

The complaint

Mr G complains that Metro Bank PLC hasn't refunded the money he lost after he fell victim to an Authorised Push Payment (APP) scam.

Mr G is represented by a third party in bringing his complaint. For ease of reading, I will only refer to Mr G in my decision

What happened

I issued my provisional decision on this complaint on 21 November 2023. The background and circumstances of the case and the reasons why I was minded to not uphold it were set out in that decision. I have reproduced the provisional decision in italics below:

The background to this complaint is well known to both parties, so I won't repeat everything in detail here. But in summary, I understand it to be as follows.

Between May 2018 and September 2018 Mr G made four international payments from his Metro account, to fund what he thought was a legitimate investment. Overall, these payments totalled £389,616.63. A breakdown of the payments is listed below;

<i>24 May 2018</i>	<i>£11,432.34</i>
<i>7 June 2018</i>	<i>£169,184.29</i>
<i>6 September 2018</i>	<i>£160,000</i>
<i>13 September 2018</i>	<i>£49,000</i>

Mr G subsequently realised he'd been scammed when he attended the address he had been given for the company, after the payments had been made. But found it didn't exist and that fraudsters had cloned a legitimate company.

Mr G raised the matter with Metro, who looked into his complaint but didn't uphold it. In summary, it said that for each payment Mr G made, it had asked additional questions regarding the purpose. It added that even if it had asked more questions, it was reasonable to presume Mr G would have continued to invest, given he'd said he'd carried out his own extensive research. Metro said when Mr G made the second payment he had provided paperwork that looked genuine and didn't give it cause for concern.

It added that when Mr G had attended one of its branches, ahead of making his third and fourth payments, it wasn't initially prepared to send the funds for the amount Mr G requested. But that he'd returned the following day and after carrying out checks of the company's website (which indicated the person Mr G was dealing with actually worked for the company) the payments were allowed to progress.

Metro went on to say that the Financial Conduct Authority (FCA) did register a warning about the company Mr G was dealing with, but this wasn't until September 2018, after Mr G had made his payments.

Metro said it reached out to the beneficiary bank (the bank to which the payments were made) to try and recover the money Mr G lost, but it wasn't able to recover anything. It said that, following an initial letter from Mr G, it didn't refer matters to its fraud team. In recognition of this it issued £50 to Mr G as a gesture of goodwill.

Unhappy with Metro's response, Mr G brought the matter to our service. One of our Investigator's looked into things, but didn't think the complaint should be upheld. In summary they were satisfied Mr G would have still wanted to go ahead with the payments despite interventions from Metro.

Mr G didn't agree with our Investigator's view. In summary he said the value of the first payment ought to have garnered further questions and had it done so it would have had enough concern to have enabled the Banking Protocol.

As agreement couldn't be reached the complaint has been passed over to me for a decision.

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.

Having done so, I'm minded to reach a different conclusion to our Investigator and to partially uphold this complaint. I'll explain why, along with what I'm minded to conclude Metro should do to resolve the complaint.

I'm aware Mr G has referred to other decisions issued by our service. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of Mr G's complaint.

I accept these were authorised transactions even though Mr G was tricked. So, although Mr G didn't intend the payments to ultimately go to fraudsters, he is presumed liable for the loss in the first instance. However, taking into account the law, regulatory rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, 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 its customers were at risk of fraud (amongst other things).*
- 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.*

In this case, I need to decide whether Metro acted fairly and reasonably in its dealings with Mr G, when he made transfers to a fraudster and when he reported the fraud, or whether it should have done more than it did.

Payments one and two

I think it is finely balanced as to whether Metro ought to have intervened more than it did when Mr G made his first two payments. The account hadn't been open for very long at the time Mr G made the first payment, but within that time Mr G had already made a payment of a similar value to the first payment he made to the fraudsters.

I am mindful though that the second payment that followed, around two weeks later, for over £160,000 represented a significant increase and ought to have made Metro alert to the possibility that Mr G may be at risk of financial harm.

It seems to be the case here that Metro did, at least to some extent, intervene. It said that it did ask for additional information for each of the payments Mr G made – and for this second payment it has said Mr G provided it with paperwork that looked genuine and which didn't give it cause for concern.

But even if I were to find that Metro ought to have intervened more than it did, this in itself isn't enough for me to say that Metro should refund the money Mr G has lost. I also need to be persuaded that its intervention would have made a difference and prevented the payments from being made. 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.

So I've gone on to think about what difference an intervention would have made here. Having thought carefully about this, I don't think I can fairly or reasonably say that it would more likely than not have made a difference and prevented Mr G from making these first two payments. I'll explain why.

If Metro had questioned Mr G further about these payments, I've no reason to doubt he would have spoken freely about the purpose of them, after all he wasn't being coached by the fraudster to provide a cover story which can sometimes, but not always, be the case with these type of scams.

So I'm persuaded Mr G would have, and it appears he did, told Metro that the purpose of the payment was to invest. I wouldn't expect Metro to have just accepted the reason for the payment at face value before releasing the funds. At the time of the scam it ought to have been aware of the prevalence of investment scams, even upon establishing that Mr G was intending to invest with what appeared to be a genuine investment firm. So I've thought about the sorts of follow up questions Metro could have asked, to reassure themselves Mr G likely wasn't at risk of financial harm.

It is worth explaining that fraud and fraudsters' methods continually evolve over time, as in turn does a bank's awareness of different types of scams and the tactics fraudsters use to defraud their victims. So in considering this complaint, I have to think about what I can reasonably have expected a bank to have been aware of and on the lookout for at the time these payments were made. At the point these payments were made, the most typical hallmarks of cloned investment scams involved victims being cold called, being offered returns that were too good to be true and being pressured.

With this in mind I'd have expected Metro to ask some questions about the payment, in the context of the particular features of an investment scam. For example, Metro could have asked questions such as, but not limited to, what the payment was for, whether Mr G had been looking to invest, what research he had done, whether he had been cold called and what rate of return he was being offered. Had Metro asked these, or similar questions, I'm persuaded Mr G would have been able to confidently answer them without concerning Metro he might be the victim of a scam. I think it more likely than not he would have been able to explain that he was looking to invest, had researched the company and had been in contact with them over a number of months. Mr G had also been presented with genuine looking

documentation, which he presented to Metro, which I think would have only gone to further his belief that this was a genuine investment opportunity. I'm also mindful that at this point in the scam, the element of pressure isn't as apparent as it later becomes.

Alongside this, I think it's reasonable to say the scam that Mr G fell victim to was highly sophisticated for its time. So even if Metro had spoken in more detail to Mr G about investment scams, and then asked the sorts of questions I've suggested above, I don't think it would have been concerned that Mr G was at risk. I think the genuine looking documents and the research Mr G carried out on the company's website suggests he was looking at what was most likely the actual website for the legitimate company (not a copied website). This would have just added to the plausibility of this being a genuine investment opportunity.

Overall, I'm persuaded, on balance, it's more likely than not the answers Mr G is likely to have given would have been sufficient to reassure Metro that Mr G wasn't at risk of financial harm. From the information I've seen and considering the circumstances of what was happening, I think Mr G would have been confident he was making a payment that was towards a genuine investment, through what seemed like a legitimate source.

Considering this, alongside the answers I think Mr G would have given to any questions, the level of the research that Mr G has told us he carried out, the persuasiveness of the literature and communication he had with the fraudsters and considering the sophistication of how the fraud was engineered, I don't think Metro ought fairly and reasonably to have been concerned, at this point, that Mr G may have been at risk of financial harm. So I'm not minded to say it should be responsible for refunding Mr G's loss from the first two payments.

Payments three and four

I'm persuaded the third payment Mr G made to the fraudsters ought to have triggered further checks. And I think it did, with Metro explaining that it initially told Mr G that it wasn't prepared to send the funds for the amount he requested when he attended one of its branches. But Metro did allow the payment to be progressed the following day. This was after it said it had carried out its own research into the company Mr G was looking to invest through and found the person, who Mr G thought he was dealing with, appeared to genuinely work for that company.

But given the significant sums of money involved and that this third payment represented Mr G making payments that totalled hundreds of thousands of pounds, within a relatively short period of time, I think it reasonable to have still expected Metro to probe Mr G further about the payment he was making.

As with the first two payments he'd made, I have no reason to believe that Mr G wouldn't have been open with Metro. From the evidence I've seen, I'm persuaded that there are some characteristics present about these third and fourth payments that ought to have given Metro cause for concern that Mr G was at serious risk of financial harm.

I'm persuaded that had Metro probed further it would have become aware that the purpose of this payment for £160,000 was to purchase shares and to release funds locked in an escrow. Indeed Metro has captured this detail on its payment notes from the time the payment was made.

I think this in itself ought to have caused Metro concern of an apparent risk to Mr G. I say this because at the time this payment was made, and it's still the case now, a classic hallmark of an investment scam is difficulty in withdrawing funds and fraudsters coaxing their victims to make further payments in the belief that these are in some way going to help them 'unlock' their funds.

I also think it's more likely than not, under further questioning, Mr G would have explained to Metro that he'd been told he was at risk of losing all of the money he'd made – which again is not likely to be the case if he had been dealing with a legitimate investment company. I'm also mindful, in the individual circumstances of this case, that Mr G had freely shared with Metro the documentation he had received from the fraudsters. I think it's apparent from this documentation, in particular the evidence of the email exchanges Mr G had with the fraudsters, that the tone of the fraudster has changed and they become somewhat aggressive and pushy. Pressure is being applied to Mr G to make these payments and that if he didn't invest more - he'd lose everything. This again is a typical hallmark of an investment scam such as this.

I can also see from Metro's evidence that within some of the emails that Mr G shared with it, that it retained for its records, it is apparent Mr G is having to borrow money in order to fund these additional payments, which again I think ought to have added a further layer of concern.

Given how open Mr G was seemingly being about the investment, I also think it more likely than not he would have explained to Metro that the payments he was intending to make would enable him to release what he had been told was £900,000. Given the amount Mr G had already paid, and was intending to pay, this amount would represent a profit of over half a million pounds within just three or four months. That level of return, over such a short period, ought reasonably to have concerned Metro that this was too good to be true to the point of being implausible.

I'm also mindful that Mr G was in his late seventies at the time of the scam and I think this is a relevant factor here. Mr G's age profile is one that is disproportionately targeted by scammers. This has been recognised by the industry for a long time and ought to have been something Metro was aware of.

In and of themselves it's arguable that any one of the above factors, in isolation, may not have been enough to have reasonably alerted Metro. But when taken collectively, I'm persuaded there was enough going on that Metro should have been alert to the possibility that Mr G was falling victim to an investment scam.

Metro ought reasonably to have known how scams like this work. I don't underestimate, in the individual circumstances of this case, how plausible a sophisticated scam like this can be. But scams like this wouldn't have been new to Metro and given I think the risk of the payments would have been apparent to it, I think it should have done more than it did. I think it reasonably could have spoken to Mr G about investment scams, explaining how they look and feel. And it reasonably ought to have known there would be a very clear way in which Mr G could be safeguarded against the risk of falling victim to a clone investment scam – which would be for him to make touch with the company through its official contact details on the FCA register, to check he was indeed in touch with the real company, and not clone investment scammers.

Bearing in mind how concerned I think Metro ought to have been about the circumstances surrounding this third payment I think this would have been an entirely proportionate recommendation from Metro, and that it really ought to have done this. In this case, I'm persuaded this most likely would have made a difference. Given the amount of money involved and how much this represented to Mr G, I think it most likely he would have listened to and taken Metro's warnings seriously and consequently not have proceeded with this and the subsequent payment he made. I'm satisfied, therefore, that had Metro done what I think it reasonably ought to have, Mr G most likely wouldn't have made (and lost) the third payment he made for £160,000, nor the fourth payment for £49,000.

It follows that, for the reasons explained above, I'm currently minded to say that Metro is liable for the money Mr G lost from the third and fourth payments he made.

Recovery

I've considered whether, once Metro was notified of the scam by Mr G, it did all it could to try and recover the money he'd lost. Metro did try to recover the money Mr G had sent to the fraudsters. Ultimately this was not successful. But that outcome is not surprising given the time that had passed between the payment and Mr G reporting the matter and considering typically fraudsters tend to move the funds they've received from their victims as quickly as possible.

Should Mr G bear some responsibility for his loss?

Finally, I've thought about whether Mr G should bear some responsibility in terms of his actions. However, it is clear that up to and including the time of the payment authorisation he was in the dark and simply did not appreciate that he may have been at risk. He thought he was investing his money through a legitimate company. I am satisfied he was simply the unwitting and blameless victim of a sophisticated scam. And Metro was the professional in financial matters.

I clarified to both parties on 6 December 2023, that my intentions regarding how I thought Metro should put things right were as follows;

Putting things right

For the reasons explained I'm currently minded to say that appropriate compensation would be for Metro to refund Mr G the money he lost from the third and fourth payments he made. It would also be appropriate for Metro to pay interest on this amount from the date of payment to the date of settlement.

I've carefully thought about how that interest should be calculated. I'm mindful that Mr G has explained that these payments were funded through a number of sources, including an interest-bearing loan from a friend, which he's subsequently made good through the sale of business and private property. Given Mr G's losses have come from various sources, it is my intention to take a pragmatic approach and say that an award of 8% interest is fair and reasonable in the circumstances.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £170,000, plus any interest and/or costs/interest on costs that I consider appropriate. If I think that fair compensation is more than £170,000, I may recommend that the business pays the balance.

Decision and award: I provisionally uphold the complaint. I think that fair compensation is £209,000. My provisional decision is that Metro Bank PLC should pay Mr G £170,000 plus 8% simple interest, from the date of payment to the date of settlement.

Recommendation: I think fair compensation is more than £170,000, so I recommend that Metro Bank PLC pays Mr G the balance plus 8% simple interest, from the date of payment to the date of settlement.

This recommendation is not part of my determination or award. Metro Bank PLC doesn't have to do what I recommend. It's unlikely that Mr G can accept my decision and go to court

to ask for the balance. Mr G may want to get independent legal advice before deciding whether to accept this decision.

In my provisional decision I asked both parties to send me any further evidence or arguments that they wanted me to consider by 5 December 2023, which I extended to 15 December 2023, given the later clarification I gave around how I thought things should be put right.

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'm minded to reach the same overall conclusions as I reached in my provisional decision.

Mr G responded to my provisional decision to say he wished to accept my findings. Metro acknowledged receipt of my provisional decision, but didn't provide any further arguments within the timescales given. As Mr G has accepted the findings within my provisional decision, and where Metro hasn't provided any new evidence or submissions in response to my provisional decision, I see no reason to depart from the conclusions I reached therein.

Putting things right

For the reasons explained I think this complaint should be upheld in part. Appropriate compensation would be for Metro to refund Mr G the money he lost from the third and fourth payments he made. It would also be appropriate for Metro to pay interest on this amount from the date of payment to the date of settlement.

I've carefully thought about how that interest should be calculated. I'm mindful that Mr G has explained that these payments were funded through a number of sources, including an interest-bearing loan from a friend, which he's subsequently made good through the sale of business and private property. Given Mr G's losses have come from various sources, it is my intention to take a pragmatic approach and say that an award of 8% interest is fair and reasonable in the circumstances.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £170,000, plus any interest and/or costs/interest on costs that I consider appropriate. If I think that fair compensation is more than £170,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation is £209,000. My decision is that Metro Bank PLC should pay Mr G £170,000 plus 8% simple interest, from the date of payment to the date of settlement.

Recommendation: I think fair compensation is more than £170,000, so I recommend that Metro Bank PLC pays Mr G the balance plus 8% simple interest, from the date of payment to the date of settlement.

This recommendation is not part of my determination or award. Metro Bank PLC doesn't have to do what I recommend. It's unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G may want to get independent legal advice before deciding whether to accept this decision.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 January 2024.

Stephen Wise
Ombudsman