

## **The complaint**

Mr M complains that Metro Bank PLC didn't help recover the money he paid to a scam investment company.

## **What happened**

Mr M says that he was interested in trading in the foreign exchange market and in February 2019, he came across an advertisement on social media for a company called UFX.com. He registered with it and was contacted by a representative who sold him an investment opportunity.

Mr M opened a trading account with UFX and initially sent USD 250 (£193.89) and USD 200 (£155.07) using his Metro Bank debit card. He says that he started receiving calls frequently from UFX and a specialist was assigned who advised him on how to use the trading platform. Mr M was able to withdraw USD 25 from his trading account – it appeared as a refund on his Metro Bank current account. He says it was at that point he sent a further USD 4,500 (£3,399.89) through his Metro Bank debit card.

The following month – March 2019 – within a space of two weeks, Mr M sent over £56,000 to his trading account with UFX. The money was sent from accounts held with other financial businesses and is therefore not the subject of this complaint. Mr M states that it was after he'd made the payments in March that the problems began. He's explained that his trading account balance went to zero very quickly following the execution of trades.

Mr M asked Metro Bank (and other financial businesses involved) for assistance with recovering the money. But Metro Bank said it wouldn't attempt a chargeback for disputed payments as the relevant rules excluded such transactions.

Our investigator concluded that although it was reasonable for Metro Bank to have executed the first two – smaller – payments in accordance with Mr M's instructions, it should have done additional checks before releasing the third – larger – payment. The investigator thought intervention in the form of contact from Metro Bank could have enabled Mr M to realise that he was in the process of being scammed.

Metro Bank disagreed with the investigator's conclusions. In summary, it said it was not involved in the creation of the code of practice that the investigator had referred to; it was outside this service's remit to comment on Metro Bank's internal security measures; and it couldn't be conclusively said that the third payment would have been stopped had it phoned Mr M.

As an agreement couldn't be reached, the complaint was passed to me for review and determination. In an attempt to resolve this complaint at the earliest possible stage through mediation (as our rules encourage), I contacted Mr M informally to explain how I was minded to proceed. I explained why I intended to reach a different outcome to our investigator.

In short, I didn't think Metro Bank had acted unfairly by not pursuing the chargeback; I'd noted that Mr M had accepted a full and final settlement of £33,000 from UFX's parent

company before a civil case was decided by the courts in Cyprus; I didn't think the third payment was so unusual or uncharacteristic that it should have prompted additional checks; and I wasn't persuaded that a contact or discussion would have led Mr M to do anything differently even if I were to conclude that Metro Bank should have intervened.

Mr M didn't agree. He reiterated that he notified Metro Bank well within the time period for requesting a chargeback. He said that the money he received from UFX following court proceedings was nowhere the amount that he lost. Mr M also added that his complaints against other financial businesses he sent payments from have been upheld by our service.

As Mr M didn't agree with my provisional thoughts, it's now appropriate for me to present my findings formally.

### **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.

Banks and other Payment Services Providers ("PSPs") have a duty to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they don't have to protect customers against the risk of bad bargains or give investment advice. And the financial services regulator, the Financial Conduct Authority ("FCA"), has confirmed that a fraud warning would not constitute unauthorised investment advice.

So, the first question to resolve is whether this particular trader was a fraudster.

#### *Were the disputed payments fraudulent?*

Not every complaint referred to us and categorised as a binary options or forex scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud; i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to fraud. When considering this for Mr M's case, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent.

Upon checking both of these, it's my understanding that UFX had no adverse information reported about it at the time Mr M authorised his payments. What I have noted was that it was registered with the FCA at the time of Mr M's payments.

I've seen that the FCA cancelled UFX's registration on 11 June 2020 and explained after this date, UFX could no longer provide investment services to UK customers. But this information was not available at the time of Mr M's disputed payments. I must therefore take into account that there's strong evidence here – particularly because there are no regulator warnings that were published at the material time – that UFX hadn't been identified as a fraudulent company when these payments were made.

What's more, I've also looked at other third-party evidence, to determine whether UFX may fairly and reasonably be regarded as fraudulently seeking gains at the expense of others. I've seen some negative reviews about UFX, including delays with processing withdrawal requests and customers losing money. But I can't ignore that, while this could be seen as circumstantial evidence that helps build an overall picture of UFX, this is not in itself sufficient evidence of fraud.

I must follow the evidence and, essentially, I have no credible evidence to persuade me with any degree of certainty that UFX was operating a scam and the evidence I have seen suggests that UFX was indeed regulated at the time it offered services to Mr M. So, taking everything into consideration, I'm not persuaded that UFX was in fact a fraudulent company.

Having concluded that this was not a fraudulent company and was potentially a bad bargain or poor investment advice, I need to consider the following:

1. Did Metro Bank deal with Mr M's chargeback fairly?
2. If so, were any of the disputed transactions still so unusual or uncharacteristic for Mr M and/or his account that Metro Bank fraud alerts ought reasonably to have triggered some sort of intervention?
3. If triggered, would Metro Bank's intervention have made a difference and prevented or reduced the loss?
4. And if so, was Mr M partly to blame for what happened such that it would be fair and reasonable to reduce compensation proportionately?

### *Chargeback*

Chargeback is a voluntary scheme run by the card scheme – MasterCard, Visa or American Express. It allows customers to ask for a transaction to be reversed if there's a problem with the goods or services they've paid for. But there's no legal right to a chargeback. And each scheme has its own rules.

Mr M's debit card was issued under the MasterCard scheme. So, MasterCard's rules governing chargebacks apply. It's not in dispute that Mr M requested a chargeback within the timescales set out in the MasterCard scheme rules. But chargeback rights are limited through the scheme rules when it comes to claims relating to gambling, investment or similar activities.

Our service has sought clarification from MasterCard, and it has explained that if a merchant (in this case UFX) does not make funds transferred to it available for use in the type of transactions for which it received them (in this case, trading on its platform), then there may be a chargeback right.

But this isn't what happened here. The nature of Mr M's claim is that he'd fallen victim to a scam. Given that MasterCard has made it clear that there would be no reasonable prospect of success through its scheme for claims of this nature, I don't think Metro Bank acted unfairly by not pursuing the chargeback when Mr M raised it.

Even if I were to conclude that Metro Bank should have attempted a chargeback – for the avoidance of any doubt, this isn't the conclusion I've reached here – I'm mindful that Mr M received accepted a full and final settlement which discharges UFX from any further liability to him. In my view, it wouldn't be unreasonable if Metro Bank didn't pursue a chargeback based on that fact alone as it would no doubt have an impact on the prospect of success.

### *Duty of Care*

Metro Bank is aware of our general position on a PSPs' safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Mr M for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mr M using the legitimate security credentials provided to him by Metro Bank. These must be regarded as 'authorised payments' even though Mr M feels he was the victim of a scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his account, Mr M is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider good industry practice at the time, I consider that Metro Bank should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks and building societies are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I've therefore considered whether Metro Bank should have looked into the circumstances of the payments in question before deciding whether to process them. In other words, were there fraud triggers that meant it ought to have identified a payment as being unusual or uncharacteristic that I'd expect Metro Bank to have identified that Mr M might be at risk from fraud or a scam.

Looking at the account history over a 12-month period leading up to the first transaction, the payment doesn't appear to be unusual or out of character. Mr M had occasionally made card payments for similar amounts during this period. So, I agree with our investigator that it's not unreasonable that this payment, or the second payment of a similar amount, wasn't flagged by Metro Bank's systems as suspicious. But I don't share the investigator's view that the third – larger – payment should have alerted Metro Bank to the possibility that Mr M's account was being subjected to unusual activity. I acknowledge £3,400 is a large amount, but that in itself doesn't make the transaction sufficiently unusual or suspicious to make Metro Bank take further action. There's a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments.

As long ago as June 2012, the FCA's predecessor indicated—in its consultation paper entitled *Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims*—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share “*timely and detailed intelligence*” with other banks, UK and overseas regulators, the police, etc. While the regulator gave no specific timings, it's not unreasonable in my view to expect a large firm to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or IOSCO. In my judgment, such alerts should automatically trigger alarm-bells—and lead to the payment being paused—pending further enquiries (and a possible scam warning) to the payer.

But in Mr M's case, in February 2019, there were no warnings from the FCA or IOSCO that indicated UFX was a scam company. And rather the evidence does suggest that it was registered with the FCA. I wouldn't have expected Metro Bank to have picked up a payment to UFX as being suspicious, given there's no credible evidence of it being reported as a scam or fraudulent company in February 2019. And by the time Mr M authorised this large payment, he'd already sent two smaller payments to UFX and not raised any concerns about them.

Even if I were to conclude that the larger payment ought to have given Metro Bank cause for additional checks, I'm not persuaded that this would have stopped Mr M from going ahead with the payment. I've established that UFX was regulated at the time it offered services to Mr M. And I've noted that there's no credible evidence available in February 2019 to suggest with any degree of certainty that UFX was operating a scam. I'm not convinced that Mr M would have done anything differently had Metro Bank contacted him and he'd carried out additional research on UFX.

I note Mr M has said that this service has upheld other complaints he's made about different financial businesses regarding payments to UFX. It's important to note that we consider each case on its merits. Each case is different and while it may be that Mr M's other cases relate to payments sent to UFX, it doesn't automatically follow that the considerations relevant to each case will also be the same. In this decision, I've considered the merits of the case before me.

### **My final decision**

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 February 2022.

Gagandeep Singh  
**Ombudsman**