

The complaint

A company, which I'll refer to as M, complains that National Westminster Bank Plc, trading as Mettle, won't reimburse money it lost after it fell victim to a fraud.

Mr J, who is a Director of M, brings the complaint on the company's behalf.

What happened

As the circumstances of this complaint are well-known to both parties, I will summarise them briefly below.

Mr J says he set up M as an online business for buying and selling goods. Mr J sought goods to purchase at wholesale using a virtual assistant that was provided as part of his online selling account.

Mr J was put in touch with a seller who he communicated with via a well-known messaging platform. Mr J placed an order for several bulk items and was provided an invoice for these goods. Within the invoice, Mr J was instructed to make a payment of £1,945 to a third-party account.

On 26 February 2024, Mr J instructed Mettle to make a payment from M's account for £1. Mr J says that this was a test payment to ensure he'd paid the correct account. Once the seller had confirmed receipt of this payment, he then instructed Mettle to make a further payment from M's account for £1,945 on 27 February 2024.

Mr J says that he did receive a delivery in the post, which he suspected to be from the seller. But this contained items he'd not purchased—and these were for a far lesser value than the items he'd ordered.

Mr J attempted to contact the seller to let them know he'd not received the order he'd purchased and asked for a refund. But the seller ignored his messages and eventually blocked him on the messaging application where they were communicating. It was at this stage that Mr J believed M had been a victim of fraud and reported the matter to Mettle.

Mettle looked into M's complaint, but it decided it wasn't liable to reimburse the funds lost. It concluded that Mr J ought to have carried out more research on the business he was transacting with. It also pointed out that as goods had been received—albeit, the wrong ones—the matter was likely a civil dispute between both parties and not a fraud.

Mr J, on behalf of M, disagreed with the findings reached, so he brought his complaint to our service for an independent review. An Investigator considered the evidence and testimony given by both parties, but agreed the matter was more likely to be a civil dispute.

Mr J, on behalf of M, disagreed. So the matter has now been passed to me for a decision to be made.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Taking into account the above, Mettle is required to be on the lookout for suspicious payments from M's account that might indicate it is at risk of financial harm, such as fraud. And where it ought to have intervened in a specific payment—and that intervention likely would have prevented the loss—it would be liable, either fully or partially, to reimburse M its loss.

However, this liability only exists where I can be satisfied M has been the victim of fraud. Private civil disputes—such as where goods/services were provided but not satisfactory, or where a legitimate business has collapsed and therefore the services were not provided—are not required to be reimbursed.

In the circumstances of this complaint, Mettle has argued that this is a private civil dispute. And Mr J, on behalf of M, has argued that this is an instance of fraud. So I must first decide which I find to be more likely taking into account the evidence and testimony provided by both parties.

I must acknowledge that there are unusual features to this case that do add weight to Mr J's argument that this is a fraud. The business which he believed to be transacting with was dissolved, according to the Companies House register, two months prior to his dealing with it. And the account to which he transferred the money onto was also in the name of this business.

I have also considered the conduct of the individual Mr J was corresponding with. Once Mr J received the products, and realised they weren't what he ordered, he challenged the seller and asked for a refund. However, he never received a response to his messages despite numerous attempts.

While these are valid arguments to support Mr J's assertion that the third-party had intended to defraud M, I don't think this is enough in its own right when considering it against all of the available evidence.

I must accept that there are other reasonable explanations as to why the third-party acted in the way that they did, such as, but not limited to:

- The third-party continued to sell off their remaining stock after they dissolved their business.
- They continued to operate as a sole trader and used their existing business account to facilitate payments.
- The business was run poorly by the third-party.

And as I do not have the benefit of the third-party's testimony, I can't rule out these potential explanations.

What has persuaded me, on balance, that this is likely a civil dispute rather than a fraud is:

- The third-party didn't attempt to hide their identity despite being shown as dissolved

- on the register at the time.
- While M didn't receive the products purchased, it did receive a box of items assumed to be sent from the third-party. It would be uncharacteristic for a fraudster to spend money posting items to a victim of fraud where they have already achieved their intended goal – to steal the victim's money.
- Open resource research doesn't uncover any negative reviews about the business, suggesting there were no wider concerns about its legitimacy or operation.

I've also considered the evidence obtained from the receiving bank account provider, to see if there is anything about the setup or operation of the account that would support the assertion that there was an intent to defraud.

I cannot disclose any specific details about the third-party account due to data protection laws, but I can assure Mr J I have reviewed these in detail. And from the information I've seen, I cannot find any discrepancies that would suggest the business was operating illegitimately.

Overall, I'm not persuaded M has been the victim of a fraud here. I want to make it clear that I don't doubt there is an issue between M and the seller. And M has clearly been let down and not received what it should have done. But there is not enough evidence to support the conclusion that M has been the victim of fraud. However, should any evidence come to light in the future that does support an intent to defraud, Mr J will have an opportunity to present this to Mettle for re-evaluation.

Did Mettle do what it ought to have done when the claim was made?

Mettle contacted the receiving account provider as soon as Mr J made a claim of fraud to it, in an attempt to recover the funds he'd lost. But the receiving account provider responded to let Mettle know that the funds were removed from the account almost immediately after they'd entered it. So unfortunately, there were no funds to recover.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 27 January 2025.

Stephen Westlake
Ombudsman