

The complaint

Mrs W complains that Metro Bank PLC didn't help recover the money she lost to an investment scam.

What happened

In January 2020, Mrs W was contacted by a company called Capital Seven after she'd been researching investment opportunities. Between January and April 2020, she made several payments using her Metro Bank debit card. Although the funds appeared to credit her 'trading account' with Capital Seven, the merchant that the debit card payments were made to was company called Maxigrid Limited.

The following transactions were made to Maxigrid Limited:

	Date	Type	Amount
Payment 1	15 January 2020	Debit card	£192.47
Payment 2	21 January 2020	Debit card	£1,004.02
Payment 3	18 February 2020	Debit card	£6,023.74
Payment 4	31 March 2020	Debit card	£1,114.71
Payment 5	28 April 2020	Debit card	£10,036.29
Refund	4 May 2020	Credit	£615.17
		Total payments	£18,371.23
		Total credits	£615.17
		Total loss	£17,756.06

Mrs W has said that she eventually realised she'd been scammed when a payment for £2,000 was blocked by Metro Bank and Capital Seven became aggressive on learning this. (Metro Bank has been unable to confirm whether it intervened like Mrs W has suggested).

It is my understanding that Mrs W first reported the scam by phone in June 2020 and then followed this up in writing in July 2020. Following several chasers and a complaint, Metro Bank ultimately rejected Mrs W's chargeback request. Unhappy with this, Mrs W referred her complaint to our service. In its submission, Metro Bank said that it believed it had correctly declined Mrs W's chargeback request. But it accepted there were customer service failures and offered £50 compensation.

I issued my provisional decision last month. I said that I intended to uphold this complaint and set out the following reasons:

Mrs W says her dealings were with Capital Seven. Given the information I've found during my research on Capital Seven, I'm persuaded that Mrs W fell victim to a scam rather than simply losing money as a result of a high-risk investment. The Financial Conduct Authority ("FCA") published a warning on 25 March 2020 telling consumers that Capital Seven had been operating in the UK without its permission. I also

understand that its website disappeared suddenly. On balance, I'm satisfied that Capital Seven wasn't a legitimate trader.

But Mrs W didn't make the disputed payments to Capital Seven; she paid Maxigrid Limited. This is important because card issuers – Metro Bank in this case – are only able to present a chargeback against the merchant the payment was made to, not another party. I've no credible evidence to persuade me with any degree of certainty that Maxigrid Limited was operating a scam. The evidence I've seen suggests that it was indeed regulated – albeit in a different jurisdiction – at the time it offered cryptocurrency exchange services to Mrs W.

That Mrs W's funds were subsequently transferred on to a scammer doesn't give grounds for a chargeback against Maxigrid Limited. So, I don't think Metro Bank acted unfairly or unreasonably by not presenting a chargeback.

While I don't think that Metro Bank could have done more with regards to the recovery of Mrs W's funds, I've also considered whether it ought to have intervened before allowing the payments to be made.

Under regulations, and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customer as a result.

The disputed payments were made by Mrs W using her legitimate security credentials. I therefore conclude that these were authorised payments for which Mrs W is liable unless there's evidence that Metro Bank could and should reasonably have done more to protect her and that this would have made a difference to her decision-making.

I've taken into account the law, regulatory rules and guidance, relevant codes of practice, and what I consider good industry practice at the time. Metro Bank ought to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions, or other indicators, that its customers were at risk of fraud and, in some situations, make additional checks before processing payments, or declined them altogether, to protect its customer from possible financial harm from fraud.

I wouldn't have expected Metro Bank to have picked up payments to Maxigrid Limited as being suspicious solely based on the merchant name. There were no regulator warnings in place about it when Mrs W made the disputed payments. But this isn't the end of the matter.

I've considered the operation of Mrs W's account in the months leading up to the disputed payments. This is to determine whether the payments were so unusual or uncharacteristic that I think Metro Bank ought to have intervened. Like the investigator, I don't consider the first two payments – of £192.47 and £1,004.02 – were unusual or uncharacteristic based on Mrs W's account activity. But I think that the third payment – of £6,023.74 – ought to have triggered Metro Bank's systems

and I consider it would have been reasonable for it to have properly questioned Mrs W before processing it.

Had Metro Bank carried out its due diligence and duties and asked Mrs W about the payments, I've no reason to doubt that she would have explained what she was doing and how she came to finding out about the investment opportunity.

While it's not up to our service to dictate what questions a bank should ask, Metro Bank could have, for example, asked how Mrs W had been contacted, whether she had parted with personal details in order to open a trading account, whether unrealistic promises were made, whether the investment opportunity was linked to a prominent individual or advertised on social media, etc. These are all typical features of investment scams and form part of a reasonable line of enquiry to protect a consumer from the potential risk of a prominent type of scam.

I'm satisfied that Mrs W would have likely shared information which aligned with the hallmarks of this type of scam, as she had been given no reason to think she had to hide this information from her bank, and neither had she been coached to tell them something different.

Had Metro Bank then indicated the potential for fraud and provided Mrs W with a potential scam warning, it seems more probable to me that she would have looked into the investment opportunity further and discovered more information about this type of investment, including the increasing prevalence of scams, and whether claims made by the broker were true. Mrs W could have discovered that Capital Seven wasn't regulated by the FCA. And although the FCA's warning wasn't published until a month later, I think it's likely that Mrs W would have come across various regulatory warnings about the risk of such scams.

So, on balance, I'm satisfied that even a general warning about investment scams from her trusted bank would probably have been enough to give Mrs W second thoughts such that she wouldn't have gone ahead with that payment. I therefore conclude that Metro Bank ought to have intervened when Mrs W authorised the payment on 18 February 2020. And had it done so, she wouldn't have incurred further losses. The three payments add up to £17,174.74. Mrs W's already received a refund of £615.17 directly from the merchant. So, it's only fair that this amount is deducted from the loss that Metro Bank needs to reimburse.

I've also carefully thought about whether Mrs W is partly to blame for what happened. And I think that she is. She told our investigator that she didn't carry out any research into the investment, the trader, or the investment type to reassure herself that the opportunity as presented was genuine. Or that Capital Seven was a legitimate trader. So, I do think that Mrs W ought to bear some responsibility for her losses. As I'm currently minded to find that Mrs W is partly responsible, I think it would be fair to reduce compensation by 25%.

I've also thought about whether a payment for the distress and inconvenience this matter has caused Mrs W is appropriate. I think that the substantive cause of her distress and inconvenience was Capital Seven. That said, I'm mindful that Mrs W did have to make several calls to Metro Bank over the summer of 2020 before it reviewed her chargeback request. Although I don't think there were grounds for a successful chargeback even if the customer service provided by Metro Bank had been better, it recognises that the service it provided fell short and has offered £50 compensation. In the circumstances, I think Metro Bank's offer of £50 is fair.

I invited further comments and evidence from both parties.

Mrs W and Metro Bank responded and said that they accepted my provisional findings.

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.

As both parties have accepted my provisional decision and not provided anything further for me to consider, I see no reason to depart from it. So, for the reasons set out above, I uphold this complaint.

Putting things right

To put matters right, Metro Bank PLC needs to reimburse Mrs W payments 3 to 5 – as set out above – with a 25% deduction for contributory negligence. From that sum, it can deduct the credit of £615.17 that was directly recovered.

Metro Bank should also add simple interest at 8% per year (less any tax properly deductible) to each reimbursed payment, calculated from the date of the respective payment to the date of refund.

Metro Bank also needs to pay Mrs W £50 compensation for the distress and inconvenience she experienced after reporting the scam.

My final decision

My final decision is that I uphold this complaint and require Metro Bank PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 2 September 2022.

Gagandeep Singh
Ombudsman