

The complaint

Mrs H complains Metro Bank PLC won't refund the money she lost when she fell victim to a scam.

What happened

Mrs H was looking for work when she was contacted via a messaging app about a job opportunity. This involved completing tasks on a website/online platform. Mrs H thought she had to simulate sales to boost the algorithm for those products. And she was directed to send cryptocurrency to the platform in order to simulate the sales and "unlock" tasks. Unfortunately, this was actually a scam.

In April 2023, Mrs H used her Metro account to send payments totalling almost £60,000 to purchase cryptocurrency to send on to the scam. She also went on to send payments from accounts she held with other firms in May 2023.

When the scammers kept instructing her to pay further amounts in order to withdraw her earnings from the platform, Mrs H realised she had been scammed, and reported this to Metro. It considered her claim under the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) code, and agreed to refund 50% of her loss. It said it could have done more to alert her to the scam risk, but she shared some liability.

Unhappy with this response, Mrs H referred the matter to our service. She said paying back half the loss wasn't enough as Metro should have done more to protect her. Our investigator looked into things, but didn't uphold the complaint. He didn't think the CRM code applied, as the payments to the scammer were sent on in cryptocurrency which isn't covered under the code.

The investigator also found another firm spoke to Mrs H about a payment made to the scam, and Mrs H had claimed she was paying a friend to build a website for her, and had an invoice for this work (which she didn't). The investigator thought that suggested Mrs H had misled the account provider – and that she would have done the same if Metro had questioned her. He therefore wasn't persuaded further action by Metro would have prevented Mrs H's losses.

Mrs H has appealed the investigator's outcome, so her case has been passed to me to decide. In summary, she disputes that she misled the other firm – saying she thought the scammers would be building a website for her. She also says we can't assume what the outcome would have been if Metro had questioned her – which it failed to do.

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've decided not to uphold it. I'll explain why.

Banks have a contractual duty to make payments in compliance with customers' instructions. So, as Mrs H authorised these payments – albeit she was tricked into doing so by the scammers – the starting position is that she is liable.

Metro has refunded 50% of the value of the payments Mrs H is disputing. It has told us it did so in line with the principles of the CRM code. However, the investigator found the payments had been used to purchase cryptocurrency from “peer to peer” sellers – with the cryptocurrency purchases being loaded to a wallet Mrs H held before being sent on to the scam. This hasn't been disputed, and fits with what Mrs H told us on the case she referred to us about another firm she used during the scam.

I therefore agree with the investigator that the CRM code isn't a relevant consideration here. It only covers certain types of payments made, in pounds sterling, between UK accounts. It doesn't apply to payments made to another account the consumer holds, payments to fund genuine purchases, or payments sent on to the scam in other currencies. So where these payments were for genuine cryptocurrency purchases that were sent on to the scam from Mrs H's wallet, they fall outside the scope of the code.

I've considered if there are other reasons why Metro may hold liability for Mrs H's loss beyond the 50% refund it has already paid her. While it has a duty to execute authorised payment instructions without undue delay, I would also expect it to be on the look-out for the possibility of fraud or scams and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all firms, including Metro, do.

I have seen indications that Metro may have intervened at points – and that Mrs H may not have been forthcoming about what she was doing, or that she responded in a way that didn't clearly alert Metro to the fraud risk. For example it appears she told them one disputed payment was for a website design, and the process had started and the logo had been completed. And that another was for cloud storage for her business.

Regardless, Metro has accepted it may not have done enough to protect Mrs H when she made the payments. That is why it has partially refunded her. So what I need to consider is whether, if it had taken further, proportionate action, (some of) Mrs H's fraudulent loss would have been prevented. As that will determine whether it would be fair to direct Metro to refund more of her loss.

Mrs H says we can't assume what the outcome would have been if Metro had spoken to her (further) about the payments. But in order to make a finding on whether Metro holds further liability for her loss, I have to make a judgment on whether it's likely any mistakes it made contributed to her loss. Deciding to uphold the complaint would require me to conclude proportionate intervention *would* have uncovered the scam. So, in order to decide this case, I can't avoid making a judgment on what I think would have happened if Metro had intervened further.

In deciding what is likely to have happened, I do consider it relevant that another firm spoke to Mrs H about a payment made to the scam. As the timing and nature of the payments were similar, I think Mrs H's response to the other firm provides insight into how she was likely to have responded to Metro.

The payment which the other firm asked Mrs H about was a payment to a seller to purchase cryptocurrency. But when asked, she said she was paying a friend to build a website for her. I agree with the investigator this didn't make the nature of the scam risk clear – and that it also seems likely Mrs H gave this explanation to mislead the bank about what she was doing.

While Mrs H says she thought the scammers would be building a web page for her, she specifically told the firm she had received an invoice for the work. But when asked for this, she confirmed she didn't receive one (although she says she was expecting to). So, this statement wasn't accurate. I also struggle to reconcile the circumstances of the scam with Mrs H describing the individual she was paying as a friend, and saying she knew others who had used their services. I also haven't found any reference to Mrs H chasing up the invoice, or discussing the web page, in her written contact with the scammer.

Mrs H has also told us she followed the scammer's instructions on other occasions about what reason to give for payments to the scam – such as claiming she was sending money to friends, and/or for graphics. From what I have seen, this may have occurred when making the disputed payments with Metro. But even if that didn't occur, it still appears likely to me Mrs H would have been similarly guided by the scammers if Metro had asked her (more) about the payments. I'm therefore not persuaded Metro ought to have uncovered the scam at the time of the payments.

I also don't think Metro could have done more to recover Mrs H's loss. It appears to have attempted recovery but the recipient banks didn't return the funds. Given it appears these payments were sent to sellers who credited Mrs H's wallet with the cryptocurrency she was purchasing, and the loss was incurred when the funds were sent on from the wallet, I don't think Metro could have recovered the loss from the scammers.

I appreciate this will be disappointing for Mrs H, who has lost a lot of money to this scam. But in all the circumstances, I'm not persuaded the loss is attributable to Metro's failings. So I don't consider it fair to direct Metro to refund more of Mrs H's loss.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 22 August 2024.

Rachel Loughlin
Ombudsman