

## The complaint

Mr and Mrs B complain that Metro Bank Plc didn't do enough to prevent the loss they suffered when they were tricked into sending money to an account held with Metro Bank.

Although the loss stems from a payment made from a joint account, for ease of reading, I'll mostly only refer to Mr B. Mr B has also used a representative to bring his complaint, but again, I'll ascribe the comments of the representative to Mr B himself.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. Mr B sadly fell victim to a scam. He instructed two CHAPS payments in January 2021 from his account with his own bank 'C'. The payments totalled around £185,300 and were made a few days apart. Both payments credited the same account held with Metro Bank.

At the time, Mr B believed he was making payments towards an investment bond with a well-known firm 'A'. But he later learned that A were being impersonated and the payments had gone to a scammer. He reported this to C who in turn informed Metro Bank. Shortly after this Metro Bank responded to say that no funds remained to be returned.

Mr B complained to Metro Bank. In essence he didn't think they'd done enough to prevent the fraud from taking place. He also referenced that a friend of his had fallen victim to the same scam and had received a partial recovery. He questioned why Metro Bank hadn't likewise been able to make a recovery?

In summary Metro Bank said all the funds were spent prior to them receiving a notification of fraud. And they had no other reasons to be suspicious of their customer's account prior to that point. Mr B referred his complaint to our service and one of our Investigators didn't recommend it should be upheld. Mr B disagreed and asked for an Ombudsman to make a decision.

In July 2023 I issued a provisional decision in which I said:

*"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'm intending to reach a different outcome to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.*

*I'm satisfied that Metro Bank appropriately followed its processes when opening the account in question. I don't think there were any failings at that time or that Metro Bank reasonably could have known that the account they were opening would later go on to be used in connection with a fraud or scam. So, I don't think Metro Bank could have prevented Mr B's loss in that way. I also don't think there was any account activity prior to the arrival of the first*

payment from Mr B where I'd have expected Metro Bank to have intervened or to have done more.

Metro Bank have obligations to be alert to potential fraud, scams and the misappropriation of funds. They are also required to have systems and controls in place in relation to compliance, financial crime and money laundering. In particular the Financial Conduct Authority's (FCA) Systems and Controls Sourcebook (SYSC) includes that "A firm must take reasonable care to establish and maintain effective systems and controls for compliance with the applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime." (SYSC 3.2.6R).

Further SYSC guidance includes that "A firm should ensure that systems and controls include:... (4) appropriate measures to ensure that money laundering risk is taken into account in its day-to-day operation." (SYSC 3.2.6G).

In its March 2016 paper "Financial Crime: a Guide for Firms" the FCA set out that "A firm must conduct ongoing monitoring of its business relationships on a risk-sensitive basis. Ongoing monitoring means scrutinising transactions to ensure that they are consistent with what the firm knows about the customer, and taking steps to ensure that the firm's knowledge about the business relationship remains current."

With the above considerations in mind, I'm satisfied that Metro Bank ought to have been monitoring its accounts and that this would include both incoming and outgoing payments. The first payment from Mr B was for £85,188.10 and it arrived in the Metro Bank account on 22 January 2021. Given the nature and expected use of the type of account that received the funds, I don't think Metro Bank needed to do more when the funds credited the recipient account. But following on from this there was then a series of transfers made to another Metro Bank account (in the same name as the account that had received the funds). The first four of these are detailed below:

<b>Date</b>	<b>Time</b>	<b>Amount</b>
22 January 2021	5.24pm	£15,600
22 January 2021	8.37pm	£9,580
23 January 2021	4.50am	£12,563
23 January 2021	9.25am	£7,000

By the time the third transfer was instructed this represented nearly half the incoming funds being transferred out less than 12 hours after they were received. I think this should have put Metro Bank on heightened awareness about the possibility of misappropriation of funds and I think it's fair to say that the account should have been closely monitored as a result. The arrival and relatively quick dispersal of funds can be a feature of the movement of the proceeds of fraud and scams. It's also unusual to place funds onto an account of this type and then to promptly move them on. The type of account is one that more commonly sees less frequent activity. And it isn't generally typical activity for money to be credited to such an account and then to be dispersed soon after.

And by the time of the fourth transfer, I think Metro Bank ought to have blocked the account; looked more closely at the activity as the potentially suspicious pattern of activity was continuing; and investigated the activity before allowing the movement of further funds. I'd

also have expected them to have blocked the linked account that the funds were being transferred into at the same time.

Had it taken the above action, Metro Bank would have seen that the additional information provided with Mr B's incoming payment indicated that it was intended for A. This clearly would not have fitted in with what Metro Bank knew about their customer and would have been an immediate red flag. Metro Bank also would have seen that the funds were quickly moved again from the account they'd been transferred into which would have added to the picture of suspicious activity. I think Metro Bank should have contacted their customer and sought evidence to support that they were the intended beneficiary for the payment they'd received.

I also don't think it would have been unreasonable for Metro Bank to have contacted C to ask them to check with Mr B about the reason for his payment. When the scam was reported on 4 February 2021, Metro Bank attempted to contact their customer but were unable to speak to them. So, I've no reason to think things would have been different had they attempted contact sooner.

But even if the accountholder had responded, I don't think they would have been able to provide anything which would have both been acceptable and would have adequately explained the beneficiary name mismatch.

And in either case, I think the majority of the funds Mr B had sent (or would have sent including the second payment) would have remained available for recovery. Either through Metro Bank contacting C which would have resulted in the discovery of the scam as Mr B would have explained he believed he was paying A (who weren't the accountholder). A are a reputable and regulated firm and this had the hallmarks of a cloned investment scam. I'd also have expected a large bank such as Metro Bank to be aware of such scams. Or through Metro Bank's customer being unable to have adequately explained the situation before the scam report was received on 4 February 2021. The second payment of around £100,000 either would never have been made, or it would have arrived in a blocked account and would have still been recoverable.

Had Metro Bank done all I'd have expected, at the time the fourth payment was requested (and when the accounts ought to have been blocked), of the first three payments £32,500.22 would have already been spent. And I don't think Metro Bank reasonably could have stopped that from happening. But I think the remainder of Mr B's loss could and should have been prevented. As I've seen evidence to support that C hasn't reimbursed Mr B with any of his loss, I'm intending to direct Metro Bank to pay Mr B £152,816.13 which represents the loss I think they could have prevented.

I've considered whether Mr B should bear some responsibility for his own loss due to contributory negligence, meaning I should make a reduction in my proposed award. And in the circumstances of this complaint, I'm not persuaded I should. The documentation provided from the scammer appears genuine. I've also seen evidence of the interaction between Mr B and C when instructing the payments. But nothing to support that he was warned of the possibility of a cloned investment scam and continued despite this.

Given this was a form of investment scam, Mr B was clearly looking to invest his money around that time. And as we can't establish with any certainty what he would have done, had the money been returned to him at the time, I see no reason to deviate from our usual approach of also awarding 8% simple interest (yearly). This interest should be calculated between 1 February 2021 and the date of settlement.

My provisional decision

*For the reasons outlined above, but subject to any further information I receive from either Mr and Mrs B or Metro Bank, I'm intending to uphold this complaint.*

*I intend to direct that Metro Bank Plc pay Mr and Mrs B £152,816.13. This is the total of the payments into the account minus what was spent before Metro Bank ought to have stepped in (£185,316.35 minus £32,500.22). 8% simple interest (yearly) should be added to this amount between 1 February 2021 and the date of settlement."*

Mr and Mrs B accepted my provisional decision. Metro Bank didn't and responded with some further comments which I'll address below.

## **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.

Metro Bank say that my provisional decision is flawed as Mr B wasn't a customer of theirs and as such no legal duty of care exists between them. And even if the funds were paid to their customer as a result of deception, then this doesn't automatically entitle Mr B to a refund from Metro Bank.

Whilst I've taken account of the law, our service is not bound by it, instead we're tasked with reaching an outcome that is fair and reasonable in all the circumstances. And this doesn't have to be the same position as if matters were being considered by a court.

I accept what Metro Bank has said, in that the sender of funds isn't automatically entitled to a refund from the recipient bank. However, even in the absence of a customer or contractual relationship between the parties, or of a legal duty of care, if Metro Bank has failed against their various obligations and this can be said to have caused Mr B's loss (as is the case here), I think it's fair and reasonable to direct that the loss be reimbursed. I believe Metro Bank is already aware of this position as our service has already considered complaints about them as the 'receiving bank' some of which were upheld with Metro Bank being directed to pay redress.

Metro Bank have also highlighted that my decision includes no consideration of Mr B's own bank 'C' who they say did owe him a duty of care. This complaint is made by Mr and Mrs B about Metro Bank as the respondent. As such, I can't comment on the actions of C here. In any fraud case there are always likely to be multiple parties involved. And I can't always comment on the actions of other involved parties. Examples of this would be the scammer or another unregulated entity or banks outside the UK. So inevitably I have to make a decision based on the actions of the respondent to any given complaint. Our rules do allow me to point out that a complainant may wish to refer their complaint to another respondent. But each complaint must still be considered on its own merit. But to acknowledge the comments raised by Metro Bank, I've already contacted both parties to make them aware of my intention to slightly amend the redress outlined in my provisional decision. As I think it would be fair and reasonable for Mr and Mrs B (upon request) to assign their rights against C to Metro Bank. This way should Metro Bank wish to try to recover what they've been directed to pay to Mr and Mrs B, from C, they can do so.

Metro Bank reiterated their position that they acted promptly upon notification of fraud, but by that time the funds had been paid away, and so they say they couldn't have prevented this. I've considered this, but the basis of my decision is because I think Metro Bank could've

prevented some of their loss for the reasons set out above, not that Metro Bank failed to act when notified.

Metro Bank have also said that them contacting C would have been outside usual banking practice. I maintain that in a situation where a bank is trying to establish whether their customer is the intended beneficiary / has entitlement to an incoming payment, when that payment has come from another FCA regulated firm, contacting the sending bank is a reasonable step for a diligent banker to take. This is something I've also seen happen reasonably frequently across my experience of complaints of a similar nature. So, I don't agree it was an unreasonable expectation on Metro Bank here. And even if it were, I still don't think their customer would have been able to provide a reasonable explanation as to why they'd received payments which appeared to be intended for a large investment firm – something completely different to the nature of the recipient account.

Metro Bank also questioned my decision to award 8% simple interest, pointing out that doing so is discretionary. I've considered this, but as I've mentioned above, it's clear Mr B was looking to invest his funds. And I've no reason to doubt that had the scam been prevented, he would have gone on to invest elsewhere. And where we can't be sure of the exact nature and form that investment might have taken; I still think 8% simple interest is a fair rate to be applied.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint and direct Metro Bank Plc to pay Mr and Mrs B £152,816.13. This is the total of the payments into the account minus what was spent before Metro Bank ought to have stepped in (£185,316.35 minus £32,500.22). 8% simple interest (yearly) should be added to this amount between 1 February 2021 and the date of settlement. I also think that it would be fair and reasonable for Mr and Mrs B (upon request) to assign their rights against C to Metro Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 9 October 2023.

Richard Annandale  
**Ombudsman**