

The complaint

Mr S complains that Metro Bank PLC did not reimburse him for the losses he incurred when he fell victim to an investment scam.

What happened

In July 2020, Mr S received a significant lump sum of money in respect of divorce proceedings. He intended to use this in due course to purchase a new home. In the meantime, Mr S kept the money in his Metro Bank accounts.

Around six months later, at the start of the following year, Mr S saw an advert for investments based in cryptocurrency. These appeared to offer good returns. Mr S was enticed by the prospect of achieving a short-term boost in the amount he had available for a property deposit. Mr S explains he initially invested just a small sum using a credit card, an amount of around £250.

Mr S says he was then contacted by someone claiming to work as a broker for an investment company (which I'll refer to as D). This broker told Mr S that D could help him achieve even better returns. Mr S says what he was told sounded attractive. He was persuaded it would be a good idea. Mr S allowed him to have remote access to his computer, supposedly to allow the broker to set up an account and make trades on Mr S's behalf.

Mr S says the broker was then in daily contact, calling and messaging him, and pressuring him to invest. He'd mentioned D to his wife, who had some concerns. She'd looked at D's website and thought it could be a scam. She was concerned Mr S had nothing in writing from D. Mr S told the broker these concerns. However, the broker then spoke to him and was ultimately able to reassure Mr S that D was legitimate.

Mr S subsequently made payments to D as listed below. These payments were sent from two different Metro accounts held in his name, but for clarity I have listed them together in chronological sequence rather than splitting by the originating account.

Each payment was first sent to an emoney wallet at a cryptocurrency exchange (I'll refer to this as E) that had been set up in Mr S's own name with the supposed broker's help. Mr S then purchased cryptocurrency and sent this onwards to D.

<u>Payment number</u>	<u>Date</u>	<u>Type of transaction / Location</u>	<u>Amount</u>
1	18/02/2021	Faster Payment transfer to Mr S's wallet held with E	£15
2	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£2,500
3	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
4	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£3,500
5	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
6	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
7	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£3,000

8	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
9	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
10	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
11	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
12	19/02/2021	Faster Payment transfer to Mr S's wallet held with E	£4,000
	22/02/2021	FCA publishes warning about D	
13	22/02/2021	Faster Payment transfer to Mr S's wallet held with E	£21,000
	22/02/2021	Credit received	(£1,528.50)
14	23/02/2021	Faster Payment transfer to Mr S's wallet held with E	£15,000
15	01/03/2021	Debit card payment to Mr S's wallet held with E	£20
16	02/03/2021	Faster Payment transfer to Mr S's wallet held with E	£1,500
17	05/03/2021	Debit card payment to Mr S's wallet held with E	£100
18	09/03/2021	Faster Payment transfer to Mr S's wallet held with E	£500
19	09/03/2021	Faster Payment transfer to Mr S's wallet held with E	£500
20	10/03/2021	Faster Payment transfer to Mr S's wallet held with E	£100
	11/03/2021	Credit received	(£71.50)
21	11/03/2021	Faster Payment transfer to Mr S's wallet held with E	£7,500
	19/03/2021	Mr S phones Metro saying he will send Metro details by email. Doesn't discuss further.	
	25/03/2021	Second call between Metro and Mr S, this time including discussion of the details of the scam.	
22	27/04/2021	Faster Payment transfer to Mr S's wallet held with E	£15
23	28/04/2021	Faster Payment transfer to Mr S's wallet held with E	£15
24	28/04/2021	Faster Payment transfer to Mr S's wallet held with E	£500
25	29/04/2021	Faster Payment transfer to Mr S's wallet held with E	£800
		Total Debits	£88,565
		Total Credits	£1,600
		Net loss – total	£86,965
		Net loss from payment five onwards	£76,950

After making payment 21 (the sum of £7,500 on 11 March), Mr S made repeated attempts to withdraw his capital from the investment. This proved impossible, and Mr S began to realise he'd most probably been the victim of a scam.

Mr S spoke to Metro on 19 March and 25 March. In the second of these calls, he detailed what had happened. Metro told him that because he'd moved the money via his own wallet held with E before it was sent onwards to D, the loss to this scam was the responsibility of E. He was told that therefore Metro couldn't help him, and he should report what had happened to E.

Mr S contacted E, but was unable to get any response or otherwise recover his money. He was subsequently tricked into sending more money to the scammers (payments 22 to 25), being promised these were release fees that would mean he could be sent the funds supposedly still in his investment with D. But again, he received nothing, and Mr S made no further payments after 29 April.

Unhappy with the treatment he'd received from Metro, Mr S complained. Metro restated its position, and Mr S referred his complaint to this service for an impartial review.

Our Investigator looked into everything and thought Metro should reimburse Mr S for most of the money he'd lost.

The investigator thought that by the point of the fifth payment Mr S had made from his Metro accounts (shown in bold above), Metro should have had concerns about the pattern of account usage and taken steps to intervene. The Investigator thought Metro would thus have prevented Mr S's losses from that point onwards.

While the money had gone via a wallet held in Mr S's own name with E, the Investigator thought it fair that Metro was liable for the losses that Mr S incurred, and that it had been best placed to identify the need for intervention and to protect Mr S.

The Investigator considered whether Mr S should share a proportion of the blame for what had happened. The Investigator noted the medical evidence Mr S had shared indicating that from around the time of his divorce he'd suffered from serious mental ill-health, and that at the time of the payments in question Mr S had been suffering from a breakdown, impairing his cognitive capacity. In light of this the investigator thought it would not be fair to apply a reduction to the amount he believed Metro should pay Mr S.

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

- While the FCA had published a warning about E on 26 June 2021, this was after the payments were made. Therefore, the payments from Mr S's Metro accounts were made to a legitimate wallet held with E, and in Mr S's own name. Metro should have had no cause for concern.
- The loss had only occurred when Mr S had sent this on to D. It was not fair to hold Metro liable rather than E.
- Even had Metro intervened as the Investigator said it should, Metro couldn't have persuaded Mr S this wasn't a legitimate scheme – he had not listened to his wife when she'd expressed this same concern.
- Metro had no knowledge at the time of Mr S's mental health and the impact on him.

Agreement could not subsequently be reached, so I have been asked to make a final decision on Mr S's complaint.

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 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 be good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

These were all 'authorised payments' even though Mr S was the victim of a scam. Mr S made the payments himself. So, although Mr S did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of his account, he is presumed liable for the loss in the first instance.

But that is not the end of the story. Taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Metro 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 that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

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.

In this case, I need initially to decide whether Metro acted fairly and reasonably in its dealings with Mr S when he made these payments, or whether it should have done more than it did. In the event I find it at fault, I will need to determine the extent to which the parties involved are liable for the consequences.

Firstly, I've considered whether these payments ought reasonably to have stood out to Metro as unusual or otherwise indicative of the potential for financial harm, in the context of Mr S's typical usage of his accounts.

Here, Mr S made ten payments on 19 February for sums ranging between £2,500 and £4,000. These were being made to a newly created payee - he'd only made the first Faster Payment transfer to that payee from his Metro accounts one day earlier.

By the point of payment five in the table above, Mr S was sending the fourth payment that day - accounting for a total of £14,000. This was considerably out of the ordinary for his prior account usage looking at the statement histories provided by Metro.

All in all, I think there was more than enough going on here that, by the time of the fifth payment, Metro ought reasonably to have considered this pattern and frequency of payments indicated a higher than usual risk of financial harm to Mr S.

As such, I think it is reasonable to have expected Metro to have intervened at that point - to reassure itself that these payments weren't connected to fraud or a scam. For example, as a starting point, asking Mr S about the purpose and nature of the payments.

Had Metro done so and contacted Mr S, I have seen nothing to suggest that Mr S would have done other than truthfully respond to Metro's questions. I think this would have uncovered that the payments were being made in connection with an investment that had the features and hallmarks of a cryptoasset investment scam (which I will revisit in more detail below).

I have considered Metro's point that Mr S did not heed his wife's concerns about D, and so

he may similarly have disregarded any concerns raised by the bank. But on balance, I'm not persuaded by Metro's argument here. Mr S explains that at the time, he thought he knew better than his wife about financial matters. Further, I don't consider it irrelevant that he was in the process of a protracted divorce process.

To my mind, it's more likely than not that he'd have heeded, rather than dismissed, comments from his bank of longstanding association if Metro had raised significant concerns about the legitimacy of what he was doing and the company he was dealing with. Based on what I've seen here, I think that Mr S, most likely recognising the bank as financial professionals with far greater expertise in the risks of fraud and scams, would have taken on board what Metro ought to have told him.

I've noted that even after Mr S had reported the matter to Metro, he made four further payments connected to the scam totalling £1,330. I'm persuaded by his explanation that these payments were made because he believed they were 'release fees' – unfortunately this being a further deception by the scammers to extract yet more money. I don't find that this shows Mr S would have continued to make payments regardless of any intervention by Metro – rather, I'm persuaded that he made these payments out of desperation at this point, believing Metro would not assist him to recover his losses.

I know Metro may consider that the above conclusions are based on speculation about what might have happened – given that no such contact between it and Mr S occurred at the time. But in the absence of actual evidence, as here, I am required to reach my findings on the balance of probabilities – what I consider most likely would have happened, given the information and other evidence available to me.

Here, Metro did not intervene when I consider it ought to have done so. Clearly there is no way of knowing with certainty what might have happened had Metro contacted Mr S. But I think it more likely than not that its intervention at this point in the proceedings would have prompted Mr S to reconsider the legitimacy of D, and the bank would have led him to the realisation that it was likely not genuine.

I find it most probable that in consequence Mr S would not have made this payment, or further payments, and so would not have incurred any of the losses that resulted from payment five onwards.

I also consider that such an intervention by Metro would likely have brought to light Mr S's situation and circumstances at the time, including his mental health (as good industry practice banks should look to identify possible signs of vulnerability).

In saying all of this, based on the evidence I've seen, I don't think it likely Metro would have been able to recover the payments made prior to this point. Having transferred funds, Mr S moved that money onward to D without delay – at which point recovery would have no longer been possible even had the scam come to light at the time. So, I don't consider Metro should be liable to reimburse payments one to four inclusive.

I have given consideration to Metro's point that the loss occurred when Mr S sent the funds onwards from E to D, rather than when he paid money from Metro to E. But I am not persuaded that this alters my view on Metro's liability. I will explain why in more detail.

I have found that Metro should have identified that the pattern and nature of transactions being made by Mr S were indicative of the risk of financial harm to him through fraud or scam. Mr S since has been unable to recover any of the funds that were sent to E – he has suffered a loss from the sequence of transactions that flowed from these payments.

Metro, of all the parties involved, was best placed here to prevent the losses – it had held accounts for Mr S for some time and so had the opportunity to establish typical usage patterns for his accounts. In my view, Metro had sufficient reason to have taken further steps to reassure itself that these payments weren't likely to lead to financial harm. Had it done so, I find this would most likely have prevented the further payments.

I am satisfied that this reflects what could reasonably have been expected of Metro in light of good industry practice and awareness of cryptocurrency-based investment scams at the time. The regulator, the FCA, had published information on its website about the growing risks and hallmarks of '*Cryptoasset investment scams*' in June 2018. The patterns described on this page and the linked Action Fraud page mirror what was happening to Mr S. I consider Metro ought reasonably to have held this knowledge considerably in advance of the scam that Mr S fell victim to.

With its knowledge of these risks and hallmarks, and from what Metro should reasonably have established from Mr S (but failed to) about the transactions he was undertaking, I find Mr S's consequent losses were reasonably foreseeable by Metro as being substantially likely to result. I don't consider Metro needed the FCA's later specific warnings about D and E to have identified what was most likely happening in Mr S's case.

So, in all, I find it fair and reasonable in all of the circumstances that Metro should now be liable to refund Mr S for the losses from payments made from the point at which I find it should have intervened (that being the point of payment five above, inclusive of that payment).

I have moved on to consider how Mr S would otherwise have utilised the money he lost through the scam. Firstly, while some credits to his account reflect monies borrowed from family, and money drawn from Mr S's pension pot, the overall losses he incurred were accounted for by the total account balance he'd held with Metro prior to the scam.

Further, based on both his testimony and the evidence within the chat history between him and the scammer, I am persuaded that he had intended to use these funds to provide a property deposit for a family member and himself. Overall, I believe a fair award here for the cost of his being deprived of the funds for the relevant period would be for Metro to add interest at the rate of 8% simple per year.

I have also considered whether Mr S should bear some responsibility by way of contributory negligence. However, while I think Mr S was able to recognise a degree of risk here, in part prompted by his wife, I am persuaded that his perception of those risks (and of the steps he could take to address them) was significantly and adversely affected by the impact of his circumstances at that specific moment in time together with the determined efforts of an opportunist scammer. Based on what I have seen, including the medical records (which I will not detail here), I don't consider it fair and reasonable to reduce the award I make here.

Putting things right

Given the above, I consider it fair and reasonable that, within 28 days of receiving confirmation that Mr S accepts this decision, Metro should:

- refund Mr S the sum of £76,950 (this equating to the money Mr S lost as a result of the scam from payment five onwards less the amount of £1,600 that Mr S received back as credits); and,
- pay Mr S interest on the payments at 8% simple from the date of each payment to the date of settlement less any tax lawfully deductible. Where payments were

partially reccredited to Mr S's account in the course of the scam (a total of £1,600), Metro can choose not to pay interest on that portion of the original payments.

My final decision

For the reasons given above, I uphold Mr S's complaint. Metro Bank PLC should now put matters right as set out above,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 January 2023.

Stephen Dickie
Ombudsman