

The complaint

Mr W is unhappy after he fell victim to an investment scam and Metro Bank PLC decided not to refund him.

What happened

Mr W was provided information about an investment opportunity in S, by financial brokers. These were brokers he'd used previously and had made other investments with.

The investment was for a listed bond paying 9% interest, paid monthly. Mr W received a loan contract which detailed the terms and he checked Companies House and could see that S was registered. The investment was also brokered through a company which was FCA regulated. Happy with what he'd been told and seen, Mr W made a payment of £65,000 from his Metro bank account. Mr W's payment was made through an intermediary, I'll refer to that intermediary as A. A was an FCA authorised firm until it went into liquidation.

Mr W received returns for 21 months at which point they stopped. After the payments had stopped Mr W was aware that there was information emerging online about one of the directors and he became worried. The company contact details were changed a number of times and it failed to respond to his emails. The insolvency service published a finding in February 2024 that S (and its successor) were wound up at the High Court of Justice in January 2024. The Official Receiver were appointed as the liquidator of the companies.

S (as well as another company – linked by its director) were shut down by the Insolvency Service for misleading investors and failing to co-operate with an investigation into the firms' affairs.

Another company linked to S (again by its director) has an FCA warning issued against it. And the Insolvency Service advised that the secretary of state has accepted an 8-year disqualification undertaking for the linked director.

Mr W contacted Metro in July 2024, but it declined to refund the money he'd lost saying that it thought that this was a civil dispute between him and S and as such wasn't covered by the Contingent Reimbursement Model (CRM) Code.

It also said:

- The beneficiary bank had said this wasn't being treated as an APP scam.
- Mr W received returns for a number of months indicating this was a legitimate investment gone wrong.
- Although funds were potentially not being used as promised there was no way of knowing when S started acting fraudulently.
- A had gone into administration and advised that Mr W contact the administrators.
- There was an on-going police investigation with no definitive outcome on whether there was an intent to deceive investors from the outset.

The investigator set out a detailed view explaining why they were satisfied Mr W had been the victim of an APP scam. And they were also satisfied that this claim was covered by the CRM code. They said there was no reason to delay this decision, despite the ongoing investigation, as there was enough persuasive evidence that this was more likely a scam, than not.

The investigator applied the CRM code and said Metro had not established that Mr W did not have a reasonable basis of belief when making these payments as:

- Mr W was told about the investment by brokers that he'd used previously.
- He completed checks which showed that S seemed to be a genuine business.
- Mr W received a contract setting the terms of the loan note before making a payment.
- The rate of return wasn't so high as to have concerned him.

He upheld Mr W's complaint in full, recommending a refund of his losses (minus the returns he received) and for Metro to pay 8% simple interest per annum from the date it declined the claim to the date of settlement.

Metro did not agree with the investigators' findings. In addition to its original comments, it added that it thought this was a failed investment. After 01 April 2024 Metro Bank was longer under the CRM code and whilst it used the principles of the code it was not bound by it. S still hasn't officially been confirmed by the Police as a scam. It said should fraud be declared then the claim could be revisited. It felt a fairer decision could be made once the police investigation was concluded. And there were other avenues where Mr W could seek reimbursement.

As the complaint couldn't be resolved it has been passed to me to decide.

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've come to the same conclusions as the investigator. I'll set out my findings in full below.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards. codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Metro's request for the case to be reviewed after the police investigation is complete

In order for the consumer to have been the victim of an APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. '*fraud*' in this instance would mean that there had been a dishonestly made false representation, with the intention of making a gain for S or to cause a loss to Mr W.

And for there to be '*fraudulent purposes*' (as opposed to legitimate purposes) would require that test for fraud to be met in relation to the *purposes* for which the payment was procured.

That must have been at the time the payment transaction occurred or earlier. It does not follow that fraud at a later date can engage the CRM Code's definition of an APP scam. Neither would fraud which doesn't speak to the *purpose* of the payment. I take it to follow that there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don't have the effect of the payment falling within the scope of the definition of APP Scam set out under the CRM Code.

I don't have the power to conduct a criminal investigation into S. Part of what is required here is to establish the intent and state of mind of the person(s) accused of this fraud about the purpose of Mr W's payment.

When considering the evidence produced in support of Mr W's claim of an APP scam, I'm required to reach my findings on a balance of probabilities rather than to the criminal standard. But given the serious nature of the allegations involved I consider that this must involve convincing evidence to lead me to find it more likely than not the underlying purpose of the payment transaction was a fraudulent purpose.

The investigator set out their explanation for making the finding this was an APP scam (and therefore a claim caught by the CRM code) but for clarity I'll repeat the salient points here.

- The director of S has been disqualified as a director on Companies House for eight years, by the Secretary of State.
- The director has failed to provide liquidators with accounting records for several of his companies and has said he will not be providing these.
- The FCA issued a warning about a linked company to S in March 2020, saying it was providing financial services without authorisation.
- There is no evidence to suggest S was operating as legitimate company. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.
- The lack of co-operation by the director with the liquidators and the disqualification of the director persuade me that the inducement of payment by the victims was as a result of the director and his businesses dishonest deception

In the absence of any convincing evidence that S was carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code.

Metro has said there is an on-going Police investigation and R3(1)(c) of the CRM code applies. R3(1)(c) says:

If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.

Metro hasn't provided an explanation as to why awaiting the outcome of the police or other statutory body investigation *might reasonably inform* an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if Metro, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance.

A criminal prosecution is not necessary to determine if something is an APP scam under the code. I'm satisfied on balance that this was more likely than not a scam. I've seen no

evidence that S intended to use the consumers funds as they agreed between them. And Metro has not provided any evidence to contradict this either. As such I'm satisfied this meets the definition of an APP scam under the CRM code.

Whilst there is an on-going Police investigation Metro has already given an outcome under the CRM code so it cannot apply the R3(1)(c) provision to delay giving an outcome under the code.

However, there is no need to delay a decision if all parties agree this is a scam. Metro hasn't provided an explanation why awaiting the police investigation would reasonably inform an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if Metro, under the voluntary CRM Code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance. There is enough evidence here that on balance Mr W was more likely the victim of an APP scam than not.

Involvement of A

The involvement of a genuine intermediary (here A) does not exclude the possibility of the CRM code applying. Here I'm persuaded the funds were under the control of the fraudster at the point they arrived at the intermediary (A). The Mr W does not appear to have a customer relationship with the intermediary. And I'm satisfied that the intermediary (N) was acting on behalf of S and not the consumer. The money was out of the consumers control and so the payments made here are capable of being covered by the provisions of the CRM Code. Metro has argued that Mr W should raise a claim against A. But as I've explained Mr W had no relationship with A, it did not hold his money – I'm satisfied the funds were passed on from A to S (I have seen this in A's bank statements). So, I do not agree that Mr W's complaint is with A rather than a claim under the CRM code with Metro – his bank. In addition to this Mr W has provided evidence, in an email from S, that his funds were received into S's account via A to secure the bond.

Many consumers have also been issued with letters from the FSCS to explain they must first claim under the CRM code with their bank before and any claim by the FSCS would be considered.

Application of the CRM code to the facts of this case

At the time of the payment Metro was a signatory of the Lending Standard Board's Contingent Reimbursement Model Code (the LSB's CRM Code). And has therefore adhered to agree to its principles. The CRM Code requires firms to reimburse victims of APP Scams in all but a limited set of circumstances.

Metro has said that it is was not a signatory to the CRM Code after 01 April 2024. And, because this scam claim was raised after this date, although Metro applies the principles of the Code, it is not bound by the Code.

Here, the payment occurred when the CRM code was in place. And Metro has applied the code – and seeks to rely on its provision to delay an outcome (under R3(1)(c) of the CRM Code), so I'm not persuaded that Metro hasn't applied the principles of the CRM code when considering this claim. Its therefore fair and reasonable to continue to consider the application of the code through the course of Mr W's claim. And in any event, it has said it does still apply its principles.

I'm satisfied this is an APP scam and caught by the CRM code, and so I've gone on to apply the provisions of the code below.

The Lending Standards Board's Contingent Reimbursement Model (the CRM Code) requires firms to reimburse customers who have been the victims of APP scams, in all but a limited number of circumstances and it is for Metro to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate *Further exceptions outlined in the CRM Code do not apply to this case.

Did Metro meet the standards expected of a firm under the CRM Code?

The CRM code says that, where a firm identifies APP scam risks, it should provide "Effective Warnings" to their customers. It sets out that an Effective Warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific.

I'm satisfied given the value of the £65,000 payment in August 2019, that Metro ought to have identified Mr W could be at risk of an APP scam and provided effective warnings in line with the firms' standards under the CRM code.

Metro's records show that this payment was made via telephone banking. It no longer has any record of the call. It has provided some notes which says the consumer said the payment was for an investment and then it has provided a screenshot of an online warning that would be displayed if that payment reason was given but there are no notes to show if this warning was discussed. So, I'm not persuaded that the wording of this warning was shared with Mr W.

But in any event, I'm not persuaded that the warning – if discussed- is effective. The warning doesn't bring to life the common features of investment scams. The significance of the FCA is not explained. A layperson may not know what or who the FCA is, or the importance of FCA regulation. And it doesn't set out the consequences of proceeding with the payment. Overall, I'm not satisfied Metro met the firms' standards as per the CRM code.

Did the consumer have a reasonable basis of belief?

Metro has not provided any argument that Mr W lacked a reasonable basis of belief when making these payments. And I agree with the investigator's findings that Mr W did have a reasonable basis of belief and I have set out those reasons below.

- The funds were being sent to an FCA-regulated company - A - which was receiving funds on behalf of S.
- Mr W was presented with links, brochures and details regarding the investment, this

was detailed in content and looked professional which is what you would expect from a genuine investment company.

- I have not found any clear or compelling evidence at the time that would have revealed to Mr W that the investment opportunity was in fact a scam.
- Mr W was advised that he would receive 9% interest per annum. While this was a high rate of return, it isn't so large that it was obviously too good to be true.

Putting things right

Overall, and for the reasons set out above, I'm satisfied that Metro should've reimburse Mr W under the provisions of the CRM Code. And, in those circumstances, I direct Metro Bank plc to now fairly and reasonably compensate Mr W by:

- Refunding Mr W his losses - £65,000 minus his returns which I calculate to be £13647.50 – leaving £51,352.50 to be refunded by Metro.
- Plus pay 8% simple interest from the date it declined the claim to the date of settlement. I've awarded 8% simple interest as Mr W tells us he received funds from an inheritance prior to this investment. And I can see that at the time Mr W made multiple investments, with this and other money, so I'm satisfied he would have likely also invested these funds, had it not been a scam. And therefore, it is appropriate to award 8% simple interest to reflect the loss of opportunity to otherwise save or invest those funds.

My final decision

I uphold Mr W's complaint against Metro Bank Plc and now direct it to settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 May 2025.

Sophia Smith
Ombudsman