

The complaint

Mr A is bringing this complaint on behalf of the estate of his late father, Mr A senior. He is unhappy that Metro Bank PLC only offered a partial refund to Mr A, after he was the victim of an investment scam.

What happened

I'll summarise the facts of the complaint:

Mr and Mrs A were the victims of a sophisticated investment scam. As a result they invested £285,000 thinking they were purchasing various fixed rate bonds. This complaint focuses on five payments made from the late Mr A's accounts.

Metro refunded 50% of the first three payment Mr A made as part of this scam because it says it didn't provide an effective warning. It said Mr A was responsible for the remaining 50% as he hadn't conducted enough research prior to investing. And it decided not to refund the final two payments as these were in line with his recent account activity.

An investigator upheld the complaint in full. Metro disagreed and the complaint was passed to me to consider.

I considered this complaint (and a number of linked complaints) and issued a provisional decision. I have been in touch with both Metro and the representative for Mr A's estate, and following further discussions, all parties have now agreed to the recommendation set out in my provisional decision, with an adjustment to the interest rate to be paid on the refunded amounts.

As that provisional decision has been accepted by both parties, I'll set it out below.

Provisional Decision

I've provisionally decided that Metro should consider a partial refund for all of the transactions made from Mr A's account. But I don't think Mr A's estate should receive a full refund of all the transactions.

I'll explain how I've come to this conclusion. In the table below I've explained what refunds have already been made and what additional refunds I am recommending.

<i>Date</i>	<i>Account</i>	<i>Amount</i>	<i>Metro refund offered</i>	<i>Receiving bank</i>	<i>Refund from receiving bank</i>	<i>Refund I'm recommending</i>
<i>28/01/21</i>	<i>Mrs A's account</i>	<i>£25,000</i>	<i>£12,500</i>	<i>1</i>		
<i>28/01/21</i>	<i>Mr A's sole account</i>	<i>£25,000</i>	<i>£12,500</i>	<i>1</i>		<i>No further refund but interest to be added</i>
<i>04/02/21</i>	<i>Mr A's sole account</i>	<i>£50,000</i>	<i>£25,000</i>	<i>1</i>		<i>No further refund but interest to be</i>

						added
05/02/21	Mr A's sole account	£50,000	£25,000	1		No further refund but interest to be added
10/03/21	Mr A's sole account	£62,500		2	50% £31,250	Metro to refund a further 16% of this transaction (£10,000) plus interest
09/04/21	Mr A's sole account	£22,500		1		Metro to refund 33% of this transaction (£7,425) plus interest
28/05/21	Mrs A's account	£25,000		3		
28/05/21	Mrs A's account	£25,000		3		
		Total loss £285,000	Total refund offered by Metro £75,000		Total loss remaining after all refunds £178,750	Additional refund to be paid by Metro £17,425 plus interest

Metro's responsibilities

I've considered Metro's argument that the final two payments (made from Mr A's sole account) aren't unusual as they had become part of the normal account activity. And that's why it hasn't refunded any part these payments. But I disagree. The payments are still significantly higher than the general spending on the account. And they were both to new payees. So, I'm satisfied that they represented an APP scam risk, that Metro ought to have been concerned about and have taken steps to intervene – as set out under the CRM code. And I agree with the investigator, that Metro ought to have, and didn't, provide effective warnings for all the payments Mr A made as part of this scam. And these are the requirements Metro agreed to when it signed to the CRM.

Metro has agreed it didn't provide effective warnings when Mr A made the first three payments and has agreed to pay 50% of those transactions.

The investigator also concluded that there wasn't detailed evidence about the conversations that took place, face to face, when Mr A made the fourth and fifth payments. And I agree. Metro hasn't provided any persuasive evidence that it had a detailed conversation with Mr A or that effective warnings were given on each and every occasion. The evidence Metro has provided shows that either several questions weren't asked, or Mr A's responses weren't recorded.

And I've considered the warnings that Metro said it provided (included in the background of the complaint). But I don't think they are effective. They don't help to bring the nature of these scams to life, in the context of how Mr and Mrs A had been contacted and what they had been told.

The first warning is generic and doesn't cover the specifics of the scam that Mr and Mrs A fell victim to. I don't think there is anything in this warning that could have helped them protect themselves from an investment scam.

The second warning talks about contacting the company directly, which Mr and Mrs A thought they had been doing when they spoke to over the phone. It also doesn't provide details to explain that legitimate investment firms can be cloned, or variations on this and what other checks Mr and Mrs A could have made to protect themselves from this type of scam. It also doesn't explain the reasons for checking the FCA website and what this means

or what they needed to look for to satisfy themselves that the investments were genuine. So, I'm persuaded that the investigators findings here are correct and Metro should refund Mr A's estate partly (I'll explain this in more detail below) for all the transactions made from his account.

Should Metro have done more to protect Mr A

In addition to its responsibilities under the CRM code, when Mr A made these payments, Metro should fairly and reasonably 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).

The payments Mr A made were for large amounts and were to new payees he'd never sent money to before. So, I think Metro should have identified that he could be at risk of fraud and so carried out further checks before processing the payments. I think Metro should've prevented the scam because the payments were unusual enough to have warranted intervention beyond a written warning. And so, I think Metro should pay compensatory interest (which I will address further in the "putting things right" section of this provisional decision) from the date of the payments to the date of settlement.

Did Mr A have a reasonable basis for belief?

Mr A made the first payment, as part of this scam, on the same day that Mrs A also made her first payment. So I have considered their actions, in light of what they both said about the scam.

I have thought carefully about the information Mr and Mrs A were presented with, the steps they took and their actions when deciding if they had a reasonable basis for believing that they were dealing with a legitimate business or person.

There are some factors which make their contact with D appear reasonably legitimate:

- *It appears as though D was attempting to clone a genuine company based in Luxemburg, but it has different addresses in Luxemburg and another in the UK, with different website addresses, and the name of the company is slightly different. But I don't think Mr and Mrs A looked beyond the website they were given for D, to check if it was genuine and consequently, they missed these differences.*
- *Mr and Mrs A weren't contacted out of the blue, they had been looking for investment opportunities online, filled in forms and had a call back in relation to their enquiries. So, the contact they received wouldn't have seemed suspicious in and of itself.*
- *They received a brochure which looked professional, and they said there was a convincing website at the time – although there is no record of this now. Mrs A has more recently told us that they received log-in information for an online platform showing what they thought were their investments although again there is not evidence of this now. But I can see why all of this would have been persuasive.*

But there are several factors which I think ought reasonably to have given Mr and Mrs A concern. They don't appear to have carried out any detailed checks on D.

- *Although they said they checked the FCA register and didn't find anything. By doing so they ought to have noticed that there wasn't any information because D wasn't authorised in the UK. And as a result they incorrectly believed their investments would be covered by the FSCS without checking if that was correct.*
- *I can't see that they checked Companies House – if they had they would have seen there is no record of D in the UK. And that ought to have been concerning.*
- *If they had checked the CSSF register carefully they would have seen a different registered address is given for the genuine company. But as I've said above, other features of the genuine company are different to D as well. So, I'm not persuaded a reasonable person would think they were the same company when deciding to invest such large amounts of money.*
- *And the warning added by the FCA doesn't say D was using genuine details of an authorised firm. It says D is not authorised by the FCA. It references the CSSF warning which says a*

company with a very similar name to D is not related to the website given in the warning. Although this was added after Mr and Mrs A had invested with D it helps to highlight that whilst D was attempting to clone a genuine company on careful inspection had different details. And I think given the amount of money Mr and Mrs A were investing, in a new company they had never heard of or dealt with before, they ought to have checked the details they were provided with and if they had they would have seen they weren't that of the genuine company.

- They didn't think it was suspicious that they were making payments to various different payees – unrelated to either D or the bonds they thought they were taking out. And I'm not persuaded that being told they were holding accounts (to allow a 14- day cooling off period) is reasonably believable, given some of the names of the payees used and their experience of purchasing bonds in the past.
- It doesn't appear that D carried out any due diligence checks with Mr and Mrs A, for example copies of their ID taken (as they were a "new client" with D), which would have made the company appear legitimate.
- The brochure they received mentions a fee for the services D was providing. But I haven't seen any evidence that a fee was paid or discussed. Which would seem unusual given that D was finding and arranging the bonds on their behalf.
- Monthly average rates, for a 3-year fixed rate bond were approximately under 1% (taken from the Bank of England's historic monthly average rate). So, although it might seem, that the initial bond they were offered, of 4.753% wasn't excessively high – it was considerably higher than any other fixed bond rate being offered at the time – so they ought to have considered if what they were being offered was "too good to be true" and I think it was.

I appreciate Mrs A's son has explained that Mr and Mrs A didn't have online banking and that they hadn't invested online before. He said they had previously invested with banks that they could visit or used trusted websites which recommended the best bonds and rates, or they would just reinvest in the same bond after it expired. I think their previous experience, albeit limited meant they should have been all-the-more cautious given the large volumes of money they were transferring and how different this investment process would have felt to them.

I don't think Metro's failure to spot that Mr A was being scammed can lead to the conclusion that his actions were reasonable. Mr A's actions still need to amount to him having a reasonable basis for believing he was dealing with a genuine company.

It's because of these factors that I think Mr and Mrs A (and for the purposes of this complaint Mr A) didn't have a reasonable basis for believing they were dealing with a genuine company and therefore shouldn't receive a full refund. The exception not to fully refund under the CRM code can fairly be relied on here.

How does this impact the refund being awarded

What this means for the transactions Mr A's estate has already received a 50% refund for, I am not recommending any further award – apart from interest being added to the refund amount (see below my recommendations regarding the interest rate to be applied)

For the two transactions that Metro hasn't offered a refund for, it needs to make a partial refund.

- o Metro needs to refund 16% of the transaction for £62,500 (as the receiving bank has already refunded 50% of this transaction) and I'm saying all three parties (Metro, Mr A and the receiving bank) should share liability here and take account of the refund already paid.
- o Metro needs to refund 33% of the transaction for £22,500 as I'm saying all three parties (Metro, Mr A and the receiving bank) should share equal liability here.

Conclusions

I'm currently persuaded that Metro needs to increase the refund amount to Mr A's estate for this complaint and I've set out what refunds it needs to make below.

Putting things right

I've considered how interest should be paid and there is enough evidence to persuade me that Mr and Mrs A would have invested in several fixed rate bonds, for different fixed periods, most likely between one and three-years fixed.

So for the purposes of applying an interest rate payment to the settlement figure I have done the following:

Rather than breakdown each individual payment and linking that to the monthly average rate for each length of bond, they had intended to purchase. I've looked at the average rate for one and three-year fixed rate bonds (using the database for the Bank of England's monthly

average rate) during the time that Mr and Mrs A made these payment - to apply an average interest rate to all the payments.

And instead of applying the rates for fixed periods it seems broadly fair to apply those rates from the date of the payments to the date of settlement. And at the time Mr and Mrs A made these payments the rate for

- a three-year fixed rate bond was between 0.57% and 0.6%.*
- a one-year fixed rate bond between 0.23% and 0.29%*

So, I have taken an average of these rates and I think an interest rate of 0.42% is broadly fair.

If either party feels strongly that a different rate should be applied, then I will consider those representations before issuing a final decision on this and the linked complaints. Otherwise, my provisional recommendations are as follows. Metro to:

- Add interest at 0.42% to the refunds already paid from the date of the payments to the date of settlement.*
- Refund 16% of the £62,500 payment to Mr A's estate – totalling £10,000 plus interest at 0.42% from the date of the payment to the date of settlement.*
- Refund 33% of the £22,500 payment – to Mr A's estate – totalling £7,425 plus interest at 0.42% from the date of the payment to the date of settlement.*

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 discussed the complaint further with Metro it decided to agree with the above recommendations. The representative for Mr A's estate provided some additional commentary which I considered further but this didn't change the overall outcome of the complaint. In summary I said the following:

- Even if I accepted that Metro hadn't given any warnings to Mr and Mrs A - the finding that Metro had not met its standard under the CRM code would be the same, and the refund amount would be the same.
- Mr and Mrs A's lack of knowledge about Companies House was only one of a number of reasons I didn't think they had a reasonable basis for believing the investments were legitimate.
- The varying payee names ought to have concerned Mr and Mrs A – given how they had purchases bonds previously.

- The representative for Mr A's estate said the scammer did carry out ID checks with them and I said this would have added to the scam seeming legitimate. But that in itself didn't outweigh the other factors which they ought to have had concerns about.
- Whilst a broker fee was printed on the first invoice it wasn't ever paid and it didn't appear to be raised or invoiced for again. And no other fees were invoiced for or paid for.
- Looking at fixed rate bonds available around January 2021 (when Mr A made the first payment) I was still of the opinion that the rates offered by the scammers were too good to be true.
- Outcomes and offers from other banks did not impact my impartial consideration of this complaint.
- Interest awards needed to reflect the loss of interest Mr and Mrs A suffered during the time they were without this money.

The representative for Mr A's estate suggested that a 1% interest rate would be more representative of the fixed rate bond products that Mr and Mrs A were looking to invest in at the time. I asked Metro if it would be willing to pay 1% interest (instead of the rate I suggested in my provisional decision) and it agreed.

So the findings in the my provisional decision stand, along with the additional comments above and there has been a change to the interest awarded.

Putting things right

I direct Metro to:

- Add interest at 1% to the refunds already paid from the date of the payments to the date of settlement.
- Refund 16% of the £62,500 payment to Mr A's estate – totalling £10,000 plus interest at 1% from the date of the payment to the date of settlement.
- Refund 33% of the £22,500 payment – to Mr A's estate – totalling £7,425 plus interest at 1% from the date of the payment to the date of settlement.

My final decision

I partly uphold Mr A's complaint (now being brought by his estate) against Metro Bank Plc

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr A to accept or reject my decision before 2 June 2023.

Sophia Smith
Ombudsman