

The complaint

Mr I has complained that Metro Bank PLC failed to refund transactions he made to a gaming website which was acting illegally within the UK.

What happened

Mr I had a gaming account with an online casino that was based outside of the UK. Over the course of two months towards the end of 2021, Mr I deposited and lost, a considerable amount of money gambling through the casino. He contacted the Gambling Commission to ask for help as he had previously registered with GAMSTOP and had thought this would prevent him from being able to gamble online.

The Gambling Commission explained that while registered GAMSTOP users were unable to gamble with UK based gambling merchants, the same restrictions didn't apply with merchants registered overseas. This was because overseas merchants weren't licenced by the UK Gambling Commission and were effectively trading illegally within the UK. It suggested Mr I contact his bank to ask if it could refund any of the transactions via a chargeback request.

Mr I then contacted Metro Bank and explained the above to it. Metro told Mr I that in this instance, because he had confirmed he'd made all of the transactions to the overseas casino himself, it was unable to request a chargeback on any of the money he'd spent under the chargeback rules. Further it said that because Mr I had told it that he had placed the bets himself, it was satisfied that there was no fraud on his account and therefore that the transactions were legitimate and not ones it could refund.

Mr I disagreed with Metro Bank's response and brought his complaint to our service. He remained of the opinion that the transactions were fraudulent on the basis that the casino was acting illegally within the UK. He questioned why the bank hadn't queried the value of the transactions leaving his account, as they were extremely high and in fact totalled more than his annual take home salary. He said he's been left with a £20,000 debt which he thinks Metro could've prevented him from accruing by stopping his gambling transactions at the time.

One of our investigators looked into Mr I's complaint already. He found that Metro hadn't acted unfairly when it refused the chargeback request as Mr I's transactions weren't eligible for that kind of refund. However he did think that by November 2021 Mr I was using his account in a very unusual way and that this should've been flagged on the bank's system as a potential indicator of vulnerability. As such he thought that Metro Bank had missed opportunities to contact Mr I and check he was comfortable with the amount of money he was spending. For this failure he suggested Metro Bank pay Mr I £300 compensation.

Metro Bank accepted the investigator's view, but Mr I didn't. He said that he thought it was unfair that Metro Bank would essentially only be asked to pay 2% of his overall losses. He believed that had it contacted him in November 2021 he would've stopped gambling and so he thought it should cover all his losses from that point. He asked for an ombudsman to review his complaint again and so it's been passed to me to consider.

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 done so I agree with the findings of our investigator and won't be asking Metro Bank to cover any of Mr I's gambling losses. I know this will be distressing news for Mr I and so I want to explain why I have reached the outcome I have.

Mr I says that the online casino he was using was acting illegally within the UK. This is because it wasn't licensed by the Gambling Commission to operate within the UK. As such he has equated it to a fraudulent or 'scam' website. While I understand why Mr I has reached this conclusion it's important to clarify what banks mean when they talk about 'fraud and scams' as I think Mr I and Metro Bank have been using similar words, but in different contexts, and that has added some confusion to Mr I's complaint.

Mr I believes that the transactions were fraudulent because the casino he was using didn't have a licence to operate in the UK and as such it was acting fraudulently. However, when banks use terms like 'fraud' more often than not it's in situations where a third party has accessed a customer's account and is spending or transferring their money without their knowledge or consent. In Mr I's case because he was the one spending the money on the websites it said that the transactions weren't fraudulent. Because it wasn't focusing on what the money was spent on, but rather, who spent it.

Mr I confirmed he had spent the money himself and had received the 'goods' (in this case the bets he placed) and so it couldn't complete a chargeback on these transactions. This is because chargebacks are only available in situations where consumers didn't receive the goods they paid for, or there was something wrong with the goods, or they were charged the wrong amount, or someone else used their card without their knowledge or consent. None of these applied to Mr I's complaint and so it couldn't process a chargeback request for him.

In regard to whether or not the actual online casino was operating legally, or illegally, within the UK this isn't something the bank is required to consider. Mr I paid for goods (ie bets) and received them, which is evidenced by the fact that when his bets won, he received his winnings into his account from the casino. I don't think Metro is at fault for not realising Mr I had linked his account with an online casino that was based outside the UK.

It's unfortunate that the Gambling Commission expressly mentioned chargebacks in its response to Mr I's complaint as I agree it was never a viable option for him to make a successful chargeback request in the circumstances of his complaint. I don't think Metro Bank acted unreasonably or unfairly when it told him it couldn't complete a chargeback request for him.

Our investigator did think that Metro Bank should've picked up on the unusual activity on Mr I's account and checked that he wasn't experiencing any problems with the volume of transactions he was completing. I agree with this. The Financial Conduct Authority ("FCA") has previously released guidance on how financial companies, such as banks, can support vulnerable consumers. And this includes monitoring accounts for unusual activity. I note that Mr I wasn't using his Metro account at all in the first half of 2021, and then suddenly began transferring in large amounts of money into the account and then spending this at online casinos.

I do think these transactions should've been flagged on the bank's systems as unusual and if not linked to fraud then still worth further investigation and consideration. In other words, it should've prompted the bank to contact Mr I to make sure he was comfortable with the

transactions and volume of money coming in and out of the account was not something that was causing him harm.

However, there is no guarantee that interaction between Metro Bank and Mr I in November 2021 would've prevented him from losing the money that he did. I know Mr I is of the opinion that he would've stopped gambling if the bank had queried his spending with him at the time, but I have no evidence to rely on to say this is the case. So, it would be unreasonable for me to hold the bank directly liable for his losses on this basis.

Which is why I think the £300 suggested by the investigator is reasonable in the circumstances. This is in recognition of the fact Metro should've contacted Mr I in November 2021 and failed to. It should not be viewed as a partial refund of his gambling losses as I don't think Metro is liable for those.

Putting things right

For the reasons set out above Metro Bank PLC should pay Mr I £300 compensation for its failure to contact him in November 2021.

My final decision

For the reasons set out above I uphold Mr I's complaint against Metro Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 4 September 2023.

Karen Hanlon
Ombudsman