

## The complaint

The trustees complain that Metro Bank PLC will not refund the money Mr J lost when he fell victim to an investment scam.

In this complaint, I am only considering the money that was lost from the trust account. The money Mr J lost from his personal account is being considered separately.

Mr J is represented by solicitors. To make my decision easier to read, I refer only to Mr J. I do this even where it was his representatives rather than Mr J who said or did something. I mean no discourtesy in taking this approach.

## What happened

The details of this complaint are well known to both parties and were set out in my provisional decision, so I won't repeat them in full here. Instead, I'll recap the key points and focus on giving reasons for my decision.

Mr J explains that he was regularly contacted on the phone about a potential investment opportunity. Initially he wasn't interested, but then he was told that he could shadow some trades first to see how it worked. As Mr J was new to investing, he thought this was a good opportunity. He says that he shadowed the trading account for three months before deciding to put in his own funds.

Between June 2020 and March 2021, he made a number of payments and sent a total of £72,285.69 from the trust account.

Initially, Mr J was pleased with how things were going. He explains that his trading account showed a profit of over \$200,000. When Mr J tried to withdraw funds, he was told that there was a restriction fee of £20,000 to release the shares in his account. Mr J explains that he told the broker to take the money from his profit, but the request was refused. They made an arrangement where 75% of the restriction fee could be taken from the profits, leaving Mr J with £5,000 to pay. But Mr J never received any of the profits. Suspecting he'd been the victim of a scam, he contacted Metro for help.

I issued my provisional decision on 9 March 2023. In it, I explained why I intended to uphold this complaint. An extract of that decision is set out below:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. Mr J used his security credentials to contact telephone banking to set up the disputed payments. This means that at the time he sent the money, he authorised the payments and wanted them to be made. Although he did not intend for the money to go to a fraudster, under the Payment Services Regulations 2017 which apply to the payments he made, and the general terms and conditions of bank accounts, Mr J is presumed liable for the loss in the first instance.*

*But, taking into account the law, regulators rules and guidance, any relevant codes of practice and what I consider to have been good industry practice at the relevant times, 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 (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 customers from the possibility of financial harm from fraud. Metro should have been on the lookout for unusual and out of character transactions.*

*Metro did not identify any of the payments Mr J made as being suspicious at the time he was making them. I've looked carefully at the trust account statements for the six months in the lead up to when the scam began to get a clear understanding of how the account typically ran. Having done so, I do recognise that a trust account may run differently to a current account and might typically be expected to have less day to day spending type activity. But as Mr J made the payments in dispute over the phone, he had the opportunity for direct interaction with bank staff before any money was released.*

*I acknowledge there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. It would not be possible or reasonable to expect Metro to check every payment instruction it received so I do appreciate the commercial realities of a risk-based approach. But I still think that Metro should have done more than it did when Mr J contacted it on 28 July 2020.*

*Mr J is in a demographic of society that the FCA refers to as older old. This is not to say that Mr J is automatically vulnerable because of his age. But I would expect the bank to be mindful that older consumers can sometimes also be vulnerable consumers and take appropriate care, especially when the consumer makes contact with the bank because they wish to make a transaction that is significantly out of character for them.*

*I have listened to a recording of the conversation that took place on 28 July 2020 when Mr J wants to make a large payment of over £9,500. The first thing Mr J says is that he wants to send some cash to Mauritius, so the bank is immediately aware that he wants to make an international payment. He explains that he wanted to make the payment over the phone because he's been to the branch counter five times and they keep asking him different questions. This might have been entirely innocent, but straight away I think the bank's operative ought to have picked up that there were potential risk factors with the transaction. Mr J was making a large payment, he'd said he'd been unable to make the payment through the branch channel and he was looking to send money abroad.*

*Mr J told the bank's operative that he was making this payment for the first time. He tells the operative that the money must be sent in euros. Again, there could well have been an innocent reason for why the transaction was not being conducted in Mauritian rupee, but the bank's operative does not really probe this any further during the call despite pointing out to Mr J that it was unusual for a payment to this country to be made in euros rather than local*

currency.

*The bank's operative takes Mr J through security and then sets up the payment. There is some confusion on the call about who Mr J is paying. He wants to pay a bank in Mauritius but does not have an account name, which is something the bank's operative picks up on. Mr J explains there is a "trade reference." The bank's operative is audibly confused. She does not understand whether the account is held in Mr J's own name or not.*

*Mr J says the account is in his name, but he is hesitant and unsure, answering "well, I suppose so, yeah...but the beneficiary would mean I'm sending it to myself and I want to send it to an account."*

*Metro: "Okay what I'm asking you please is you have an account with this Mauritius bank? It is under your name?"*

*Mr J: "Erm...yes...it is...it's a Victor Global Trading Limited"*

*Metro: "Is that the name of the beneficiary then? Are you paying a company account or are you paying your own account?"*

*Mr J: "I'm paying, I'm paying a company transfer agent called Victor Global Trading Limited"*

*The bank's operative proceeds to take the IBAN number and then asks Mr J for the purpose of the payment. He says that it is a trade reference to pay for shares. The operative doesn't ask Mr J any questions at all about the payment despite now being on notice that the payment is being made for investment purposes. She proceeds to check that the IBAN number is valid and then repeats the payment information back to Mr J.*

*At the time these payments were made, Metro was well aware of the prevalence of investment scams and the hallmarks of how these scams operate. With this in mind, I'd have expected Metro to ask Mr J some questions about the payment aimed at disturbing an investment scam. For example, Metro could have asked questions such as, but not limited to, whether Mr J had been looking to invest, what research he had done, whether he had been cold called.*

*Even though Mr J had made Metro aware that the purpose of the payment was linked to shares, I don't think it should have just accepted that rationale at face value. I accept Metro's position that it is not able to make an investment decision for its customer. There are genuine investments based abroad as well as speculative, high risk investments. But I don't think it is unreasonable to expect Metro to have given Mr J information about common scam risks, especially when the transaction Mr J wanted to make displayed risk factors.*

*From what I have heard, I consider that Mr J would have spoken openly and freely if he had been asked direct questions. It's clear that Mr J didn't identify any red flags in the arrangement himself, but Metro, with its far superior knowledge and experience of what an investment scam could look and feel like, ought to have been concerned about some of the things Mr J had said and asked him more direct questions in order to satisfy itself he was not at risk of financial harm. I think Mr J would have told Metro that he was making an investment via a firm based abroad and he would have explained about shadowing the trader. I am persuaded Mr J would have been open with the bank about the transaction as at this time he believed he was dealing with a genuine company.*

*Although I consider Metro ought fairly to have done more to find out more about the payments Mr J was making, this in and of itself isn't enough for me to say that the bank should refund all of the money Mr J went on to lose as a result of those payments being*

*made. I also need to be persuaded that the bank's intervention would have made a significant difference and ultimately prevented the payments from being made. When making that decision, I have to base my findings on the balance of probability – that is, what I think is more likely than not to have happened, taking into account what I know from the information that is available to me.*

*I've thought carefully about whether Metro's intervention would have prevented Mr J's loss. If the bank had asked appropriate questions, I'm not persuaded Mr J would have been able to confidently answer them without concerning Metro he might be at risk of financial harm from fraud. I say this because there was confusion in some of the limited information that Mr J did give and I think he would have described the key hallmarks that Metro should be on the lookout for if he'd been asked more pointedly. Had Metro given him information about what an investment scam could look and feel like, this warning would have caused Mr J to reflect and, on balance, would have stopped him from going ahead to make the payments. I don't think Mr J would have proceeded and risked losing money from his inheritance if he'd been made aware that the investment bore the hallmarks of a scam.*

*I have thought carefully about whether Mr J should bear some responsibility for his loss by way of contributory negligence (which might justify a reduction in compensation). And overall, I don't think he should. Mr J fell victim to a highly sophisticated and well-orchestrated scam. As with many scams of this type, the fraudsters employed an array of tactics to persuade prospective investors that the company was legitimate. They built trust over an extended period of time, they interacted over the phone which is very powerful at creating false confidence and there was a trading platform that Mr J was able to access. I think a reasonable person could similarly have been persuaded to invest in what, on the face of it, appeared to be a good investment opportunity.*

*Overall, I think Metro should have done more than it did before processing the payments Mr J wanted to make. Had it intervened as I think it ought to have done when Mr J was making a large, out of character payment, I think it's more likely than not that Mr J would have decided not to go ahead and he would not have lost this money.*

*Our Investigator said that the bank should pay 8% simple interest on the funds from the date Mr J made each payment to the date of settlement. But I don't think this is the most fair and reasonable approach to putting Mr J back in the position he would have otherwise been in now. I say this because the account statements I have show that the trust account was interest bearing, so it is possible to work out how much the funds would have earned had they remained in the trust account. I am not persuaded that Mr J's intentions were always to invest in something high risk and speculative. As such, interest at the underlying account rate is fair because I think it is more likely than not that the funds would have remained here but for the scam.*

*Our Investigator recommended that Metro should pay £150 compensation to Mr J to acknowledge the distress and inconvenience the bank has caused him. Even though Mr J is a trustee, he was still interacting with Metro as an individual. It's clear that Metro's failure to intervene when it should have done has had an impact on Mr J. Whilst much of the impact of this situation is undoubtedly down to the actions of the fraudster, I think £150 is a fair and reasonable way for the bank to acknowledge its contribution to the overall situation Mr J has found himself in.*

*To put things right, I am proposing that Metro should now refund the £72,285.69 that was lost to this scam from the trust account along with simple interest at the underlying trustee account rate from the date each payment was made to the date of settlement.*

*Metro should also pay Mr J £150 compensation to recognise the distress and inconvenience*

*he has been caused.*

## **Responses to my provisional decision**

Mr J's representatives received my provisional decision and confirmed the trustees accepted the position.

Metro confirmed it had received my provisional decision and said it would indicate the bank's stance in line with the deadline.

Metro responded to say that the first principle of any scam claim was validating the claim to be genuine. It suggested that I had accepted this was a valid scam based on the basis of a single link published on the internet in 2020. The bank said this information was too vague.

Metro said if it were provided with concrete evidence to indicate this was a scam, it would take that into account and asked if this service has got evidence to show this is a scam. It made no other comments about any of the other points I had outlined in my provisional decision.

As both parties have now responded and the deadline for responses has passed, I will consider the complaint afresh.

## **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 was surprised by what Metro said in response to my provisional decision. When the bank sent its file to us, it said:

*"Whilst I appreciate the consumer fell victim to a scam, I cannot see how Metro Bank can be held liable for the funds."*

Although the bank did not agree that it had a responsibility to refund any of the loss, it did seemingly accept at the outset that Mr J had been the victim of a scam, so it is puzzling that the bank continues to question now whether this was a scam or not.

Nonetheless, I do appreciate that it can be difficult to know whether a consumer has lost money to a bad investment or whether they have lost money to an investment scam, especially when the investment is based abroad. But I think there are obvious signs here that Mr J has fallen victim to a scam. What happened in this case bears the hallmarks of an investment scam.

Right at the outset, Mr J was approached from a cold call, which is a common feature of an investment scam. In addition to this, he was unable to withdraw any funds. He was also told that he needed to pay substantial fees to access his money. The level of profit Mr J had allegedly made was unrealistically high.

Given that the investment firm made it impossible for Mr J to withdraw any money and now seems to have disappeared, I consider it unlikely that it was operating a legitimate operation. I am also mindful that repeatedly contacting Mr J over the phone to encourage him to invest is a high-pressure sales technique and a practice typically associated with scam firms. In addition to this, two of the companies the broker told Mr J to invest in appear on the International Organization of Securities Commissions Investor Alerts Portal. I consider a warning shared by a financial regulator to be persuasive supporting evidence for a scam.

Against this backdrop, I'm satisfied that, on balance, this was not a genuine investment opportunity and was instead a dishonest scheme intended to deceive Mr J into parting with his funds.

Metro did not make any other comments, so it is not clear what the bank thinks about the points that I made in my provisional decision. It might be that the bank is expecting a further opportunity to review and provide submissions, but I have to be fair to both parties here. Metro has been given a fair opportunity to make its case.

As neither party has provided any further comments or evidence for me to consider about the approach I have proposed taking to resolve Mr J's scam complaint, I see no reason to depart from the conclusions set out in my provisional decision and summarised above.

### **Putting things right**

To resolve this complaint, Metro Bank PLC should now:

- Refund the £72,285.69 that was lost to this scam from the trust account
- Pay simple interest at the underlying trustee account interest rate from the date each payment was made to the date of settlement.

If Metro considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

- Pay Mr J £150 compensation to recognise the distress and inconvenience he has been caused.

### **My final decision**

My final decision is that I uphold this complaint against Metro Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mr J to accept or reject my decision before 24 April 2023.

Claire Marsh  
**Ombudsman**