

The complaint

Miss E complains that Marks & Spencer Financial Services Plc ('M&S') declined to refund her just under £80,000 which she says she lost as a result of a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, between September 2020 and April 2021 Miss E made a series of payments totalling just under £80,000 to six personal accounts from her M&S account. She had received a call and letter purporting to be from a company which I will call 'A' who offered assistance in recovering funds her son had lost with an investment between 2016-2019. A told her that they could recover her son's initial investment, which with the returns was then worth nearly £100,000. By 2021 she was told the investment was worth nearly £450,000. Miss E's son made some payments to A before she got involved. They said they needed her to send funds for a variety of reasons, but that they would be returned when the profits were released. She later became suspicious and realised she may have fallen victim to a scam.

Miss E contacted M&S who considered her case under the Lending Standard Board's Contingent Reimbursement Model ('CRM') Code. M&S and the receiving bank agreed they were both partially liable under the Code, so agreed to refund 66% of Miss E's loss. But it said that Miss E ought to bear some responsibility too as she did not undertake sufficient due diligence to ensure she was paying a legitimate company. Miss E also said that the scammer had taken a loan out in her name with M&S for £5,000. M&S said they thought she had taken it out as she had called them around a week later asking to extend the term of the loan. So they did not write this off or take further action with regard to the loan.

Miss E was unhappy with M&S' response and so she escalated her concerns to our service. One of our investigators looked into what had happened and did not recommend that M&S should refund anything further. They agreed with M&S that Miss E had not done enough to ensure that she was paying a legitimate company. They agreed that it was most likely that Miss E had taken out the loan. Miss E did not agree. In summary, Miss E said through her representatives that she had done enough to check whether she was paying a genuine company and so did have a reasonable basis for belief. They also said Miss E was vulnerable and could not protect herself from the scam due to a recent bereavement. This should have meant she was refunded in full under the Code. As no agreement could be reached, the case was passed to me to decide.

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 the 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 be good industry practice at the time.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of their customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse them, even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I have considered whether M&S should reimburse more of the money Miss E lost in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect Miss E from the possibility of financial harm from fraud.

There is no dispute here that Miss E was tricked into making the payments. But this is not enough, in and of itself, for Miss E to receive a full refund of the money under the CRM Code. The Code places a level of care on Miss E too.

The CRM Code

M&S was a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which required firms to reimburse customers who had been the victims of APP scams like this in all but a limited number of circumstances. M&S say exceptions to reimbursement apply in this case. It says that Miss E didn't have a reasonable basis for believing the company she transacted with was legitimate or was providing a legitimate service.

It is for M&S to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.

Those exceptions are noted at R2(1) of the Code:

- The customer ignored an effective warning in relation to the payment being made;
- The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

**There are further exceptions within the CRM Code, but they do not apply in this case.*

Vulnerability under the CRM Code

The CRM Code says:

"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis. In these circumstances, the Customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the Firm had previously identified the Customer as vulnerable."

So, if Miss E was so vulnerable that she could not have protected herself from falling victim to this APP scam at the time and to the extent of the impact they suffered, it would be fair and reasonable for her to be refunded in full regardless of whether she had a reasonable basis for belief that she was dealing with a legitimate business. So, it is this question I will turn my attention to first.

Was Miss E so vulnerable at the time of the transactions that she was unable to protect herself from this scam?

I was sorry to read of the circumstances Miss E was in at the time of the scam. I won't go into them in depth, but Miss E had recently lost her mother who passed in 2020 whom she relied on for advice and in financial matters. I understand that this kind of bereavement must have had a profound impact on Miss E, and I would like to pass on my condolences for her loss. For this to be added to by becoming the victim of a cruel and callous fraudster can only have made matters worse, at an already difficult time. So, I would like to pass on my sympathies for everything that has happened to Miss E.

The Code does not have a set definition of vulnerability and recognises that it is dynamic and can include things like the personal circumstances of the customer; and the timing and nature of the scam itself. I've reviewed all of the information Miss E's representatives provided to our service with regard to her vulnerability. As well as her bereavement, her representatives have also cited her age. They have also mentioned a lack of capability to effectively manage her finances, and her inexperience with technology and using the online payment services available to her. I've thought very carefully about this, and whilst I do appreciate the difficulties Miss E was going through at the time, I do not think that on balance she was unable to protect herself from this particular scam.

Whilst someone's age can make them more vulnerable to scams – this is not in and of itself enough for me to assume vulnerability. It is clear that Miss E has a good degree of computer and internet literacy, or the support of those who did. I've seen that she used email systems to communicate and share things with her son, as well as to speak to the scammers. The way the scam unfolded was about getting money back for her son's investment. There was no imminent danger or pressing need that meant she could not take time to consider her options in this case. During this time, she was able to research the company and find them online. She understands how to use online review sites to find information about companies – as she did in this case. There is also evidence that she was able to speak with her banks – as she did about the term of the loan in this case. So, whilst I am sure that her mother's advice is keenly missed, I do not think that Miss E was so vulnerable that she did not have the tools to protect herself from this scam such that she should be reimbursed in full under the Code.

Did Miss E ignore an effective warning in relation to the payment being made?

M&S have accepted some liability and have not indicated that they were relying on this exception to reimbursement here. So, the crux of what should be refunded under the provisions of the CRM Code depends on whether they fairly relied on the exception that Miss E did not have a reasonable basis for belief.

Did Miss E have a reasonable basis for believing that she was dealing with a legitimate company?

Having considered everything, I think that it was fair and reasonable that M&S relied on this exception to a full refund under the code. I say this because:

- Miss E's son originally sent £25,000 as towards what he believed to be a legitimate investment. He then believed he had lost it. Miss E's son then sent around £98,000 into what he believed was the escrow account to try to get the money released, which they said would be refunded. They were told by A that they had been unable to release his funds due to a 'plethora of issues'. They were asking for a final payment to conduct checks and if no issues were discovered, they would be reimbursed the fee with the escrow balance.

- It is unclear exactly what they thought the investment pot was worth at the point Miss E started and completed the payments – but her son had already paid significantly more than the pot would likely have been worth when Miss E started to make payments. This ought to have given Miss E cause for concern.
- Miss E paid money from her M&S account to six different individual's accounts throughout the duration of this scam. This again ought to have provided a cause for concern here. The company were purporting to be a legitimate business, so it would seem unusual to not only be asked to pay one individual's account, but ever changing individuals accounts certainly would not be in-keeping with a legitimate business enterprise of this type. The explanation she was given was that only £85,000 can be covered by banks against losses – but this does not really provide a suitably clear explanation for why a genuine business was operating in this manner.
- Miss E explained that the scammers told her that they were not regulated in the UK, and only they could deal with the original failed investment as this had been another unregulated company. She says neither she or her son understood what this meant. I think it would have been prudent to seek advice or look this up at the time, before committing so much money to the company.
- The company told her to lie to her bank about the purpose of her payments – to tell them that it was for building work as the money had already been taxed and it would have been taxed again. I do think it ought to have been concerning for Miss E. It would seem unusual for a legitimate company to encourage her to lie to her own bank, as a manner of not paying taxes that may be owed.

Considering all of this, I do think that Miss E ought to bear some responsibility for her losses, and it was fair that M&S relied on this exception to the Code. As such, I do not think it would be fair and reasonable for them to refund any more of what Miss E lost to the scammers.

Did M&S treat Miss E fairly with regard to the £5,000 loan?

Miss E said that she did not take out the £5,000 loan with M&S. This was taken out in her name in March 2020. In the same month, M&S have been able to provide call recordings in which Miss E gets in touch to change the terms of her loan. She also appears to have called them back to chase up the loan funds. Having listened to the calls and compared them with the call reporting the fraud to M&S, I think that it is most likely that it is the same person – Miss E. And so I think it is more likely than not that Miss E did take out the loan, perhaps with the encouragement of the scammers. But this would still mean it was fair and reasonable for M&S to hold Miss E responsible for the loan.

My final decision

I do not uphold this complaint and so I do not require Marks & Spencer Financial Services Plc to do anything further.

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

Katherine Jones
Ombudsman