

The complaint

Mr M complains that Metro Bank PLC ("Metro") failed to refund £18,000 he lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. However, in summary, Mr M was scammed out of £18,000 by a fraudulent investment broker called Berson Trading. He made the following payments between March and September 2019:

Date	Payee/Merchant	Amount
29 March 2019	Lex Mercatoria Ltd	£5,000
21 June 2019	Anglo Iberian Ltd	£8,000
5 September 2019	VS Direct Ltd	£5,000
	Total:	£18,000

Mr M discovered he had been scammed when he was no longer able to access his trading account and the website was no longer available. However, Metro declined to refund the money he had lost as Mr M had authorised the payments. It said that part of its payment process included an effective warning about being scammed, which it said Mr M would have seen. Metro said it also contacted Mr M as his payment of £5,000 in September 2019 had flagged due to the financial institution it was going to. However, the bank said that he confirmed the payment despite them telling him to check he was sending the funds to the correct place.

Our investigator upheld the complaint as he thought that Metro ought to have intervened from the first payment Mr M made in March 2019, which he thought would have prevented any loss if it had properly questioned him about the payment at that point. Metro failed to respond, so the matter has been escalated to me to issue a final 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 agree with the conclusions reached by the investigator for the reasons set out below:

- In deciding what's fair and reasonable, 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. I've also considered the Lending Standards Board's voluntary Contingent Reimbursement Model ("the Code"), which Metro committed to follow and came into

force on in force in May 2019. So, I'm aware that the Code will only apply to the second and third payments Mr M made after May 2019.

- However, notwithstanding the Code, in light of the odd pattern of these payments, I do think that by the first payment of £5,000 Mr M made in March 2019 that there were fraud triggers. Mr M opened his Metro account in November 2018. And from the point he opened the account to the point he made the first £5,000 payment on 29 March 2019, he had not made any other large payments of this kind, and he rarely made payments of over a few hundred pounds from his account. So a payment of £5,000 to a new payee marked a significant departure from the usual activity that can be seen on his account, such that it would have been reasonable for Metro to have questioned him at this point before processing the payment in order to satisfy itself that all was well.
- I've considered whether any such intervention in March 2019 would have likely prevented Mr M from making the payment, and I'm satisfied it likely would have. I appreciate that Metro did intervene in the third payment Mr M made in September 2019 when it questioned him about it, and that this did not prevent him from losing his money to the scam. But I don't think their line of questioning went far enough in the circumstances.
- When Metro called Mr M on 5 September 2019, it asked him what the payment was for and how it came about. He told it that it was for a company called Berson Trading who would call him about investment opportunities. Metro noted that the company he was paying was different to the name of his broker, so it asked that he contact them to see if the account and sort code is correct and known to them. Mr M got in contact with the scam company who told him that it was one of their accounts. When Metro called him back, it asked if he was happy for the payment to be released, to which Mr M confirmed he was.
- So, while I appreciate Metro did ask some questions about the nature of the payment and where it was going, I do not think those questions went far enough. At the time the payment was made, Metro ought to have had a good understanding of how investment scams commonly work. And given the size of the payment in relation to Mr M's normal pattern of spending, and the fact that it was being paid to a new payee, I would have expected the bank to have asked further probing questions about the context and purpose of the transaction – particularly with regards to the 'broker' who he said was in regular contact with him.
- While it is not up to our service to dictate which questions a bank should ask, Metro could've, for example, asked how Mr M had found Berson Trading and what research/checks he had carried out on the broker to determine if it was legitimate. This would have formed part of a reasonable line of enquiry to protect a consumer from the potential risk of a prominent type of scam. Had Metro asked such questions when Mr M came to make the first payment in March 2019, I'm satisfied it would have become apparent at that point that Mr M was falling victim to a scam: the broker he was sending money to was not regulated by the FCA, and the account he was sending money to also did not match the name of the broker he was allegedly paying. Metro did not need to know for certain whether Mr M was dealing with a fraudulent trader or investing in a legitimate product; reasonable grounds for suspicion are enough to trigger a bank's obligations under the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that Metro ought reasonably to have provided a scam warning in light of all

the information then known to financial professionals about the risks associated with unregulated investment brokers.

- If Metro had given a warning, I believe that Mr M would have paused and looked more closely into Berson Trading before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that he would have made further enquiries into investment scams and whether or not the broker was regulated. He could have discovered they were not and the various regulatory warnings about the risk of investment scams. In other words, I am satisfied that a warning from his trusted bank would probably have exposed Berson Trading's false pretences, causing him to stop 'trading' and preventing further losses through making the later payments in June and September 2019.
- As outlined above, the remaining two payments fall within the period after Metro had signed up to the CRM Code. I do not consider that either of these payments fall within the exceptions outlined in the Code. I appreciate Metro provided a scam warning through its online banking system when Mr M was in the process of making the payments, which warned about being contacted out of the blue with an investment opportunity. But I do not consider this to have been an 'effective warning' as required by the Code (i.e. clear, impactful, timely and specific); It doesn't provide enough information about what an investment scam could look like, for example. Most of the time investors have completed an online form, so the call also isn't always out the blue.
- I'm also satisfied that Mr M had reasonable basis for belief that he was investing with a genuine company. I do not think Mr M could have foreseen the risk that the company he was dealing with was a scam and the trading account he was viewing was likely to have been a simulation. This was a sophisticated scam, so I do not think he had any cause to believe that the payment he was making was not legitimate.

My final decision

For the reasons given above, I uphold this complaint and direct Metro Bank PLC to:

- Refund Mr M the £18,000 he lost to the scammer; and
- As this was a current account, Metro should add interest to that sum (less any tax properly deductible) at 8% simple interest per year from the respective dates of loss to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 April 2022.

Jack Ferris
Ombudsman