

The complaint

Mrs H complains that Metro Bank PLC won't refund money she lost when she fell victim to an investment scam.

Mrs H is being represented by solicitors in her complaint.

What happened

Mrs H was looking for opportunities to grow her income. She's said that in June 2021 she came across an advertisement for a firm "N" in a news article. She checked N's website, which she thought looked professional, and registered her interest. Shortly afterwards, she was contacted by a representative who sold her an investment opportunity.

Mrs H says N's representative told her they would trade in bitcoins and other currencies on her behalf for a commission. But only 10% of her deposit would ever be used for trading, with the remaining 90% staying invested. Mrs H says she thought her 'account manager' would take their commission from the returns on her trade. She agreed to open an account with N and followed her account manager's instructions, including downloading remote access software.

Mrs H started off with an initial deposit of £240 and was able to make a small withdrawal shortly afterwards. She's said this reassured her that the investment was working as it should have.

Over the coming days, Mrs H's account manager persuaded her to invest more money to increase her returns from trading. She says that she had set some money aside for home improvements but deposited it into her trading account instead. And on one occasion, her deposit was also topped up by N. Subsequently, her account manager went on holiday and a colleague took over. Mrs H continued depositing more money to fund her investment, gradually sending payments from an account with a different bank.

Mrs H says things went wrong when she discovered that her new account manager had been trading using all her investment money which had been lost. She felt pressured into taking out loans and borrowing money from her partner to recover her losses.

It was only when her other bank blocked one of the payments and questioned her that Mrs H realised she'd been scammed.

The following transactions made from Mrs H's Metro Bank account are relevant here –

Transaction Date	Transaction Type	Merchant / Payee	Amount
10 June 2021	Debit card	MT4 Prime	£240.00
14 June 2021	Credit (withdrawal)*	Binance	£20.10
14 June 2021	Debit card	Binance	£2,500.00
21 June 2021	Debit card	Binance	£5,000.00
21 June 2021	Debit card	Binance	£5,000.00

1 July 2021	Debit card	Bitstamp Sales	£2,000.00
2 July 2021	Debit card	Wisensex	£1,990.60
5 July 2021	Debit card	Wisensex	£1,674.16
7 July 2021	Credit (withdrawal)*	Bitstamp Sales	£1,881.99
9 July 2021	Debit card	Wisensex	£1,810.19
13 July 2021	Loan proceeds	Lender 1	£5,000.00
13 July 2021	Debit card	Wisensex	£3,171.44
29 July 2021	Pension drawdown	Pension Provider	£19,920.64
29 July 2021	Faster payment	Mrs H	£20,000.00
3 August 2021	Faster payment	Mrs H	£2,000.00
9 August 2021	Loan proceeds	Lender 2	£5,000.00
9 August 2021	Faster payment	Coinfloor Ltd	£5,000.00
16 August 2021	Faster payment	Coinfloor Ltd	£1,800.00
20 August 2021	Credit (reversal)*	Mrs H	£2,000.00
20 August 2021	Faster payment	Coinfloor Ltd	£2,000.00
24 August 2021	Loan from partner	n/a	£5,000.00
24 August 2021	Faster payment	Coinfloor Ltd	£5,400.00
	Scam payments total		£59,586.39
	*Credits total		£3,902.09
	Total loss		£55,684.30

Mrs H reported the scam to Metro Bank in February 2022. It said it was unable to recover any funds and refused to reimburse Mrs H's losses. A complaint was made and subsequently referred to our service.

Our investigator agreed that Metro Bank couldn't have done more with regards to the recovery of the payments. But they thought the bank ought to have done more to protect Mrs H from loss due to fraud. The investigator recommended Metro Bank to refund all the payments from the first £5,000 payment on 21 June 2021 along with interest. Mrs H agreed with the investigator's recommendations, but Metro Bank didn't.

So, the complaint has 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.

I'm mindful that the parties have been waiting for an ombudsman's decision on this case for some time. So, I'd first like to thank Mrs H and her representative, as well as Metro Bank for their patience while we've been considering this case.

The Financial Conduct Authority ("FCA"), UK's financial services regulator, issued a warning about N in August 2021 which said that it was operating in the UK without its permission. Given the information I've found about N during my research, I'm persuaded that Mrs H fell victim to a scam rather than simply losing money as a result of a high-risk investment.

Recovery

In relation to the debit card payments, Mrs H's card was issued under the MasterCard scheme. Chargeback rights are limited through the scheme rules when it comes to claims relating to investment or similar activities. There may be a chargeback right if a merchant doesn't make funds transferred to it available for use in the type of transactions for which it

received them (such as trading on its platform). But the nature of Mrs H's claim is that she'd fallen victim to a scam. As there would be no reasonable prospect of success through the card scheme for claims of this nature, I don't think Metro Bank acted unfairly by not pursuing a chargeback when it was notified that Mrs H has been scammed.

As for the faster payments, the payments went to a wallet in Mrs H's name. Metro Bank would have only been able to send a recall request to the bank the wallet was held with. It's also worth noting that the bank didn't become aware of the scam until several months after the payments had been made. We know the funds were subsequently moved on from Mrs H's wallet to the scammer. So, its unlikely recovery would have been successful.

Duty of Care

While I don't think that Metro Bank could have done more with regards to the recovery of Mrs H'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 H using her legitimate security credentials. I therefore conclude that these were authorised payments for which she 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 is aware of our approach of expecting it to have been monitoring accounts to counter various risks, to have systems in place to identify unusual transactions or other indicators that its customers were at risk of fraud and, in some situations, to make additional checks before processing payments, or declining them altogether to protect customers from possible financial harm from fraud.

I've considered the operation of Mrs H's account in the months leading up to the disputed payments. This is to determine whether they were so unusual or uncharacteristic that I think Metro Bank ought to have intervened. I don't consider the first two payments to unusual or uncharacteristic based on Mrs H's account activity. The first payment (for £240) was in keeping with regular spending history. And while the second payment (for £2,500) was for a higher amount than Mrs H's usual debit transactions, it wasn't so unusual or out of character such that I would have expected Metro Bank to have picked it up as being suspicious.

But arguably, the third payment (for £5,000) does stand out as unusual activity for Mrs H's account. Although it went to the same merchant that she'd paid just days prior, I don't think a spending pattern was necessarily established by that point. I've also kept in mind that the transaction amount was double that of the previous transaction. In my view, it would have been reasonable for Metro Bank to have properly questioned Mrs H *before* processing the third payment.

Had Metro Bank carried out its due diligence and duties and asked Mrs H about the payment, 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 is not up to our service to dictate what questions a bank should ask, Metro Bank could have, for example, asked how Mrs H had been contacted, whether she had parted with personal details in order to open a trading account, whether she'd allowed a third party to remotely access her decide, 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.

Even if she had been sending money to a legitimate crypto platform, it didn't follow that Mrs H's money was safe, or that she wasn't at risk of financial harm due to fraud or a scam. By the time Mrs H made the payments, I think Metro Bank had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account.

Had Metro Bank done more and warned Mrs H about cryptocurrency scams, I've no reason to doubt that she would have explained the true purpose of her payment. I can't see that Mrs H had been given a reason to think she had to hide this information from her bank. Neither had she been coached to tell them something different. I'm persuaded that Mrs H would have looked further into the investment opportunity in general. Indeed, it's likely that Mrs H would have come across the various warnings about cryptocurrency scams following Metro Bank's intervention and scam education.

I therefore conclude that Metro Bank missed an opportunity to intervene. And had it done so, Mrs H wouldn't have incurred further losses. So, I consider Metro Bank can be held liable for them.

In their recommendation, the investigator didn't take into account two 'credits' – £1,881.99 on 7 July 2021 and £2,000 on 20 August 2021 – which simply put are funds that Mrs H recovered directly from the scam after the point I consider Metro Bank ought to have intervened. That was an oversight on the investigator's part, as of course the funds already recovered should be deducted from the loss that Metro Bank needs to reimburse Mrs H.

Contributory Negligence

I've also carefully thought about whether Mrs H is partly to blame for what happened. However, in this case, I don't think she could have foreseen the risk that the company she was dealing with was a scam. She simply didn't appreciate what she was doing or the consequences of her actions.

I haven't seen any evidence to suggest that Mrs H had investment experience such that she ought to have realised she had been given inaccurate information, or that what she was told was too good to be true. Unaware of the common deceptive tactics of scammers, Mrs H unwittingly agreed to continue making deposits until such time that she realised something had gone wrong.

I've thought about this carefully, given the imbalance of knowledge between the parties. While acknowledging that Mrs H could have done more research – as can most customers – overall, I'm not persuaded that it would be fair to make a deduction for contributory negligence in this case.

Putting things right

To put matters right, Metro Bank PLC needs to –

- refund Mrs H all the disputed payments from and including 21 June 2021, less the funds already recovered after that date; and
- pay simple interest at 8% a year on each refunded payment, calculated from the date of loss to the date of settlement (less any tax properly deductible).

Metro Bank must pay the compensation within 28 days of the date on which we tell it Mrs H accepts my final decision.

My final decision

For the reasons given, my final decision is that I uphold this complaint. Metro Bank PLC needs to put things right for Mrs H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 6 September 2023.

Gagandeep Singh
Ombudsman