

The complaint

Mr and Mrs M are unhappy Metro Bank PLC (“Metro Bank”) won’t reimburse them for a transfer of £10,000 Mr M made from their current account, after he fell victim to a scam.

What happened

Mr and Mrs M, who were in their 70s at the time, held a savings account and a current account with Metro Bank. Mr M is a carer for Mrs M. And Mr and Mrs M were in receipt of their pension and DWP benefits. On 19 March 2019, Mr M received a call on his home phone while he was on the computer. Mr M says the caller said he was phoning from British Telecom (“BT”) and was called ‘John’. This call was sadly a scam call.

The scammer told Mr M a fraudster was currently using his computer and had accessed it to carry out fraudulent transactions from Mr M’s bank account.

Mr M initially queried with the scammer why someone from BT was calling, as his internet provider was with a different provider. But the scammer convinced Mr M that BT owned all the phone and broadband lines. Mr M accepted this. The scammer then convinced Mr M into allowing him remote access to his computer.

Mr M says the scammer showed him fictional evidence of various attempted transactions of payments abroad. The scammer told Mr M they had managed to stop these payments and asked if Mr M would be willing to help catch the fraudster, explaining that this would involve transferring money to the fraudster – enabling the fraudster to be traced. Mr M says he agreed to help providing it wouldn’t cost him anything.

The scammer showed Mr M a copy of Mr and Mrs M’s current account statement which showed a balance of £1,328.97, and a copy of their savings account statement which had a balance of £8,859.74. The scammer said he had just put £10,000 into Mr and Mrs M’s current account and showed Mr M a statement to reflect this.

In fact, what had happened was the scammer had transferred £8,800 from Mr and Mrs M’s savings account into their current account – so the balance in Mr and Mrs M’s current account hadn’t increased by £10,000 but by the £8,800. Mr M didn’t notice this at the time - as his account balance was over £10,000, he believed that the scammer had paid £10,000 into his account.

This left Mr and Mrs M with £128.97 in their current account and £59.74 in their savings account.

The scammer then asked Mr M to transfer £10,000 to an account and provided the details of the account and the payee, who I will refer to as “VB”.

As Mr M was satisfied that he was helping catch a fraudster and wouldn't be using his money to do so, he went ahead and set up a new payee using his online banking account. Metro Bank sent Mr M a text to confirm that he had set up a new payee and Mr M went on to transfer £10,000 to VB at 10:18am.

The scammer told Mr M not to answer any calls from the bank – as this would in fact be the fraudster who had been hacking Mr M's computer. The scammer also told Mr M to leave his computer on and wait for further instructions.

A little later, the scammer told Mr M to call Metro Bank to 'authorise' the payment. It's my understanding this is because the scammer thought the payment hadn't been processed by Metro Bank because he hadn't yet received it. The scammer told Mr M, that if questioned, he should tell the bank that he was paying for a friend's wife's hospital treatment.

Mr M called Metro Bank at 11:01am and asked them to authorise a payment of £10,000. The adviser clarified if Mr M wanted to make a payment for £10,000 to which Mr M said "yes". The adviser asked if it was going to a new beneficiary or an existing beneficiary with Mr M saying: *"it's going to a person, my friend that needs help. He is needing hospital care. So he needs £10,000 for his wife's care"*. After Metro Bank confirmed security details with Mr M, it confirmed that the £10,000 payment had already been made. Mr M asked again if the payment had been made, with the adviser confirming it had.

A short time later, Mr M says the scammer called him again to say the payment hadn't been received and asked Mr M to call Metro Bank again to check the status of it. Mr M did so and the call handler explained that payments can take up to two hours and to wait a bit longer.

At 12:36pm, Mr M called Metro Bank again. Mr M said that he had looked at his account and it seemed to have been emptied. After completing security, the adviser told Mr M about the recent transactions on his account so the £8,800 transfer from Mr and Mrs M's savings account into their current account and then the £10,000 transfer from Mr and Mrs M's current account to VB. As Mr M hadn't known £8,800 had been transferred from his and Mrs M's savings account he asked if £10,000 had been deposited into their current account before that. The adviser explained there wasn't any record of any incoming payments for £10,000.

Following a couple more calls Mr M realised he'd been the victim of a scam, Mr M called Metro Bank at 13:58pm to report what had happened.

Metro Bank contacted the receiving bank to report the scam but unfortunately most of the funds had been removed from the account with only £10.20 being recovered and returned to Mr and Mrs M.

Mr and Mrs M, unhappy with what had happened and Metro Bank's response to the matter, referred their complaint to our service.

In response to the case being with our service Metro Bank investigated Mr and Mrs M's complaint. It said as Mr M had 'authorised' the payment it didn't consider it was liable for any financial loss incurred.

Metro Bank also said as Mr M was told not to answer any calls from the bank at the time of the scam it wouldn't have been able to contact him and prevent the loss.

One of our investigators looked into Mr and Mrs M's complaint and thought it should be upheld. Broadly summarised, she considered while Mr M had 'authorised' the payment (albeit while being tricked); Metro Bank should, as a matter of good practice, be undertaking transaction monitoring seeking to avert fraudulent activity.

In reaching her opinion our investigator thought the British Standards Institute's ("BSI") *'Protecting customers from financial harm as a result of fraud or financial abuse – Code of practice'* published in October 2017 was relevant. This was because the BSI Code of practice set out some key principles for businesses to work to in the detection of fraud and financial abuse.

The investigator considered the transaction was out of character and unusual for Mr and Mrs M and therefore should've alerted Metro Bank to the possibility that they were at risk of financial harm. She considered Metro Bank didn't contact Mr M to challenge the purpose of the payment at the time he was attempting to make the transaction, other than the text it had sent him when he was setting up the new payee. She didn't think a text was sufficient, given all this confirmed was that Mr M had set this payee up himself - it didn't seek to uncover whether Mr and Mrs M had been duped into making the payment.

She thought had Metro Bank looked into things at the point Mr M attempted to pay VB £10,000, then it was more likely than not the scam would've unravelled, and the loss would've been prevented.

She also thought that while Mr M had been told not to answer any calls from Metro Bank, if Metro Bank had been unable to speak to Mr M before processing the payment, it ought not to have processed the payment until it had been able to speak to him. She thought this meant Mr M would have contacted Metro at some point anyway, and when he'd done so this would have allowed Metro Bank to ask Mr M questions about the transaction before processing it. Had this happened our investigator considered it was likely that the scam would have been revealed, meaning the transaction wouldn't have gone ahead and Mr M wouldn't have lost the funds.

Our investigator was of the opinion that Metro Bank should refund the amount Mr and Mrs M lost as a result as a result of the scam and pay them £150 to acknowledge the upset caused.

Metro Bank disagreed with the investigator's opinion. Broadly summarised Metro Bank considered:

- it wasn't reasonable to apply the BSI Code of practice as only a small number of institutions built the practice and those that did not, had no involvement whatsoever as to whether they are in agreement or alignment with what constitutes 'best practice'.
- it adheres to the voluntary 'Contingent Reimbursement Model Code for Authorised Push Payment Scams ("the CRM code") but couldn't see that this has been considered within the investigator's opinion.
- that it recognises there needs to be a balance between servicing a customer's instruction from a customer experience perspective, whilst also protecting the customer from a risk perspective, but says its risk appetite is in line with its regulatory obligations.
- its colleagues are trained to have open conversations to obtain as much information as possible about the transaction which a colleague would then use to consider whether there should be wider concerns. Metro Bank says it maintains systems to flag suspect payments in line with its regulatory duties.
- there was no statutory underpinning for the rationale detailed within the investigator's opinion, including the investigator's views of Metro Bank's payment screening requirements – which are dictated by its own risk appetite, as required by the financial regulator the Financial Conduct Authority ("FCA") and Prudential Regulation Authority ("PRA").

- the opinion of the investigator and our service appear to be attempting to take on the role of the regulator (the FCA) in dictating what payments should and should not have flagged as suspicious.
- as an impartial service, we should be considering and fairly placing weight on what the actual obligations of a bank are and what due diligence – or prerequisite level of care – the customer undertook to prevent themselves falling victim to a scam.
- due diligence was completed, however the investigator's opinion on this was subjective. Metro Bank argue that it doesn't find the transfer unusual given Mr M said a friend's wife needed urgent hospital treatment. And it further explained that it was uncertain what the repercussions would then be, had it restricted the payment, if it was genuinely needed to cover someone's urgent hospital treatment.

As Metro Bank disagreed, and as the matter hasn't been resolved, it's been passed to me for a decision.

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 reached the same conclusions as the investigator and broadly for the same reasons.

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.

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 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:

- The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty').
- Regulated firms like Metro Bank are also required to conduct their '*business with due skill, care and diligence*' (FCA Principle for Businesses 2) and to '*pay due regard to the interests of its customers*' (Principle 6).

And as a matter of good industry practice at the time, I consider firms should also have taken proactive steps to:

- identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something recognised by the FCA in recent years and by the British Bankers Association's ("BBA") February 2016 report '*improving outcomes for customers in vulnerable circumstances*');

- look to identify and help prevent transactions — particularly unusual or out of character transactions — that could involve fraud or be the result of a scam (something also recognised by the British Standards Institute's October 2017 *'Protecting customers from financial harm as a result of fraud or financial abuse – Code of practice'*, which a number of banks and trade associations were involved in the development of); and,
- in relation to branch transactions – follow the Banking Protocol when available.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

This is particularly so, in light of the environment created by the increase in sophisticated fraud and scams in recent years – which banks are generally more familiar with than the average customer.

Metro Bank argues that the BSI Code of practice isn't legislation or a regulation and only a few firms were involved in its development. So Metro Bank considers that it was unfair for the investigator to consider the BSI Code of practice is relevant when determining Mr M's complaint.

The British Standards Institute's *'Protecting customers from financial harm as a result of fraud or financial abuse – Code of practice'* (the BSI Code) gives recommendations to organisations for protecting customers from financial harm that might occur as a result of fraud or financial abuse. It also gives guidance on how to recognise customers who might be at risk, how to assess the potential risks to the individual and how to take the necessary actions to prevent or minimise financial harm.

I recognise that Metro Bank was not itself a signatory to the BSI Code. But I consider the BSI Code was in any event a reasonable articulation of what I consider to have already been good industry practice at the time Mr M made the payment and that it sets out the kinds of practical steps businesses might fairly and reasonably take. I don't think the BSI Code suggested wholly new practices.

Metro Bank also argue that it adheres to the voluntary CRM code and that this wasn't considered within the investigator's opinion.

This is because the CRM code states:

“Scope

DS2(1) This Code does not apply to:

(c) any payments completed before the coming into force of this Code.”

As the CRM code was introduced in May 2019, after Mr M's transfer in March 2019, and the CRM code isn't retrospective – it isn't relevant in this complaint.

In this case, I need to decide whether Metro Bank acted fairly and reasonably in its dealings with Mr and Mrs M when Mr M made a payment of £10,000 to a new payee, or whether it should have done more than it did.

Did Metro Bank act fairly and reasonably in this case?

As I've explained, I consider that as a matter of good practice Metro Bank should have been on the lookout for unusual and out of character transactions.

Mr M initially made the request to transfer £10,000 through online banking. And this happened after the scammer, while having access to Mr M's computer, had transferred nearly all of Mr and Mrs M's savings into Mr and Mrs M's current account. In doing so, deceiving Mr M into thinking the funds placed into his current account were from the scammer and were not Mr M's.

I've thought carefully about whether the payment made to the scammer was out of character and unusual for Mr and Mrs M. Having looked at Mr and Mrs M account usage from January 2018, I'm satisfied it was. I say this because:

- The current account was typically used for everyday spending; card payments and direct debits didn't exceed £400, and the largest cash withdrawal was £500. While there were two larger standing orders, these were regular each month – with one going to their savings account and the other being for rent – and they were both significantly less in value than the £10,000 payment to the scammer.
- The transfer of £8,800 from Mr and Mrs M's savings account to their current account, and then the subsequent payment of £10,000 to VB almost cleared both of Mr and Mrs M's accounts leaving them with very little to live off on a limited income – which was their pension and the benefits they received.
- Mr and Mrs M hadn't used their online banking to make a faster payment out of their account (based on the online banking audit from February 2017). So a £10,000 transfer to a new payee was a sudden change to the way Mr and Mrs M operated their account.

Given I'm persuaded this payment was unusual and out of character, I think Metro Bank ought fairly and reasonably, and as a matter of good practice, to have made enquiries about the purpose of the payment before it processed it.

I can't see Metro Bank carried out any additional checks with Mr M at the time he attempted to make the £10,000 payment, other than to send him a code via text message to confirm a new payee had been set up by Mr M prior to the transfer. But Metro Bank has said it has "*fraud-detection systems*" in place to help it "*identify any unusual transactions*", and the transaction Mr M requested didn't flag as suspicious.

How Metro Bank chooses to configure its fraud detection systems is for it to decide. But the question I need to answer here is: based on all the circumstances of this complaint, whether Metro Bank ought fairly and reasonably to have done more in Mr and Mrs M's case – whether its fraud prevention systems detected the payment or not. And taking all of the above into account, I think Metro Bank should reasonably have taken additional steps and made additional checks before processing the payment.

I've thought carefully about what would've happened had Metro made enquiries with Mr and Mrs M before processing the payment. Of course I can't know for sure what would've happened, so I've thought about what is more likely than not to have been the case.

It seems to me the scammer had considered Mr M might be contacted by Metro Bank following his request to transfer £10,000 to a new payee as he instructed Mr M not to answer any calls from his bank. And then later, when the payment didn't credit the scammer's account as quickly as he'd have liked, the scammer provided Mr M with a cover story – 'a friend's wife needing hospital treatment' - before asking him to call Metro Bank to 'authorise' the payment. I've thought about these facts carefully in deciding what is more likely than not to have happened if Metro Bank had made enquiries about Mr M's payment request.

Having done so, I'm persuaded that had Mr M not answered a call from Metro bank following his attempt to make the payment then Metro ought not to have processed it until it had spoken with Mr M and satisfied itself he wasn't likely to be at risk of financial harm. And had Mr M either answered the call, or proactively called Metro in order for the payment to be released to the fraudster, I think it's more likely than not the scammer would've provided him with the same cover story he used later on.

Metro Bank says all its colleagues are trained to have open conversations to obtain as much information as possible about a transaction which the colleague then uses to consider whether there should be wider concerns. So I would have expected it to ask further questions in response to Mr M's likely given reason for the payment – rather than just accept it at face value.

I say this because while I accept the reason Mr M was more likely than not to have given for the payment wasn't *completely* implausible (on the face of things), I'm satisfied that Metro Bank ought to have recognised there was a possibly Mr M might've been providing a cover story, and ought to have had some concern Mr M might be at risk of financial harm – particularly as in this case, Mr M would've been suggesting they were using almost all of their money to fund a friend's wife's hospital treatment.

It's widely accepted that a common feature of scam related transactions is that customers are persuaded not to tell the truth. Banks recognise that, and in my view should, as a matter of good practice, take that into account when deciding whether to take further steps before accepting a customer's instruction to process a payment.

In this case, Mr M was making an unusual and out of character payment when he requested the £10,000 payment, and that payment would mean Mr M would've spent almost all of his and Mrs M's money on hospital treatment for someone outside his close family, so for the reasons I have given, I think Metro Bank ought fairly and reasonably to have asked further questions in order to satisfy themselves Mr and Mrs M weren't likely to be at risk of financial harm in all the circumstances of the transaction.

Metro Bank argues that it doesn't believe interrogating Mr M, who had advised that the payment was needed for someone's hospital care, would have been deemed appropriate. And it goes on to say that there would be repercussions if it had restricted the payment had it been genuinely needed to cover someone's urgent hospital treatment.

There is obviously a balance to strike, and I'm not suggesting that Mr M should have been subjected to an interrogation by the call handler. But Metro Bank ought fairly and reasonably to have satisfied itself that Mr M wasn't likely to be about to fall victim to a scam, and I'm persuaded it could've done this by asking a few questions relating to the purpose of the payment.

Metro bank could have, for example, asked Mr M which hospital the treatment was due to take place in, what his friend's wife's name was and what was wrong with her. Metro Bank could have brought it to Mr M's attention that he was using almost all his money to fund this treatment.

I think it's unlikely that Mr M would have been able to give convincing answers to these questions and I'm persuaded the 'story' Mr M had been given would've begun to unravel. I say this because, while the scammer told Mr M to use a specific reason for the transfer, based on what Mr M has told us, I'm not persuaded this cover story was particularly detailed or, in the circumstances of this case, that it would have stood up to more than the most basic level of enquiry. And of course, had Metro alerted Mr M to the fact he was using almost all of his money to fund the treatment Mr M would've very quickly realised something wasn't quite right.

Had the story unravelled in the way I think it likely would've, I believe the scam would more likely than not have come to light. Ultimately I am persuaded Mr M wouldn't have gone on to make the payment, and wouldn't have lost out as a result of the scam had Metro Bank taken the time to ask sufficient questions about the payment before processing it as I think it ought fairly and reasonably to have done in all the circumstances, given the indicators that Mr and Mrs M might be at risk.

In reaching my conclusions about what is fair and reasonable in this case, I have taken into account everything Metro Bank has said, including its view that Mr and Mrs M ought to have taken steps to prevent themselves falling victim to a scam. But I don't think it would be fair to say Mr and Mrs M acted unreasonably here.

I appreciate that in hindsight it might be difficult, in particular for those who haven't been affected by this type of crime or who have greater knowledge of fraud and scams as banks do, to understand why Mr M fell for the scam. But as I've already explained, I'm satisfied Mr M was under the spell of a scammer. He was in my opinion carefully manipulated and coached into thinking he was helping to catch a fraudster. Because of this, I think it's understandable that Mr M acted in the way that he did. And I don't think Mr M's actions, whilst he was under the spell of a scam, means that Metro Bank shouldn't have done more, or that he shouldn't now be compensated.

Overall, Mr M's transfer of £10,000 was an unusual transaction and was out of character. Metro Bank could have done more to prevent the transfer from happening. There was enough going on to suggest that Mr M may well have been in the process of being scammed and Metro Bank ought fairly and reasonably to have picked up on this. Had it done so, and had Metro asked some questions to challenge the purpose of the payment, I'm persuaded it is more likely than not the scam would have come to light, and Mr and Mrs M wouldn't have lost out on the funds Mr M transferred.

The impact on Mr and Mrs M

Mr M was 72 years old at the time of the scam. He was also a full-time carer for Mrs M, who suffers with advanced dementia. Being a victim of a scam had a big impact on Mr and Mrs M. The scam has left them thinking they had lost everything. It is clear from listening to the calls our investigator had with Mr M that it still impacts him to this day.

The bulk of that impact follows directly from the actions of the scammer. But I consider that Metro Bank could and ought to have prevented Mr M from losing money as a result of the scam, for the reasons I've explained. By stopping the financial losses Mr and Mrs M incurred, it is my finding that Metro Bank could have reduced the overall impact on Mr and Mrs M.

Considering everything, I agree with our investigator's recommendation that Metro Bank should pay Mr and Mrs M £150 in compensation for the distress and inconvenience they experienced as a result of its actions.

Putting things right

For the reasons given above, I uphold Mr and Mrs M's complaint against Metro Bank PLC. I do not think it was fair and reasonable for Metro Bank PLC not to refund the amount Mr and Mrs M lost though becoming a victim of a scam.

I now direct Metro Bank PLC to:

- Refund Mr and Mrs M for the total of £10,000 they lost; less any sums already refunded (£10.20).
- On the £8,800 lost from the savings account, pay the interest rate of the savings account at the time – as this was where these funds originated. This should be paid from the date of the loss to the date of the settlement. [†]
- Pay simple interest on the remaining £1,200 (less £10.20) paid to the scammer from Mr and Mrs M's current account, from the date of the loss to the date of the settlement. The interest rate should be 8% a year. ^{††}
- Pay £150 compensation to Mr and Mrs M for the material distress and inconvenience they experienced.

[†] If Metro Bank is legally required to deduct tax from the savings interest, it should send Mr and Mrs M a tax deduction certificate so they can claim it back from HM Revenue & Customs if appropriate.

^{††} HM Revenue & Customs requires Metro Bank to take off tax from this interest. Metro Bank must give Mr and Mrs M a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons given above, my final decision is that I uphold this complaint.

Metro Bank PLC should calculate and pay compensation as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 8 December 2020.

Matthew Horner
Ombudsman