

The complaint

Mr T complains that Marks and Spencer Financial Services Plc trading as M&S Bank didn't do enough to prevent him losing money to a scam.

Mr T has used a representative to bring his complaint. But, for ease of reading, I'll mostly just refer to Mr T himself where I also mean the representative.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events here. In 2020 Mr T says he was the victim of a scam. He describes how he was looking for investment opportunities and found a company 'E' who he thought could assist him. He says he found them to be very professional and knowledgeable.

Ultimately Mr T says he used his M&S credit card to make the following payments which all went to E.

Date	Amount
2 March 2020	£2,197.80
9 March 2020	£767.11
9 March 2020	£1,534.21
9 March 2020	£1,304.08

Mr T says he was able to see his money being traded on his behalf by E with the activity all visible on his platform with them. Mr T says that there started to be losing trades, and his account ended up at zero. Yet E continued to try to convince him to invest more. At this point, he says he realised he'd been scammed.

Mr T complained to M&S who refunded half of his payments (plus interest) as a gesture of goodwill. The matter was referred to our service and one of our Investigators ultimately reached the conclusion that M&S didn't need to do more. Mr T disagreed and has asked for an Ombudsman to review his complaint. In June 2025 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've reached the same outcome as our Investigator and for similar reasons. But because I'm adding some additional reasoning, I'm issuing this provisional decision to give both sides a further opportunity to comment before my decision is finalised.

There isn't an automatic right to a refund from M&S in relation to payments made as a result of an alleged scam. M&S are generally expected to follow the payment instructions of their customers (like Mr T), and they are under no obligation to provide investment advice. But they should also be alert to the risk of fraud, scams and the misappropriation of funds.

Not every complaint referred to us and categorised as an investment scam, is in fact a scam. Some cases simply involve high-risk investments which resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the legal threshold or burden of proof for fraud.

Having thought about this, I'm not persuaded that at the relevant time E was operating a scam. I say this because:

- At the relevant time E was regulated in a jurisdiction outside the UK, and it would be unusual for those operating a scam to agree to comply with the requirements of regulation.*
- The International Organization of Securities Commissions (IOSCO) is an international body that brings together the world's securities regulators. I've found no adverse information about E from the relevant time to Mr T's payments (or indeed any of the business names materially connected to E) recorded on IOSCO's Investor Alerts Portal.*

I've taken account of negative press information and other factors that Mr T has raised, including the Financial Conduct Authority's press release in May 2021 which 'identified concerns with the sales and marketing practices of E' and removed their authority to offer services to UK customers. But none of this proves that E were operating a scam when Mr T made his payments back in 2020.

So whilst I understand this will be disappointing for Mr T, I'm not persuaded there is sufficient evidence to support that E were operating a scam at the time he made his payments. And as I've covered above, whilst M&S have obligations to be alert to fraud and scams, there is no obligation to protect against bad bargains or to provide investment advice. So, as I'm not sufficiently persuaded E was operating a scam, I can't fairly say there would have been any reason for M&S to have intervened and have done more than they did before processing his payments.

As these were credit card payments, the only possible potential avenues for a recovery would be the chargeback scheme or a claim under section 75 of the Consumer Credit Act 1974 (s75, CCA). But by the time Mr T raised this with M&S, he was outside of the applicable chargeback scheme time limits. It's also most likely that payments towards investing in trading wouldn't be covered by s75. But even if it were, I've also seen a letter written by Mr T which was sent to M&S and was dated 21 July 2022. In this letter, Mr T explains how his payments were towards an investment in his father's (Mr T2) name. For Mr T to make a successful claim under s75 against M&S it requires that he would have a claim against E for breach of contract or misrepresentation. But here, whilst it was Mr T who made the payment against his credit card, it was his father, Mr T2, who had entered the contract with E. As well as the letter I've mentioned above, this is also reflected in the trade history from E that Mr T has provided which shows the account was in his father's name. So I don't think it can fairly be said that Mr T would have a claim against E, as he doesn't appear to have contracted with them. And a s75 claim to M&S would most likely fail for the same reasons. As such, I don't think this is a basis upon which I could require M&S to do more in this case.

For completeness, I'm also satisfied that the Lending Standards Board's Contingent Reimbursement Model (CRM Code) isn't applicable to the circumstances here. This was a voluntary scheme which was in place at the relevant time through which victims of scams could sometimes receive reimbursement from the banks involved. But in this case, as I've set out above, I'm not persuaded that Mr T's payments were made as the result of a scam,

and secondly the CRM Code doesn't apply to credit card payments.

Overall, I'm sorry to hear Mr T lost the money he did. But as I'm not persuaded this is something that M&S can fairly be said to be responsible for, there isn't a reasonable basis upon which I can require them to do more to resolve this complaint."

M&S didn't respond to my provisional decision. Mr T responded to say he would like a final decision to be issued.

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.

Whilst Mr C responded to say he wanted a final decision, he didn't raise any additional points or provide further comments or evidence. So as neither party provided anything further for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 August 2025.

Richard Annandale
Ombudsman