

The complaint

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

What happened

Mr T met someone on a dating app ('the scammer') who suggested an investment opportunity to him. The scammer suggested that he open an account with crypto exchanges in order to obtain the crypto he needed to fund his investment. When one of the crypto exchanges limited his ability to use his account, he purchased crypto from private individuals. When Mr T tried to withdraw his funds, the scammer told him he needed to pay more money for tax, which he duly did. However, he came to realise that he'd fallen victim to a scam after he was told to pay further fees to release his money.

Since 2021, Mr T has disputed various amounts that he says were part of the scam with Metro. Metro says he initially disputed payments totalling £31,740. In subsequent complaint letters, Mr T disputed payments totalling £28,000. Upon referral to this service, Mr T confirmed that he was disputing 15 transfers made from his Metro current account from 1 June 2021 to 6 August 2021 totalling £33,210. The payments were made to multiple different parties including; crypto exchanges, private individuals and businesses. Mr T says he received one payment back from the scammer.

Metro says its fraud team found it difficult to contact Mr T following his initial report of fraud, so it considered the matter closed in October 2021. However, it says it was able to recover a total of £2,600, which was returned to Mr T in September 2022. Mr T contacted Metro in December 2022 (making reference to an earlier letter he'd sent it). Metro reopened Mr T's fraud claim and it ultimately declined to return any further payments.

Unhappy with Metro's response, Mr T referred his complaint to this service. When he did, Metro issued a final response letter to him maintaining its earlier position on his fraud claim but it offered £100 compensation for the way it handled a call with him on 11 January 2023. After further review, Metro didn't find that its earlier fraud investigation was sufficiently robust. It found that Mr T made a large number of payments on 5 and 6 August 2021 totalling £15,740. It offered to refund 50% of this sum which totalled £7,870, together with interest.

Mr T didn't accept Metro's offer. He explained the aftermath of the ordeal resulted in substantial health issues, including a period of hospitalisation where he lapsed into a coma. Mr T said he experienced significant memory loss as a consequence.

Our investigator looked into things and requested further evidence from Mr T to support his case. He was unable to provide any further evidence which he explained was on account of his ill health. He did answer some of our Investigator's questions. Ultimately our investigator couldn't conclude that all the payments complained about were made as the result of a scam, or that all of the payments were lost. And because of the lack of evidence, she couldn't safely say that an earlier intervention would have made a difference.

Mr T didn't agree and asked for an Ombudsman to consider the complaint.

The complaint has therefore been passed to me for determination.

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 don't think Metro need to do anything to settle Mr T's complaint.

It isn't in dispute that Mr T authorised 15 payments totalling £33,210 from his Metro account between 1 June 2021 and 6 August 2021. These payments were made to cryptocurrency exchanges, private individuals and businesses to fund what Mr T believed was an investment opportunity. As the payments were requested by him using his legitimate security credentials, the starting point is that Banks and Payment Service Providers (PSPs) ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

Banks and other PSPs do have a duty 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. 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 Financial Conduct Authority ("FCA") has confirmed that a fraud warning would not constitute unauthorised investment advice.

But not every complaint referred to us about payments in exchange for cryptocurrency are made as the result of a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. And some cases just involve the purchase of cryptocurrency.

When considering this for Mr T's case, I've paid particular attention to the evidence we do have, which is largely Mr T's testimony. I do think on balance that Mr T may have fallen victim to a scam. Some of his testimony such as how he came into contact with the scammer; being asked to pay money to release money is indicative of that. However, the amounts disputed by Mr T have changed over the years and I've also noted that some of the disputed payments were made to; a legitimate business (which were refunded) and individuals with references such as 'goods' and 'shopping'. So even though I can conclude that Mr T likely purchased crypto with some of his disputed payments, I can't conclude that all payments were made towards crypto or a scam. I also can't conclude that all of this money has indeed been lost. I do take into account Mr T's ill health and I empathise with his personal circumstances. But in the absence of any evidence to show his communication with the scammer, along with evidence that would support *all* the disputed payments were lost to a scam; I can't say with any certainty what level of financial loss Mr T has suffered.

Metro acknowledges it could have intervened when Mr T sent larger payments on 5 August and 6 August 2021. But I agree with our investigator that Metro could have intervened earlier and specifically when he made his second disputed payment of £7,100 on 8 June 2021. There was no history of Mr T making a payment as high value as this. I think Metro ought to have intervened to ask some probing questions of Mr T about the reason this payment was being made and I think it could have led to a meaningful scam warning.

However, for the reasons I've explained, I can't say with any degree of likelihood that an intervention and/or warning from Metro would have prevented Mr T from losing this money. There's simply no evidence of the events that took place, or evidence of financial loss, that would support me reaching this conclusion. By Mr T's own admission, he used references

such as 'goods' and 'shopping' to make some of the payments to private individuals to purchase crypto as he says 'the scammers were leading me on and telling me what to say and what to do'. Therefore, had Metro intervened in a meaningful way, Mr T may have continued to be guided by what the scammer was telling him to say and do.

To that end, I cannot safely conclude that Metro's failings were the cause of Mr T's loss as I am not satisfied all the payments were made and lost to a scam. I'm also not satisfied that an intervention would have most likely made a difference to the loss alleged by Mr T.

Metro made attempts to recover Mr T's payments from the beneficiaries he paid. It recovered £2,600. In my judgement, I don't think Metro had reasonable grounds to recover any of the disputed payments. Mr T says he received crypto in exchange for his payments and this was loaded onto his trading platform. Mr T therefore received what he paid for. He didn't pay the scammers directly (which is why the Contingent Reimbursement Model Code does not apply here), so I don't think Metro had reasonable grounds to attempt recovery of any of the disputed payments. However, I think it did so in order to assist Mr T which was its discretion.

Metro also offered to pay Mr T £100 for the poor service he experienced when one of its advisers spoke with him on 11 January 2023. Metro gave the impression that this call alone was satisfactory of a response to Mr T's concerns. I think this offer was fair and reasonable as it was clear that Mr T was wanting a more substantive response and not receiving this would have caused him distress and inconvenience. If Mr T has not yet contacted Metro to receive this payment and he wishes to accept it, he should contact Metro directly for it.

Metro has already offered to pay a further £7,870 together with 8% simple interest from the date it declined the refund (11 January 2023) to settle the complaint and it confirmed with our Investigator that this offer still stands. Mr T should contact Metro directly if he now wishes to accept this.

My final decision

My final decision is, I don't think Metro Bank PLC needs to do anything to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 July 2024.

Dolores Njemanze
Ombudsman