

## The complaint

Mr C complains that Metro Bank PLC didn't protect him from an investment scam.

Mr C is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr C in this decision.

## What happened

Mr C says that he was introduced by a friend to a 'trusted' broker (who I'll refer to here as Mr M). Mr C says Mr M was a consultant for a company (which I'll refer to here as 'W'), which he believed to be regulated by the Financial Conduct Authority (FCA).

Mr C says Mr M introduced him to an investment with a company (which I'll refer to here as 'H') in relation to forex trading. Mr C said he understood that Mr M had himself invested in 'H', and that he had introduced others to the investment, and that he was attracted by the rate of returns received.

Mr C completed client suitability forms. And as part of the application process, he also communicated with another broker (who I'll refer to here as 'E').

Another company (which I'll refer to here as 'S') facilitated the payment towards the investment in 'H'. Mr C was also in communication with 'S' during the application process.

Mr C understood the terms of the investment to be monthly returns of 5% - with return of the capital in 12 months. He said he checked the websites for both 'H' and 'S' and had no concerns. Mr C entered into a loan agreement with 'H' for the sum of £100,000.

Mr C made the following payment by way of telephone banking as part of the investment:

Date	Amount
29/11/2017	£100,000

Between January and December 2018, Mr C received monthly returns on the £100,000 investment totalling £29,700.

'H' went into liquidation in June 2019.

On 24 November 2023 Mr C made a complaint to Metro. In short, he said he'd been the victim of a scam investment perpetrated by 'H', and that Metro hadn't done enough to protect him. Mr C therefore held Metro responsible for his loss. He wanted his funds returned together with 8% interest and £1,000 for the distress and inconvenience caused.

Metro replied to say it didn't think it had done anything wrong. It said the £100,000 wasn't out of character for Mr C, given his previous account activity. Metro said it no longer had records of the telephone call during which the payment was made. But it maintained that any questioning of Mr C was unlikely to have uncovered anything untoward given both 'H' and 'S' were legitimate companies.

Mr C referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, she said Metro should've questioned Mr C about the £100,000 payment. But given there was no adverse information about 'H' or 'S' available at that time, and because he'd been introduced to the investment by a trusted broker, our Investigator didn't think further questioning by

Metro would've given it or Mr C any obvious cause for concern. She also thought there was no reasonable prospect of Metro being able to recover the lost funds.

Mr C didn't agree. Essentially, he said that he was an inexperienced investor, and this would've become known to Metro if it had questioned him about the £100,000 payment. Mr C said despite any preconceived ideas he might've had about the legitimacy of the investment in 'H', he wasn't able to lose such a substantial amount of money, and so would've listened to any warnings Metro, his FCA regulated bank, had provided to him.

Mr C also said that Metro should've done more to understand the regulatory status of 'W'. He said:

*'Metro had the opportunity to ask ... more detailed questions. Had they done so, the unregulated status of ['W'] might have been uncovered, potentially preventing the payment'.*

Mr C added that this was a high-risk investment, and as such, Metro shouldn't have relied on Mr C's trust in an unregulated broker.

I've been asked to review everything afresh and reach 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.

Having done so, I've decided not to uphold it. I know this is not the answer Mr C was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether Metro can fairly and reasonably be held responsible for Mr C's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Metro could've prevented Mr C's loss.

Following a court hearing in July 2020, it's now accepted that Mr C has likely been the victim of a scam. But I accept the £100,000 transaction Mr C made was an authorised payment. So, Mr C is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as Metro, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Metro ought reasonably to have held such suspicions or concerns in relation to Mr C's £100,000 payment — and if so, what might've been expected from a proportionate intervention.

Further to that, where there is an interaction between a customer and a bank before a high value payment is processed, as there was here, I'd expect the bank to take reasonable steps to understand the circumstances of that payment.

So, taking all of this into account, I need to decide if Metro acted fairly and reasonably in its dealings with Mr C when he made the £100,000 payment. Specifically, whether it should've done more than it did before processing the payment – and if it had, would that have made a difference. I also need to decide if Metro could've reasonably recovered the lost funds.

Metro did speak to Mr C about the £100,000 payment because it was made by way of telephone banking. Metro has confirmed that the payment purpose was given as 'investment', but given the passing of time, we don't have a record of what else was discussed. Whilst I accept that Mr C had used his account previously for similarly high value

payments, these weren't transactions made in the preceding 12 months. And so arguably, Metro should've asked Mr C about the purpose of the £100,000 payment, that was being made to a new payee, when it had the opportunity to do so as part of the telephone banking process.

But for me to find it fair and reasonable that Metro should refund the payment to Mr C requires more than a finding that Metro ought to have intervened.

I would need to find not only that Metro failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would have been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Metro wouldn't have revealed the payment was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being made.

In thinking about this, I've considered what a proportionate intervention by Metro at the relevant time would've constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, Metro's primary obligation was to carry out Mr C's instruction without delay. It wasn't to concern itself with the wisdom or risks of his payment decision.

In particular, Metro didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment Metro was recommending or even endorsing.

Metro's role here was to make the payment that Mr C had told it to make. Mr C had already decided on that investment. And I find that Metro couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr C's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr C (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of Metro in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for Metro, as a matter of good industry practice, to have taken steps to establish more information about this payment when it spoke to Mr C.

What matters here is what those steps might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H', and the legitimacy of the investment, I must consider what Metro could reasonably have established during a proportionate enquiry to Mr C about his payment back in November 2017. I cannot apply the benefit of hindsight to this finding.

'H' was a genuine company and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr C has provided about 'H', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Metro or Mr C at the time the £100,000 payment was made.

I think it's also likely Mr C would've told Metro that he had documents from 'H' confirming the terms of the investment by way of a loan agreement, which all appeared entirely genuine. And whilst it isn't disputed that the investment in 'H' was high risk – Mr C declared on his client suitability form that he'd previously put money in '*risky investments*'. This suggests that Mr C had thought through his choice to invest and had some awareness that his money could be at risk.

Further, in January 2018 Mr C said he made another payment for £50,000 towards the investment with 'H' from his company account (not subject to this complaint). I appreciate this decision was partly driven by the returns Mr C was seeing on the £100,000 investment. But it does, I believe, further demonstrate how committed Mr C was in his decision to invest with 'H' and what it had to offer; and that he had no doubts whatsoever over its legitimacy.

The £100,000 payment was also being facilitated by 'generational wealth specialists' ('S') – who had a UK based bank account, and was, and still is, an active company registered on Companies House. Mr C had also been in regular communication with 'S' prior to making the payment whereby he built up trust and reassurance.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H', everything I've seen indicates that those concerns only began to surface in the public domain after the £100,000 payment was made by Mr C. And there would've been nothing obviously concerning about the involvement of 'S' – the payee.

I've thought next about how Mr C found out about the investment. Mr C was introduced to 'H' by Mr M, who appears to be an unregulated broker working for 'W'. Mr C has said he believed Mr M (and 'W') to be FCA regulated.

So, had Metro asked Mr C who'd advised him about the investment, then the involvement of Mr M (and 'W') would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice; and might be made available to clients of an unregulated adviser (as seems to be the case here).

Mr C believes that Mr M and 'W' being unregulated would've been of concern to Metro, which in turn could've prevented his loss. But the status of Mr M or 'W' and the investment weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr C asked Metro to make the payment. This, in my opinion, is also particularly true given there was no adverse information available about 'H' and 'S' at that time.

Further to that, I've not seen any evidence to suggest Mr C ever doubted the advice he was being given by Mr M, or that Mr M misled Mr C into thinking he or 'W' was FCA regulated. Mr C has said Mr M was also investing in 'H' and had introduced other investors who were receiving good returns. And Mr C has said he is still in contact with Mr M and trusted him. And the involvement of another broker endorsing the investment in 'H' ('E') would've, I think, only served to further reassure Mr C.

Given this, I don't think, on balance, that any advice or warning from Metro about Mr M or 'W' would've likely resonated with Mr C or given him any cause for concern. And any concerns that might've been raised with Mr C about 'H' would've likely, in my opinion, have been allayed by Mr M – or by 'S'.

All things considered; I don't think it would've been readily apparent in November 2017 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think Metro could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think Mr C could've uncovered such information at the time – he wasn't at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by Metro to have been proportionate to the perceived level of risk of 'H' being fraudulent. I don't think that a proportionate enquiry in November 2017 would've led to either Metro or Mr C considering 'H' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that Metro was at fault for carrying out the relevant payment instruction, or for not preventing Mr C from making his payment.

In terms of trying to recover the lost funds; I'd expect Metro to attempt this at the point it's alerted to the loss. But almost six years had passed by the time Mr C contacted Metro and 'H' had gone into liquidation by this point. Furthermore, evidence from 'S's bank account indicates that Mr C's funds left that account long before Mr C reported his loss to Metro.

Therefore, I can't say Metro had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' had gone into liquidation more than four years before.

I have a great deal of sympathy for Mr C and the loss he's suffered. But it would only be fair for me to direct Metro to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

### **My final decision**

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 C to accept or reject my decision **before 6 May 2025**.

Anna Jackson  
**Ombudsman**