

complaint

Mr D is unhappy with Metro Bank PLC's decision not to refund a transfer of £9,550 he made when falling victim to a scam.

background

In 2015, Mr D opened an account for the proceeds of a personal injury settlement to be paid into. He explains he thought it had been set up as a trustee account requiring one of his parents to counter sign before any transactions over £500 could be made. Mr D has said that concerns around how the account has been set up will be addressed with the bank separately.

In late November 2018, Mr D saw a camper van advertised on an online auction website. He contacted the seller to discuss the vehicle's specification. The seller confirmed the vehicle had everything Mr D was looking for and provided Mr D with further photographs of it. Mr D decided to go ahead and agreed a price to buy it now. He didn't see the vehicle beforehand.

The seller told Mr D the payment would be held by the auction website for five days to give him the opportunity to test drive it before any money was released. Mr D was told the camper van would be delivered to his house at 10am on 24 November 2018. Having agreed a deal, Mr D was then sent an invoice to pay in full. He explains that he spoke to an advisor on an online chat facility who provided him with the account details to transfer the money to. Unfortunately, Mr D was dealing with a scammer.

On 22 November 2018, Mr D went into his local Metro Bank branch to make the payment using some of the funds in his trust account. He explains that his mum was on her way to the branch to provide her signature, but she arrived late, and after the payment had already been made.

Sadly, the camper van did not arrive as arranged. Mr D realised he'd been the victim of a scam after speaking to the auction website. Mr D contacted Metro Bank around lunchtime on 24 November 2018 to report the scam. Metro Bank tried to recover the funds but none of the money sent remained.

Mr D complained to Metro Bank. He said the bank's employee should not have sent the funds with just his signature for the transaction. He also said he wasn't warned about this type of scam at the time the payment was made, and that the bank's employee didn't ask him any questions about what it was for.

Metro investigated Mr D's concerns but didn't agree. In summary, it said Mr D was the only authorised signatory on the account and there had been large payments made using just his signature as authority previously. It felt the branch employee that served Mr D had correctly followed the bank's procedures by sending the payment to the details he had provided. It didn't think there was any way to know the details he'd provided would lead to him becoming a victim of fraud.

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

When referring its complaint papers to us, Metro said it was unreasonable to expect it to cover the loss. In summary it added:

- The cashier followed Mr D's instructions and there wasn't anything to indicate the transaction was suspicious
- Making a payment for a vehicle isn't a suspicious activity
- Mr D would have needed to pay for the camper van first before receiving it and there was no reason for him to have known the seller personally given how they found each other
- There was no reason for the cashier to have questioned the auction website's practices and Mr D should have checked how it operated by doing his own research. It did not think it was the role of the cashier to know the processes and systems of other institutions.

Our investigator looked into Mr D's complaint and thought it should be upheld. He considered that Metro should have done more to make sure Mr D wasn't at risk of suffering financial harm.

In reaching his opinion, our investigator thought that 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 D and therefore should've alerted Metro Bank to the possibility that he was at risk of financial harm. He said the evidence he'd been provided with suggested Mr D wasn't asked any questions whilst he was in the branch and no warnings about scams were provided to him. He thought Metro Bank had missed an opportunity to look into things before Mr D sent any money and if had done so, it was more likely than not the scam would've unravelled and the loss prevented.

He said Metro should refund the amount Mr D lost as a result of the scam and pay him £200 to acknowledge the upset he'd been caused.

Metro didn't agree. In summary, it said:

- The Banking Protocol only applies when a bank is already suspicious of a transaction and is not a guide on what the industry should consider suspicious
- Metro Bank do not consider this transfer to be suspicious and the branch colleague was not concerned about it
- The Financial Ombudsman Service is setting standards that go beyond what legislation and regulation require
- There is no alignment or involvement across the industry as to what constitutes good industry practice
- It is not possible for a bank to always be able to detect unusual behaviour in every case
- There was no requirement for Metro Bank to provide Mr D an explicit scam warning at the time he made the transfer and it is unfair and unreasonable to expect Metro Bank to have done so
- Mr D should have carried out his own due diligence into the payment he was making, especially given its value

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

my findings

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.

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 Payment Services Regulations and 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 customer's in vulnerable circumstances*' and 2010 publication '*Safeguarding vulnerable customers. Banking best practice: advice for bank staff*');
- 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 BSI 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 Financial Ombudsman Service is setting standards that go beyond what legislation and regulation require. It has pointed out that it had no involvement in the building of the BSI Code of Practice. So Metro Bank considers that it was unfair for the investigator to consider the BSI Code of practice as relevant when determining Mr D's complaint.

The BSI Code of practice 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 of practice. But I consider the BSI Code of practice was in any event a reasonable articulation of what I consider to have already been good industry practice at the time Mr D 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 of Practice suggested wholly new practices.

Of particular relevance in this complaint is the Banking Protocol and the BBA publication 'Safeguarding vulnerable customers. Banking best practice: advice for bank staff' (which for simplicity I will refer to as the BBA best practice note), so I have set out more information about them below.

The Banking Protocol is a multi-agency initiative between the Police, financial sector organisations (including banks, building societies and the post office), and Trading Standards 'aimed at identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds.'

In broad terms, according to UK Finance's toolkit, financial businesses commit to:

- Look out for any unusual or out of character withdrawals and to implement the Banking Protocol procedure when such transactions are identified.
- Discreetly question the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been told they are helping to catch a corrupt bank employee and may have been given a cover story to tell if asked about the transaction.
- Consider the responses provided by a customer against what they expect normal activity on that customer's account to be. If they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details.
- If the senior member of staff believes the customer is a victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the Police immediately. The Police will then come to the branch and speak to the customer.

It also sets out that bank staff are encouraged to contact the Police even if they aren't sure the customer is a victim of fraud. For example, UK Finance's Bank Colleague FAQ's says:

'I think a customer may be a victim but I'm not sure. Should I still follow the Banking Protocol? Yes. If you have questioned the customer and are still not sure, the police urge you to still call them. It is not possible to answer every 'what if' so if you are suspicious or concerned but are not completely sure then still report this following the Banking Protocol. You might prevent a customer becoming the victim of a crime.'

The Banking Protocol was first launched in October 2016 and has been fully in force nationwide since March 2018, so it would have been in force when Mr D made his payment in November 2018.

The various pieces of published good industry practice, codes and guidance that I've set out above all point to Metro's responsibility to help protect its customers from fraud and to look out for out of character and unusual transactions.

In this case, I need to decide whether Metro acted fairly and reasonably in its dealings with Mr D when he made a payment of £9,550 in branch to a scammer, 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 or out of character transactions.

I've thought carefully about whether it would be fair and reasonable to conclude that there were enough of the 'hallmarks' of a potential fraud present for Metro to have had reasonable grounds for some concern and ask more questions than it appears to have done that day. In all the circumstances of this case, I'm satisfied, on balance, there was.

If the funds are available, a bank usually shouldn't refuse to make a payment its customer wants to make. In this case, Mr D went into branch to make the payment because he wanted to buy the camper van. There's been some debate around whether Mr D could make a payment of more than £500 from his account without requiring a second signature.

From what I've seen, I think Mr D was able to make larger transactions on his account without requiring a second signature. I've seen a copy of the account mandate that was in place at that time and it allowed Mr D to operate the account on his own. In addition, there's a number of card and in branch transactions for more than £500 over the years that show this was the way that the account ran.

Mr D has said the confusion around how the account is structured and whether it should have been allowed to operate in this way will be raised with the bank separately, but for the purposes of this complaint, I'm persuaded that Mr D was able to authorise a payment of £9,550 on his own and that at the time he went into branch it was one he wanted to make.

This means this was authorised payment even though Mr D was the victim of a sophisticated scam. Although he did not intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr D is presumed liable for the loss in the first instance.

Was the payment unusual for Mr D?

Looking at Mr D's account statements, I can see that he did make larger payments from time to time. The previous year he'd made card payments of over £1,000 to a holiday resort and another large card payment to a motorcycle retailer. But it's not an account that is used for typical day to day or household spending. There's nothing to suggest any of these payments are regular payments. In the months leading up to the scam, Mr D uses the account infrequently. He made no payments at all between February and July 2018 and only uses the account infrequently and to make purchases which appear to me to have been for specific things, such as the card payments he made to an airline in October 2018.

Against this backdrop, I am persuaded that a payment of this size was unusual and out of character for Mr D. It's clear from what he's said about it that Mr D also considered it to be a one-off payment utilising a significant amount of his savings. He described it as a "*huge amount of money being transferred*" and explains that he printed off all the paperwork, including the invoice the scammer had given him and went into the branch to make the payment. He suggests the bank's employee was inexperienced and focused on how to process the payment and did not check any of his paperwork.

As I'm persuaded this payment was unusual and out of character for Mr D, 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 processing it, especially as branch staff should be on the lookout for any potentially unusual or out of character transaction.

Metro Bank has said it did not consider the payment to be suspicious and the bank's employee that assisted Mr D had no concerns about it. But I think Metro Bank should reasonably have taken additional steps and made additional checks with Mr D before processing this particular payment. Banks don't need to be certain a fraud is happening to ask additional questions about a payment a customer is intending to make.

Mr D was duped by a scammer posing as a genuine seller on an auction website. It's a common type of scam and one that I think Metro Bank ought to have been aware of at the time. If the bank's employee had asked Mr D what the money was for, I don't doubt that he would have said it was to purchase a camper van he'd found online. It's clear from what he's told us that he was excited about buying the vehicle and had imagined going on holiday with his family in the vehicle so it's not hard to imagine that he would have been willing to have a similar conversation with the bank's employee had he been asked. I'm also mindful that Mr D thought he was making a legitimate payment and hadn't been coached or told to tell the bank it was for anything else.

So upon finding out Mr D was making a payment to an online seller for a camper van that he'd found advertised on an auction website, Metro Bank would have had the opportunity to ask him some further questions, based on what it knew about this type of scam. It should have had a decent conversation with him about the nature of the payment he was making and the potential risks. Whilst I accept branch staff ultimately have to make decisions based on information they are given by customers, it is up to branch staff to find out enough information about the purpose of the payment.

I think it's fair to say that the primary concern of the Banking Protocol is consumer protection rather than, for example, to help financial businesses avoid liability. So the skill of bank staff and the types of questions that get asked in the particular circumstances of a transaction – and most notably when a consumer wishes to transfer an unusually large sum of money -

will be important. In saying this, I expect most people understand there are limits to how far a bank can or should go when asking questions. And of course, most bank customers won't be fraud victims, so I acknowledge there is a balance to be struck.

I've thought carefully about what would've happened had Metro Bank made enquiries with Mr D 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.

When Mr D explained the reason for the payment, Metro Bank could have asked him if he'd seen the camper van in person or taken it for a test drive. Whilst it's not implausible that a customer would want to make a one off, larger than usual payment to buy an expensive item like a camper van, I'd expect the bank's employee to use their knowledge and experience of scams to consider whether there should be any wider concerns about the payment its customer wants to make.

Bearing this in mind, and given the prevalence of this type of scam, I think Metro ought fairly and reasonably to have asked Mr D about the purchase he wanted to make. It could have told Mr D that scammers copy genuine adverts and send emails that can look very convincing, using similar logos and formatting as a genuine email from the auction website. It's in asking open questions and engaging in a dialogue around the wider surrounding circumstances that a scam like this can be revealed and prevented.

Had it done so, I'm persuaded Mr D would have said that he hadn't seen the vehicle and that it's more likely than not he would have gone on to explain about the holding account arrangement for the money. Mr D hadn't been given a cover story at any point, so I'm persuaded that he would have answered these basic questions about the payment he was making naturally and without any hesitation. Metro Bank would have then recognised from his answers there was a possibility Mr D might be at risk of financial harm because even the basic details of his intended purchase shared many of the hallmarks of this kind of scam.

Had Metro Bank alerted Mr D to the fact that scams involving vehicles on auction websites are sadly very common and talked to him about what those scams looked like and felt like, I believe this scam would more likely than not have come to light. Mr D would not have needed to share very much information about the purchase he wanted to make to put Metro Bank on notice that there was a strong possibility that he was the unwitting victim of a scam.

Mr D has told us this money came from his life savings obtained following an accident and I'm not persuaded that he would have parted with them lightly. If Metro had asked some simple questions related to the purpose of the payment and used its expertise to make Mr D aware of the possible risks when buying a vehicle online, I think it's more likely than not significant doubt would have been put into Mr D's mind about whether he really wanted to make the payment. It follows that the funds would not then have been sent to the scammer and lost. In this case, I think Metro Bank missed the opportunity to uncover indicators that Mr D might have been at risk. As a result, I think Metro Bank should refund the money Mr D lost as part of this scam.

Overall, Mr D's transaction of £9,550 was unusual and out of character for him. Metro Bank could have done more to prevent it from happening and it ought fairly and reasonably to have picked up on the scam by making checks and probing into the purpose of the payment before processing it. I'm persuaded that had Metro Bank asked at least some questions to understand the purchase Mr D wanted to make, it is more likely than not the scam would

have come to light and Mr D wouldn't have transferred the funds. I consider Metro Bank's failure to probe caused this particular scam to succeed.

Metro Bank has suggested that Mr D should have carried out his own due diligence into the payment before making it, especially given its value. But Mr D didn't realise that something might not be right with the purchase at the time and I'm not persuaded that was unreasonable in all the circumstances. I consider Mr D to have been the unwitting and blameless victim of a clever scammer. Scammers are by their very nature, convincing in order to fool and deceive a victim. Mr D has provided copies of the information the scammer gave him to explain how the payment system and buyer protection worked. He's explained that the scammer gave him plausible explanations. What Mr D has recalled about the online chat function suggests the scammer had a slick operation that looked and felt genuine. Mr D does not have as much knowledge or experience of this type of scam as Metro Bank does. I don't think he has missed an opportunity to recognise for himself that he was at risk of financial harm.

The impact of the bank's actions on Mr D

Metro Bank knew from the outset that the funds in Mr D's account were the proceeds of a settlement he received following an accident at work. He has described ongoing physical and mental health struggles as a result of a degenerative condition stemming from his injuries.

Being the victim of a cruel scam is an awful experience for anyone to have to go through. Mr D had made plans for what he wanted to do with the money that now can't be fulfilled. The money that's been lost is very hard for him to replace.

Metro Bank missed an opportunity to prevent Mr D from losing this money as a result of the scam. I consider that it exposed him to detriment by not acting with the appropriate level of care. Had Metro Bank done what it ought fairly and reasonably to have done, it could have stopped Mr D from sending the money and reduced the overall impact of the scam on him.

Considering everything, I agree with our investigator's recommendation that Metro Bank should pay Mr D £200 in compensation for the distress and inconvenience he experienced directly as a result of its actions.

putting things right

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

I now direct Metro Bank PLC to:

- Refund the £9,550 Mr D lost through the scam
- Metro Bank is aware that I think it should compensate Mr D for being deprived of this money. As it is not clear in this particular case what else he would have used it for, Metro Bank should pay simple interest on the £9,550 paid to the scammer from Mr D's account from the date of the loss to the date of the settlement. The interest rate should be 8% a year.*

- Pay Mr D £200 compensation for the distress and inconvenience he experienced

**HM Revenue and Customs requires Metro Bank to take off tax from this interest. Metro Bank must give Mr D a certificate showing how much tax it's taken off if he asks 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 D to accept or reject my decision before 24 December 2020.

Claire Marsh
ombudsman