

The complaint

Ms R complains that Metro Bank PLC did not refund the £40,000 she says she lost to a scam.

What happened

Ms R was looking to invest and was introduced to a company I'll call 'HS' for the purpose of this decision. HS had several different building projects they were providing investments for in the form of loan notes. Ms R agreed to take out two loan notes and invested a total of £40,000 across two transfers from her Metro account. This was £30,000 on 20 September 2018 and £10,000 on 30 August 2019.

No returns were ever made on the investment and eventually, HS went into administration in December 2021. Ms R felt she had been the victim of an investment scam and that HS set out to defraud her. She raised a scam claim with Metro who explained HS appeared to be a genuine company who had entered into financial difficulties. So, they felt it was more likely this was a failed investment rather than a scam, and they didn't agree to reimburse Ms R. As a result, the complaint was referred to our service.

Our Investigator looked into the complaint and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Having done so, they agreed it was more likely a civil dispute between Ms R and HS. On balance, they did not think the evidence showed HS never intended to act in line with the agreement or pay the funds described in the contract. And instead, they felt it was more likely this was an investment that failed, so they didn't agree Metro needed to refund Ms R.

Ms R's representative disagreed with the findings. As an informal agreement could not be reached the complaint has been passed to me for a final decision.

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.

It isn't in dispute that the payments in question were authorised. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that Ms R is liable for the transactions. But she says that she has been the victim of an authorised push payment (APP) scam.

Metro has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...a transfer of funds executed across Faster Payments...where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

I've therefore considered whether the payments Ms R made to HS falls under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Ms R has been the victim of a scam, I have to consider if her intended purpose for the payment was legitimate, whether the intended purposes her and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Ms R's representative has not provided me with much evidence on Ms R's specific investment. They have said Ms R was intending for the funds to be invested in a building project and she expected to see returns at an annual fixed rate of 12%. I can see HS was on Companies House and had been incorporated since 2011. From the limited information I've seen, I see no reason why Ms R would not have thought this was a legitimate investment.

I've gone on to consider whether HS's intended purpose for the payments aligned with what Ms R intended as set out above. I've seen evidence that three building projects were completed by HS. They had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows HS was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

Ms R's representatives have said HS paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely to be possible. They felt that a credit event was inevitable in the circumstances. However, whether or not unregulated investors were used to introduce the investment does not indicate that HS set out to defraud investors of their funds, with no intention to invest the funds into building projects. On balance, I don't think there is a correlation between the level of commission and Ms R being a victim of a scam in the circumstances.

It should be noted that the liquidator for HS has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from HS to various subsidiary companies, due to the way in which the HS network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

I appreciate the comments from Ms R's representative about one company within the group which it has been suggested traded while insolvent. However, I have to consider that this is just one company within a group of many, and this is not enough for me to conclude that Ms R's funds were not used for their intended purpose. And it should be noted that the points raised in the Menzies report have already been considered when reaching an outcome I feel is fair.

On balance, I think HS's intended purpose for the funds aligned with Ms R's and nothing I have seen indicates to me that HS intended to defraud her. Instead, I think it's more likely this was a failed investment, So I don't think it meets the definition of an APP scam. And I think Metro acted reasonably when it treated the case as a civil dispute. And I think it follows

that the initial payment of £30,000 which is not covered under the CRM code would not have been a cause for concern for Metro had they intervened when it was made as nothing that I have seen indicates this was a scam and it was instead a failed investment.

Ms R's representatives have also highlighted that she was vulnerable at the time of the payments, due to her father's ongoing mental health issues as well as financial strains. I want to thank Ms R for sharing this personal information with us and I'm sorry she's had to go through this experience. I have no doubt this loss has impacted Ms R, but as explained above, I think it's more likely this was a failed investment instead of a scam. So, I therefore don't think Metro needs to take into account Ms R's vulnerabilities at the time and I don't think it has made an error in not doing so.

It is possible that further evidence may come to light at a later date, which may indicate HS was operating a scam. Should such evidence come to light, then Ms R can complain to Metro again, and refer the matter to this office, should she not be happy with the outcome.

My final decision

I do not uphold Ms R's complaint against Metro Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 11 February 2025.

Rebecca Norris
Ombudsman