

The complaint

Mr M complains that Metro Bank PLC won't refund the money he lost to an investment scam.

What happened

Around January 2018, Mr M was searching online for opportunities to increase his income and came across a company he'll call 'T'. Mr M saw that T offered investment trading and found their website to be professional and informative, so he left his contact details with them.

One of T's representatives contacted Mr M and explained he'd be assigned an account manager. Shortly after this call Mr M was contacted by his account manager. The account manager required Mr M to sign up to T's trading platform, which required him to provide his identity verification. The account manager advised Mr M that she would be trading for him, which reassured him as he was not experienced in trading.

On 31 January 2018, Mr M made two debit card payments of £10,000 from his Metro current account to T. Mr M saw that his trading account was progressing well and that his profits were rising at a steady pace. Around 7 February 2018, Mr M's account manager explained that the market had suddenly crashed and he would need to quickly reinvest, so he paid a further £5,000 using his Metro debit card. On 26 February 2018, Mr M invested a further £3,000 using his Metro debit card.

Towards the end of February 2018, Mr M noted that communication from his T account manager stopped and it was at this point he realised he'd fallen victim to a scam.

Mr M reported the scam to Metro in March 2018 but was told it couldn't help him recover his money.

Mr M subsequently complained to Metro in 2022.

Metro responded to Mr M's complaint and explained Mastercard limited chargeback rights for investment purposes and it couldn't have assisted him with chargeback claims at the time. It said it didn't find the disputed payments unusual as Mr M had made a previous undisputed payment of £200 to T on 16 January 2018. Metro upheld his complaint in relation to customer service as it found it didn't do what it should have done when he raised his fraud claim in March 2018. It offered to credit his account with £50 compensation.

Unhappy with Metro's response, Mr M referred his complaint to this service.

One of our Investigators looked into things. She felt that Metro should have reasonably intervened when Mr M made his first payment of £10,000 to T. But she didn't think an intervention would have made a difference as (amongst other things) there were no hallmarks of a scam.

Mr M didn't agree and asked an Ombudsman to review his complaint.

The complaint has therefore been passed to me for determination.

On 16 March 2024, I issued a provisional decision upholding Mr M's complaint. For completeness, I repeat my provisional findings below:

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've reached different conclusions than that of our Investigator and I intend to uphold this complaint.

Banks and other Payment Services Providers ("PSPs") have expectations to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

Neither party disputes that Mr M was the victim of a scam. I'm also satisfied that Mr M fell victim to a binary options trading scam. I've noted T was not licensed or regulated anywhere — despite claiming to be registered in Estonia. Having concluded that this was a scam rather than just a genuine investment that went wrong. I must now go on to consider three more issues in order to determine the outcome of the complaint:

- 1. Should Metro have fairly and reasonably made further enquiries before it processed Mr M's payments?*
- 2. If so, would Metro's further enquiries have made a difference and prevented or reduced the loss?*
- 3. And if so, should Mr M bear some responsibility for the loss such that it would be fair and reasonable to reduce compensation proportionately.*

Should Metro have fairly and reasonably made further enquiries before it processed Mr M's payments?

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr M's account is that he is responsible for the payments he authorised himself.

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). 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; and*
- 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.*

- *Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example investment scams involving unregulated and unlicensed brokers).*

Metro's evidence and Mr M's testimony doesn't indicate that any of the disputed transactions were flagged as unusual or suspicious. I've thought about whether this was reasonable.

Having considered Mr M's previous account history from January 2017, he commonly used his account to make low value ATM and card transactions of less than £100. There was the very occasional larger one-off transaction but this appears to have been transfers to Mr M's own account – with the largest transaction being £2,600 in April 2017.

Therefore, I think when Mr M made a debit card payment of £10,000 to T on 31 January 2018, this ought to have stood out as sufficiently unusual and uncharacteristic to Metro when considering Mr M's normal account spend. It was the largest debit card payment he'd made in the period I've reviewed and it was an international payment. I've noted Metro's argument that it didn't consider the larger payment to T as unusual because Mr M had sent a payment of £200 to them two weeks earlier. I don't agree, T was still a relatively new payee, based overseas and so, I think a payment to them of £10,000 ought to have reasonably appeared unusual to Metro.

I've noted that Metro didn't make further enquiries of Mr M about this payment and I think this was a missed opportunity to intervene.

Would Metro's further enquiries have made a difference and prevented or reduced the loss? If Metro had intervened and asked reasonably probing questions, there is no reason to doubt that Mr M would have explained what he was doing. In such circumstances, whilst the bank had no duty to protect him from a bad bargain or give investment advice, it could have explained to him that T were required to be licensed by the UK's Gambling Commission in order to offer their services. Metro could have also explained to Mr M that T most probably required regulation to operate legitimately and pointed him to the direction of the FCA and the UK's Gambling Commission for further advice.

Metro could have explained its own customer experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances.

After all, at that time, there was information in the public domain—which a bank ought to have known (this includes Metro as a bank that had been operating for almost 10 years at the time) even if a lay consumer ought not—about the very high risks associated with binary options trading, including many warnings of potential fraud (e.g. Action Fraud's June 2016 warning; the European Securities and Markets Authority's July 2016 warning; the Financial Conduct Authority's consultation paper of December 2016; and the Gambling Commission's December 2016 scam warning that "an unlicensed operator is likely operating illegally"; City of London Police's October 2017 report noting victims had lost 'over £59m' to binary options fraud; Visa's Business News publication of October 2017 where it expanded its chargeback scheme rules to cover binary options and investment disputes arising from merchants often unlicensed and unregulated deploying 'deceptive practices'; and so forth).

I think if Metro had appropriately brought this to Mr M's attention, he'd have likely paused and looked into this further, before deciding to part with any more of his funds. I think he'd have likely found that despite T claiming they were registered in Estonia, they nor their alleged parent company were registered with the Estonian Financial Supervision and Resolution Authority. There's no evidence that Mr M took risks with his money and I don't think he'd have risked using his savings and newly acquired inheritance on a scam. I think

he would have considered T's misrepresentation about their registration status to be a 'red flag' and I don't think he would have paid T anymore money.

In other words, but for a warning from Metro, I don't think he'd have paid any of the disputed payments to T.

Should Mr M bear any responsibility for his losses?

I've thought about whether Mr M should bear any responsibility for his loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.

In my judgement, this was a very sophisticated binary options scam that was common to banks and financial professionals but I don't think it was well known to a layperson. Particularly as the scam companies were able to operate within the card scheme networks. Mr M was an inexperienced investor and I don't find that there was any credible adverse information about T at the time he invested with them. I think it would have required some pointed checks about this type of fraud to uncover it, something I think Metro (as the financial professional) could have assisted with.

I think Mr M reasonably believed that T were acting in his best interests and I don't think he had any reasonable cause to suspect that they could have been deceiving him. So I don't find that Mr M should share responsibility for his loss.

I've noted that Mr M tried to report the fraud to Metro in March 2018 but it says it incorrectly didn't raise a claim on his behalf. Had it done so, I think Mr M would have realised he could have referred his complaint to this service sooner.

In regards to interest, I think that Metro should also pay 8% simple interest per annum on the disputed transactions from the date of each payment to the date of settlement.

Finally, Metro offered to pay £50 compensation for failing to raise a scam claim in 2018. I think this is reasonable in the circumstances. Had Metro raised a claim at the time, it wouldn't have made a material difference. Mr M wouldn't have been able to recover his money through the chargeback scheme as Mastercard limits chargeback claims relating to investments or gambling. Based on what Mr M has told us, those limited chargeback options wouldn't have applied to him as he says his money credited his trading account and the account manager traded with his funds immediately. So I don't think Metro's mistake materially impacted Mr M's prospects of recovering his payments. And as Metro declined to refund his disputed transactions following his 2022 complaint, it's likely it also would have taken this action in 2018 and Mr M would have likely always needed to refer his complaint to this service.

Responses to my provisional decision

Metro responded to my provisional decision and confirmed it had nothing to add.

Mr M responded to my provisional decision accepting it.

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.

As Mr M accepted my provisional decision and Metro confirmed it had nothing further to add, I see no reason to depart from my provisional findings.

For the reasons I've explained in my provisional decision (which forms part of this final decision), I uphold this complaint.

My final decision

My final decision is, I uphold this complaint and instruct Metro Bank PLC to pay Mr M:

- All the disputed transactions to T (complained about by Mr M) – totalling £28,000.
- 8% simple interest, per year, from the respective dates of payment to the date of settlement (less any lawfully deductible tax).
- £50 compensation for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 April 2024.

Dolores Njemanze
Ombudsman