called the family member on their real number and realised she'd been scammed.

Metro didn't think it was liable for Mrs S's loss. It said the amount was under its internal limit for questioning cash withdrawals.

Our investigator looked into things and didn't uphold the complaint. Mrs S didn't agree, so the complaint's been passed to me to decide.

I sent Mrs S and Metro a provisional decision on 14 May 2024, to explain why I thought the complaint should be partially upheld. In that decision, I said:

There's no dispute that Mrs S authorised the withdrawal involved, even if she didn't intend for the money to then go to scammers. So under the Payment Services Regulations and the terms of her account, Mrs S is liable for the loss in the first instance. But the matter doesn't end there.

Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider that Metro should have fairly and reasonably:

- *Monitored accounts and payments to counter risks such as fraud and scams;*
- *Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;*
- *In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.*

Metro's terms and conditions also gave it rights to speak to customers about suspicious activity, and to refuse to process suspicious activity.

I've reviewed Mrs S's account usage in the months leading up to the scam, and I can't see any comparable activity. She did not normally make any branch cash withdrawals, and the occasional withdrawals she made at ATMs were far smaller. This withdrawal was a notably large amount, and far larger than Mrs S's previous spending. The withdrawal stands out as being remarkable here. And as Mrs S made it in person, Metro had a clear opportunity to speak to her about it. I find that Metro should have intervened in this particular case.

Metro stated that it does not question withdrawals below a certain level, which this particular withdrawal was below. To be clear, I do not oversee Metro's processes, and I am not instructing it to change its process. However, Metro cannot treat customers unfairly just because doing so would fulfil its process. It must be willing to depart from its processes when needed to treat a customer fairly. And here, I've found that it should have fairly and reasonably intervened, despite its process not to.

Had Metro intervened and asked reasonable questions when Mrs S made this withdrawal, I think it's most likely it could have identified what was happening and prevented it. This was a relatively prominent type of scam, and reasonable questioning could have revealed several causes for concern. For example, that Mrs S was cold called from an unknown number in the wrong country, that the caller had not identified themselves and had relied on Mrs S to suggest who they were, that Mrs S had been given nothing to verify what was really going on, that she had not yet contacted the family member directly or any related family to check whether they were really in trouble, and that an unverified lawyer in the wrong country had asked her to send a substantial sum in cash via a peer-to-peer money transfer service.

A simple suggestion from Metro to call her family member – or related members – on their real number would have uncovered the scam. Indeed, that's how Mrs S ended up uncovering the scam herself shortly after. I've seen nothing to suggest that Mrs S would not have been honest about why she was withdrawing this money – she just thought she was helping her family member, and the scammer hadn't told her to lie if questioned. And I've found no good reason why Mrs S would not have listened to Metro – it is a well-known name in banking, and she's said she already felt suspicious that the situation might be a scam.

Metro argued that it could not be held liable for the loss because it couldn't guarantee that the cash withdrawn was the same cash used to pay the scammer. But Mrs S sent the cash on via the money transfer service right afterwards. I can't see that Mrs S withdrew any similar amounts of cash before this. And Mrs S's testimony has been consistent, plausible, and reliable, and I've found no good reason to doubt her. I'm reasonably satisfied that this withdrawal funded the subsequent loss. Similarly, Metro argued that the loss happened with the money transfer service, not with it. However, as above, I'm reasonably satisfied that this withdrawal facilitated the loss, which happened directly afterwards. And identifying and explaining the scam to Mrs S, as well as preventing the withdrawal which funded it, would still have the effect of preventing the loss. So Metro can still be held liable for a loss which resulted from its failure to intervene – which is what I've found to have most likely been the case here.

So I think Metro should bear some liability for the loss involved here.

I've also thought carefully about Mrs S's role in what happened. While I understand that she thought a family member was in need, and that the scammer happened to sound similar to a family member, I think Mrs S ought to have had more concerns along the way about what she was being told and asked to do. For example, it doesn't look like she was sent anything which substantiated what she was being told, she admitted she thought it sounded like a scam at the time, it didn't make sense for her Asian family member to call her on a UK number while in North American custody, the payment recipient did not match the alleged lawyer or the family member and was based on the wrong country, the money transfer service displayed a warning about this sort of scam – albeit not especially prominently or in much detail, and Mrs S could have checked this all by calling the family member directly or another relative. So I think Mrs S should also bear some responsibility for the loss.

Lastly, I note that from the receipt Mrs S's representatives have sent, she only sent £5,000 to the scammers, not the full £6,000. So I have based the loss on that £5,000. If they wish for me to revise this, they will need to give us the receipt of her sending the other £1,000, before the deadline of this provisional decision.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 11 June 2024. I'll talk about the responses below.

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've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Metro agreed to pay the proposed redress set out in the provisional decision, for which I am grateful.

However, Mrs S's representatives sent in a receipt, showing that she did pay an additional £1,000 to the scammers by a money transfer service, just minutes after the £5,000 payment. So she did send the scammers the full £6,000 withdrawn in branch that day. They asked for the redress to be adjusted to reflect this, but otherwise accepted the provisional decision.

We forwarded this evidence to Metro on 22 May 2024, and asked if they'd adjust the redress to 50% of the full £6,000 loss plus simple interest. However, unfortunately Metro didn't respond before the deadline.

I find this receipt to be compelling evidence. And having given both parties the opportunity to respond, I've not received any other new evidence or arguments. So having reconsidered the case, I've not found any reason to depart from my provisional decision, other than to adjust the total loss from £5,000 to £6,000.

Putting things right

I direct Metro Bank PLC to:

- Refund 50% of the £6,000 loss, i.e. £3,000; and-

- Pay Mrs S simple interest on that loss, at the rate of 8% simple per year, payable from the date of the withdrawal to the date of settlement.

If Metro considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Mrs S how much tax it's taken off. It should also give Mrs S a tax deduction certificate if she asks for one. Mrs S may be able to reclaim the tax from HMRC if she doesn't normally pay tax.

My final decision

I uphold Mrs S's complaint in part, and direct Metro Bank PLC to put things right in the way I set out above.

If Mrs S accepts the final decision, Metro Bank PLC must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 9 July 2024.

Adam Charles
Ombudsman