DRN-3771482

The complaint

Mr T has complained that Metro Bank PLC ('Metro') has declined to refund the money he's lost to a scam.

What's happened?

Mr T has fallen victim to an investment scam. On 4 March 2019, he paid £33,000 via faster payment to a company I'll refer to as 'V' ('the payment'). A family member had recently invested through one of V's financial advisors ('the advisor'), and they recommended the advisor to him. Mr T says he had no prior investment experience, but he wanted to invest his inheritance. So, he decided to pay into a one-year bond with a 5% guaranteed return ('the bond').

Before investing, Mr T says that he checked V's website, and everything looked legitimate. And he spoke to the advisor several times over the telephone and via email.

Mr T received paperwork for the bond but, when the bond's maturity date was approaching, he tried to contact the advisor to explore his options and realised he'd been scammed. He reported the fraud to Metro in January 2020.

Unfortunately, Metro raised the fraud claim incorrectly, which caused delays. Metro says the receiving bank has confirmed that no funds remained in the beneficiary account to recover in January 2020 – they were removed within a few hours of crediting the account in March 2019. So, its error has not led to the loss of an opportunity to recover Mr T's funds. But it has offered Mr T £120 by way of compensation for the additional trouble and upset it has caused him in this respect.

After investigating Mr T's fraud claim, Metro declined to reimburse him. It said that it asked Mr T for the payment reason when he instructed the payment over the telephone, and it didn't discuss the payment further. But even if the bank had discussed the surrounding risks, it wouldn't have been able to prevent the scam because Mr T believed he was investing with a legitimate company.

<u>What did our investigator say?</u>

Our investigator thought that Metro should have asked some questions about the payment and, if it had done so, it could have prevented the scam. And she didn't think it was unreasonable for Mr T to make the payment. So, she recommended that the bank reimburse Mr T's full loss and pay 8% simple interest from the date of payment to the date of settlement.

She thought that Metro's offer to pay Mr T £120 for the additional trouble and upset it had caused him by raising his fraud claim incorrectly was fair and reasonable.

Metro said that Mr T could have done more to protect himself in the circumstances – for example, by checking the Financial Conduct Authority ('FCA') register and/or verifying the advisor as well as V – so he should share the responsibility for his loss.

The complaint has now been passed to me to decide.

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.

It's common ground that Mr T 'authorised' the payment – he made the payment using his payment tools. 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. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that Metro should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering and the financing of terrorism.
- 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 (amongst 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 made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

The payment was high value, it was for significantly more than any other payments out of Mr T's account, and it went to a new payee. So, I think it stood out as unusual and out of character and I think it's reasonable to expect Metro to have asked Mr T some questions about it when it spoke to him on the telephone. But, by its own admission, Metro did not appropriately question Mr T or advise him about the risks of financial harm.

There's no suggestion that Mr T was coached by the fraudster, so I think he would've spoken freely if Metro had asked him some questions about the payment. I appreciate what Metro has said about Mr T's belief in the investment opportunity. But banks are aware of the prevalence of fraud and scams, and I consider that they ought to be aware of the main characteristics of investment scams, including that cloned companies are often involved. So, although I wouldn't expect Metro to interrogate Mr T about the payment, I would expect to see that it had used probing questions to get into the detail and test the purpose of the payment and/or that it had educated Mr T about the relevant scam type. If it had done so, then I think it's likely that the bank or Mr T would have realised something was amiss before the payment was made and the scam would've unravelled without Mr T suffering a loss. Metro has pointed out that Mr T could have checked the FCA register to assure himself of the legitimacy of the investment opportunity. And it's said that Mr T could have verified the advisor in order to protect himself – commonly done by contacting the switchboard number for a company as listed on the FCA register. When Mr T contacted V after the scam, he was told that the advisor had never worked for the company, and I think it's fair to assume that he would have been given the same information if he'd contacted V prior to the scam.

Mr T has no prior investment experience and he's said he would have trusted the bank's advice. Overall, I think that if Metro had challenged Mr T about the payment in an appropriate and sensitive way and/or given him relevant scam advice, then it's likely the scam would've been exposed, and Mr T wouldn't have lost his money. So, I'm satisfied that it's fair and reasonable for Metro to reimburse Mr T's loss.

I’ve considered whether Mr T should bear some responsibility for his loss by way of contributory negligence. But I don’t think he should. I understand that Mr T was vulnerable at the time, having recently lost his mother. And he was an inexperienced investor. But he took some steps to protect himself – for example, he checked V’s website – and he was assured of the company’s legitimacy. I’ve looked at the written communication between Mr T and the advisor before the payment was made and I can see that the advisor corresponded in a professional and convincing manner, that their communication was often delivered on seemingly professional letter headed paper, that Mr T signed a contract for his investment, and that he received the paperwork he might have expected to receive for the bond. I don’t consider that the bond’s rate of return was too good to be true, or that it should’ve raised Mr T’s suspicions. And I can’t ignore that Metro did not educate Mr T about the relevant scam type to raise his awareness about the types of checks he could do to protect himself from financial harm.

Overall, although there’s more Mr T could’ve done to protect himself, I don’t think it was unreasonable for him to make the payment in the circumstances and I’m satisfied that there was no contributory negligence on this occasion.

Finally, I can see that Metro made some errors when handling Mr T’s fraud claim which caused delays. I consider the £120 Metro has offered to pay Mr T by way of compensation for the additional trouble and upset these errors have caused him to be fair and reasonable, and in line with the levels of awards this Service recommends. So, I don’t think the bank needs to take any further action in this respect.

My final decision

For the reasons I’ve explained, my final decision is that I uphold this complaint and instruct Metro Bank PLC to:

- reimburse the £33,000 Mr T lost to the scam and pay 8% simple interest per annum from the date of the payment to the date of settlement; plus
- pay Mr T £120 for the trouble and upset its errors in handling his fraud claim have caused him.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 20 December 2022.

Kyley Hanson
Ombudsman