

The complaint

Mrs D is unhappy that Metro Bank PLC will not refund all of the money she lost as the result of a scam.

Mrs D brought her complaint through a representative. For ease of reading I will refer solely to Mrs D in this decision.

What happened

As both parties are familiar with the details of the scam I will not repeat them in full here. In summary, Mrs D fell victim to an investment scam run by company H. She was introduced to the opportunity by an acquaintance. She transferred a total of £42,655.34 (net of two credits) as faster payments to two cryptocurrency wallets held in her name that she had opened in April 2021. From there she sent funds in USDT to the scammers, believing she was depositing the funds in a trading account in her name. Mrs D was expecting a full return on her investment within 200 days and a three-fold return in 600 days, with daily returns of 0.5%. The payments involved are set out below.

payment	date	value
1	05-Apr-21	£230
2	30-Apr-21	£220
3	07-May-21	£930
4	14-May-21	£215
5	14-May-21	£2,130
6	14-May-21	£5
7	04-May-21	£430
8	25-May-21	£1,980
9	09-Jun-21	£215
10	28-Jul-21	£1
11	28-Jul-21	£100
12	28-Jul-21	£3,500
13	29-Jul-21	£3,650
14	29-Jul-21	£15,000
15	02-Aug-21	£5,000
16	02-Aug-21	£9,354.96
17	07-Feb-22	-£1,305.62
18	23-Jul-22	£300
19	23-Jul-22	-£300

By February 2022 it had become more and more difficult to withdraw money from her trading account but Mrs D hoped this was a temporary problem. Only when her representative became involved did she realise she had been scammed.

Mrs D says Metro Bank did not do what it should have to protect her and so should be held liable for her loss.

In its final response letter Metro Bank offered to refund Mrs D 50% of her losses from payment 5 onwards, saying it ought to have intervened at this point. And it would most likely have broken the spell of the scam. However, it felt Mrs D must take some responsibility for her losses as she did not do enough due diligence before sending the money. It refunded £19,377.36 on 16 May 2024. When it submitted its business file to this service it realised there was an error in its refund calculation and so credited Mrs D's account with a further £150.

Mrs D says Metro Bank should be liable for 100% of her loss.

Our investigator upheld Mrs D's complaint in part. He said there is no doubt Mrs D was scammed. He agreed with Metro Bank's analysis that it ought to have intervened before processing payment 5 based on Mrs D's typical account activity and the payee. He concluded Metro Bank could therefore have prevented Mrs D's losses, but should only be partially responsible as Mrs D should have done more checks before investing. He said as Metro Bank's refund calculation had not treated payment 17 (a credit) correctly it must resolve that, and pay 8% simple interest on the payments from the date they were made to the date of settlement.

Mrs D did not accept this assessment and said Metro Bank must refund the payments in full as it missed the opportunity to discuss payment 5. It could have prevented any further payments from that point onwards.

Metro Bank accepted the assessment in principle but queried the investigator's calculation. He explained he had first calculated the total loss which both parties are equally liable for. So, he'd added up all the debits and deducted any credits from the trigger point (payment five) onwards. He then made a 50% deduction to this total loss figure and asked Metro Bank to pay its half to Mrs D – net of the two refunds it had already paid.

As the parties could not reach agreement the complaint was passed to me to make 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.

There's no dispute that Mrs D made and authorised the payments. Mrs D knew why she was making the payments. At the stage she was making these payments, she believed she was transferring funds to two crypto wallets in her name that would allow her to then invest through company H. I don't dispute Mrs D was scammed and she wasn't making the payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Metro Bank has an obligation to follow Mrs D's instructions. So in the first instance Mrs D is presumed liable for her loss. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payments were made to an account in Mrs D's own name, not one held by another person, the principles of the Contingent Reimbursement Model (CRM) code do

not apply in this case.

This means I think that Metro Bank should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that 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 financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

In this case I agree that Metro Bank ought to be held liable in part for the transactions. I'll explain why.

There is no dispute between the parties that Metro Bank ought to have intervened before processing payment 5. And both parties agree that a proportionate intervention would have stopped Mrs D from making any subsequent payments. As I agree with both these two findings, I will not comment further on them and instead focus on where the dispute remains.

Should Mrs D bear some responsibility for the overall loss?

Metro Bank refunded 50% of the losses from payment 5 onwards arguing that Mrs D missed certain red flags, and the investigator agreed. Mrs D maintains that the bank should be held wholly liable as its failure to intervene caused all the losses from payment 5 onwards.

I am not persuaded that Mrs D's position is fair and reasonable. I've considered carefully whether Mrs D should hold some responsibility for her loss by way of contributory negligence. On balance, I think Mrs D should be held responsible in part. I accept she had been given documentation by company H that was credible. But I have not seen enough evidence that she carried out her own independent research. And the regulator, the FCA, had published a warning about company H on 23 March 2021 so it would have been easy for Mrs D to check the legitimacy of the investment. Mrs D had not taken any professional advice and had no investment experience, or knowledge of cryptocurrency. The rate of return was not typical of legitimate investment opportunities. Given the amount she was investing I think Mrs D ought reasonably to have done more to reassure herself that the opportunity was genuine.

Overall, I'm not satisfied that it was reasonable for Mrs D to proceed without doing more to verify the information she was given.

I therefore agree that Metro Bank was right to only refund 50% of Mrs D's loss from payment 5 onwards. It does however need to apply interest at 8% simple to the refund.

Did Metro Bank do what it should to try to recover Mrs D's money?

In this case, Mrs D sent the money to her own accounts held elsewhere and from there onto the scammer. So there was no prospect of Metro Bank being able to recover the funds from the two firms it had sent the payments to. It follows I do not find any failings on its part in this regard.

Putting things right

Metro Bank must:

- Refund 50% of £40,060.34 (so £20,030.17); and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each payment (from 5 onwards) to the date of settlement.*

It can deduct the two refunds already repaid that total £19,527.36 from this amount and adjust the interest owed on those amounts accordingly.

*If Metro Bank considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D how much it has taken off. It should also give Mrs D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I am upholding Mrs D's complaint in part. Metro Bank PLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 20 February 2025.

Rebecca Connelley
Ombudsman