

## The complaint

Mrs O complains that Metro Bank PLC hasn't refunded her after she fell victim to an investment scam.

## What happened

I issued a provisional decision for this complaint on 28 April 2023, copied below. Both parties have responded and accepted my findings.

*Mrs O received an email from an unknown sender on 22 March 2021. The email appeared to be a celebrity endorsement of cryptocurrency investment. Details were provided for how Mrs O might get involved in such investments and she followed a link from within the email, to a website. She left her details and was later contacted by someone posing as a broker from an investment firm. This person, along with others Mrs O interacted with, was in fact a scammer.*

*The scammer talked Mrs O through the benefits of investing in cryptocurrency and the potential for lucrative returns. Mrs O was persuaded to invest and gave remote access to the scammer so they could help her set up a cryptocurrency wallet on what was a legitimate platform. She was also given access to what appeared to be a trading platform.*

*Mrs O proceeded to make a payment of £2,500 to the cryptocurrency wallet, creating a new payee through her online banking in the process. That same day she sent a further £2,500. She then sent the money on from the wallet at the scammer's instruction.*

*By the end of the day, she was shown returns of €600. She was persuaded to invest more.*

*Mrs O made two further payments of £5,000 and £5,001 on 23 March 2021. Her apparent returns continued to increase and so she continued to invest, sending a further £11,000 to be invested over the course of six days and two payments.*

*Mrs O then decided she wanted to withdraw some of her considerable returns, which appeared to stand at €65,000. The scammer told her that, to do so, she'd have to pay a 20% 'cashflow guarantee fee' to allow the withdrawal. Mrs O went on to pay this, sending £11,200 at the scammer's instruction.*

*The scammer then kept telling Mrs O she'd need to pay more and more money, for varying reasons, to withdraw her funds. Over the course of around three weeks Mrs O sent a further £106,100 across seven payments. One of those payments was made in branch, where she explained she was making a payment for cryptocurrency.*

*Mrs O received further requests for the payment of various fees, each apparently necessary to complete a withdrawal of funds. She became suspicious and contacted Metro on 10 May 2021. In doing so the scam was revealed.*

*The full list of payments made to the scam are as follows:*

Date	Amount
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22/03/2021	£2,500
22/03/2021	£2,500
23/03/2021	£5,000
23/03/2021	£5,001
25/03/2021	£10,000
29/03/2021	£1,000
05/04/2021	£11,200
05/04/2021	£6,600
12/04/2021	£12,000
14/04/2021	£17,500
19/04/2021	£20,000
23/04/2021	£20,000
23/04/2021	£20,000
30/04/2021	£10,000
<b>Total loss</b>	<b>£143,301</b>

*Metro began investigating and it said it would contact Mrs O with an update on 24 May 2021. Mrs O didn't hear anything and so contacted the bank. She was promised a call-back but never received one. She next heard from Metro on 4 June 2021, when it wrote to her and explained it wouldn't be refunding her loss. It also acknowledged it had provided a poor level of service throughout the investigation and offered an apology.*

*Metro said that because Mrs O had transferred the money to a cryptocurrency wallet in her own name, it wouldn't offer a refund.*

*One of our investigators considered Mrs O's case and felt it should be upheld. She was satisfied that Metro ought to have identified Mrs O's payment behaviour as suspicious by the time she made the third payment, and so should have intervened. She said, had it done so, the scam would have been revealed and Mrs O's loss prevented.*

*Our investigator said Metro ought to have known enough about cryptocurrency investment scams to recognise that Mrs O was at risk of harm through financial crime and that her losses were reasonably foreseeable to the bank. That meant it didn't matter that the payments went to a cryptocurrency wallet in Mrs O's name before being lost to the scam.*

*Our investigator said that Mrs O ought to have become concerned about what she was being told by the scammer at the point she'd made the ninth payment. She found that, by this time, the supposed returns had become too good to be true. And she said Mrs O was repeatedly being asked to pay more money for all manner of fees, with the purpose of each payment becoming more concerning to the extent where Mrs O ought to have stopped what she was doing. With that in mind our investigator said Mrs O ought to bear shared responsibility for her losses from payment nine.*

*The recommendation was then that Metro should:*

- refund all loss on payments three through eight;*
- refund 50% of Mrs O's loss on payments nine through fourteen;*
- pay interest on the refund at 8% simple per year from the date of payment to the date of settlement; and*
- pay £150 in compensation for the poor handling of the complaint.*

*Mrs O accepted the investigator's findings, but Metro did not. It maintained that it wasn't*

*responsible for any losses as the funds had gone to Mrs O's cryptocurrency wallet. It also said the repeated payments to the same payee made the account activity look genuine.*

*Our investigator responded to endorse her findings, but Metro has since failed to respond, despite numerous promises of reply and chasers from us. It has now been seven months since Metro have engaged with our service about this complaint.*

### **What I've provisionally 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 intend to uphold the complaint, but my findings and the redress differs to the recommendations of our investigator.*

*The starting position in cases like this is that Mrs O is presumed responsible for the payments out of her account. That's because, as per the Payment Service Regulations 2017, she authorised them. However, that isn't the end of the story and Metro has responsibilities beyond simply executing a payment instruction it receives.*

*Does Metro bear any responsibility for Mrs O's loss?*

*It's well-established (through industry regulation, best practice standards, and this service's approach to scam complaints) that Metro ought to have had systems and processes in place for identifying payments at risk to fraud. That includes monitoring accounts for suspicious and unusual activity.*

*This service's approach to cryptocurrency scams has also been well-established for some time now, and Metro ought to be aware of this. Cryptocurrency scams have been growing in prevalence for several years, with the FCA specifically providing commentary on them as early as June 2018, including publications on its website and a 'Dear CEO' letter. I'm then satisfied that Metro ought to have been aware of, and on the lookout for, cryptocurrency scams at the time Mrs O fell victim. That includes instances where a customer might make payments which first go to a cryptocurrency wallet in their own name.*

*That the payments went to Mrs O's own cryptocurrency wallet doesn't remove Metro's obligations to protect her from fraud and financial harm. The loss to her, in sending the money to a cryptocurrency wallet before moving it on to a fraudster, was both reasonably foreseeable and preventable.*

*The Contingent Reimbursement Model (CRM) Code doesn't apply in this case because of the specific provisions of the Code. Those provisions don't, however, remove Metro's account monitoring and fraud prevention responsibilities.*

*I'm persuaded then that Metro might be considered to bear responsibility for Mrs O's loss, if it is evidenced it didn't act as it ought to have done.*

*I can see that, between 2 October 2020 and the start of the scam, Mrs O made no faster payments. It wasn't a common method of payment for her. There's also no payment out of her account of any similar value; all are much lower regardless of payment method. And so the payments made as part of the scam quickly become unusual to the extent Metro ought to have intervened. I find the investigator's outcome, that Metro ought to have stepped in at payment three, is reasonable.*

*I'm satisfied that intervention from Metro would have made a difference. There's nothing to suggest Mrs O would have lied about the purpose of the payments she was making or how she came upon the investment opportunity. Indeed she appears to have revealed some of this detail when she visited a branch to make one of the scam payments. On hearing what Mrs O had to say Metro ought to have been immediately concerned, given*

*all the hallmarks of a scam that were present.*

*Metro ought then to have highlighted the scam risk to Mrs O and attempted to dissuade her from proceeding, offering strong warnings and explaining the features of such scams in detail. I've seen nothing to persuade me that Mrs O wouldn't have listened to the bank.*

*I'm satisfied Metro bears responsibility for Mrs O's losses from the third payment on, given it could have and should have intervened and prevented the scam.*

*Should Mrs O bear some responsibility for her loss?*

*Our investigator felt Mrs O ought to have been concerned about what she was being told at payment nine, given what she was being told about the returns and the purpose of the fees. I do agree that she ought to have been concerned by these things.*

*However, I believe Mrs O's concerns ought to have been present from the outset, prior to any payment being made. Whilst there was some sophistication to the scam it's important to consider the key features from the beginning, alongside Mrs O's actions.*

*Mrs O received an email from an unknown sender. There doesn't seem to be anything that would set it apart from a spam email and there seems to be little to no reason to trust it's source or content from the outset. Indeed, it's fair to say that spam emails are notoriously the source of misleading and malicious content.*

*Whilst there appears to be a celebrity endorsement within the email, I don't find it can be fairly said to stand up to any degree of scrutiny. It's only a picture of a celebrity and an alleged quote from them.*

*I can't be sure what Mrs O saw after clicking the link within the email. She's previously described a video which featured further celebrity endorsement of cryptocurrency investment and a clip of a popular morning television programme. But I consider it's very unlikely that this is what Mrs O was actually presented with. There's very little evidence to suggest such a video existed or that celebrity endorsements were made on the TV programme mentioned. It might be that some video stills were edited, or something similar. I can't be sure, but I'm not persuaded there was a genuine or convincing video clip.*

*I'm also conscious that Mrs O appears to have carried out no checks on the scammer (having been given his name) or the firm the scammer claimed to work for. There were no steps taken to verify his or the firm's legitimacy.*

*There appears to have been no exchanging of terms and conditions, or a contract/agreement between Mrs O and the investment firm. Whilst Mrs O has explained she provided some ID documents, this doesn't meet the reasonable expectations of how an investment firm might operate.*

*I find the rate of return Mrs O was supposedly generating to be too good to be true from the outset too. She was told she'd made €600 on a £5,000 investment in just a matter of hours. I don't find that can be fairly and reasonably described as realistic or believable. And so when presented with such returns, I find it's fair and reasonable to say Mrs O ought to have been suspicious and more cautious.*

*Mrs O has described how the scammer was helpful, appeared knowledgeable, and seemed trustworthy. And I understand there were some convincing looking websites involved in the scam. But I don't find these features outweigh the elements I've already described. I'm satisfied Mrs O ought to have been concerned and more cautious from the outset.*

*With this in mind, I find the 50% reduction in award recommended by the investigator ought to be applied from payment three, rather than payment nine. That the scam becomes less believable over time doesn't further impact the reduction in award.*

*What rate of interest should Metro pay on the award?*

*Our investigator recommended a payment of 8% simple interest per year. But I'm not*

*currently persuaded that would be fair. The money appears to have come from a savings account, and there don't appear to have been any plans to use the money elsewhere, and so that would seem to be the fair rate to award.*

*If Mrs O can persuasively show that a different rate is more appropriate, or that she had firm plans to use the money elsewhere, then I'll consider this point further. She should otherwise provide evidence to show the interest rate applicable to the account the funds originated from and statements to show the transfers made.*

*Should Metro pay additional compensation to Mrs O?*

*Metro itself admitted in its final response that it hadn't handled Mrs O's complaint well. It's a shame to see it didn't proactively award compensation at the time given those findings. Mrs O was doubtless experiencing a lot of stress and worry, made worse by a lack of communication and broken promises on Metro's part.*

*Our investigator's recommendation of £150 seems reasonable in the circumstances.*

*I have also considered Metro's failure to engage with our service on this complaint. I said earlier in this decision document that Metro had not properly responded to the investigator's findings despite several promises, a number of chasers, and seven months having passed.*

*DISP 3.5.14 states:*

*If a respondent fails to comply with a time limit, the Ombudsman may:*

- (1) proceed with consideration of the complaint; and*
- (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.*

*With the circumstances of the case in mind, I intend to make a further award of £200 for the distress and inconvenience caused to Mrs O as a result of Metro's failure to comply with time limits and lack of engagement with this service.*

### **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 not departing from my provisional decision as both parties have accepted it.

Mrs O has confirmed some of the money lost was borrowed from friends and family. As that money wasn't her own it wouldn't be fair and reasonable for an interest award to be made on it.

Her own money was held in an account with a 0% interest rate. And so there is no interest award to be paid there either.

### **Putting things right**

Upon final acceptance by Mrs O Metro should pay:

- a 50% refund of the loss from payment three onward (£69,150.50);
- a total of £350 compensation for distress and inconvenience.

**My final decision**

I uphold this complaint against Metro Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 14 July 2023.

Ben Murray  
**Ombudsman**