

The complaint

X, a limited company represented here by Mrs G – its director – complains that Metro Bank PLC did not reimburse the money X lost to a scam.

What happened

In December 2022 Mrs G's spouse, Mrs A, was contacted by someone they both knew – a fellow property investor, Mr O, whom they had discussed investment opportunities with in the past. Mr O told them about an investment opportunity he had come across with V and sent them a detailed brochure with a link to a seminar by V's founders where they answered questions from other investors about the scheme. The seminar was hosted by another individual well known in the property investment business, Ms J.

In January 2023 Mr O contacted Mrs A again to see if she was interested in investing, and Mrs A and Mrs G went on to have a video call with Mr O where he told them about his personal experience of investing in V and the profits he had made. They were also given various information about V's regulatory status and how it operated, and this was followed up with recordings of several live seminars with other investors. Mrs A and Mrs G also did their own research into V and its founders, and were satisfied with what they had found, so they decided to invest some of X's money in the scheme.

They went through the process of setting up a trading account for X at V, and in March 2023 made two payments, totalling £20,000 as an investment. They received regular updates on X's investment, until May 2023 when they received an email explaining that the FCA had asked V to stop trading. Subsequent updates about the FCA's investigation into V led them to believe that V had been operating a scam, so Mrs G contacted Metro to ask them to refund X's loss.

Metro declined to refund X's loss, it said it could not reach a decision on whether a refund was due until the outcome of the FCA's investigation into V was completed.

Mrs G referred X's complaint to our service and our Investigator looked into it. Having reviewed the complaint, they did not feel it was reasonable for Metro to delay any longer in making a decision on the complaint, given the evidence that was available by that time. They were also satisfied that X had been the victim of an APP scam. They therefore assessed the complaint under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, which was in force at the time of the payments X made.

They felt that Mrs G (on behalf of X) had a reasonable basis for believing the investment was genuine, and had not ignored any effective warnings relating to the payments made, so they did not think an exception to reimbursement applied. They therefore recommended a full refund of the scam payments, as well as 8% simple interest from the date of their view to the date of settlement.

Mrs G accepted the findings on behalf of X, however Metro did not, it maintains that any decision should be delayed until the FCA investigation is complete. 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.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

In order to determine X's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that X was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that X first raised the claim with Metro in 2023 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving X an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes might result in some recoveries for V's investors; in order to avoid the risk of double recovery, I think Metro would be entitled to take, if it wishes, an assignment of the rights to all future distributions to X under those processes in respect of this investment before paying anything I might award to X on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the FCA's investigation, or any criminal investigations that might follow that, for me fairly to reach a decision on whether Metro should reimburse X under the provisions of the CRM Code.

Has X been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mrs G (on behalf of X) authorised the payments that are the subject of this complaint. Because of this, the starting position – in line with the Payment Services Regulations 2017 – is that X is liable for the transactions. But Mrs G says that X has been the victim of an authorised push payment (APP) scam.

Metro was a signatory of the voluntary CRM Code, which provided additional protection to scam victims at the time these payments were made. 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 this definition out 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.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

This Code does not apply to:

b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.

I've therefore considered whether the payments X made to V fall under the scope of an APP scam as set out above. Having done so, I think that they do.

I say this because our service is now aware of a number of issues related to V, which suggest to us it is more likely they were carrying out a scam. Specifically:

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- Less than half of the funds sent to the two founders was potentially used for the intended purpose of Forex trading. Whereas X sent funds to V with the understanding they would immediately be moved to a trading account to be used in Forex trading.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with a trading exchange and that it was regulated.
- We have also seen evidence that none of the funds sent to V's business accounts was used for the intended purpose of trading in Forex.

Considering all of the above, I do not think V was using investor funds, such as X's, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception on V's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. In regard to the FCA's investigations, there is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Is X entitled to reimbursement under the CRM Code?

I've considered whether Metro should refund X under the provisions of the CRM Code.

Under the CRM Code the starting position is that a firm should reimburse customers who have been the victim of an APP scam, except in limited circumstances. These circumstances include where the firm can establish that the customer made the scam payments without a reasonable basis for believing that they were for genuine goods or services; and/or that the payee was legitimate.

So, I've thought about whether X (or Mrs G on X's behalf) had a reasonable basis to believe V was legitimate and was providing a genuine investment product. In doing so, I have considered that the investment was recommended to Mrs G and Mrs A by someone she trusted, and who they had previously discussed investments with. They also received a brochure with an FAQ which looked to be professional and were able to view information about investments on a professional looking portal. Mrs G and Mrs A also saw recordings of live seminars, and saw evidence that their contact had made a good profit from the scheme. Lastly, they carried out their own checks on what they were told and on the individuals involved in the investment, and what they found satisfied them that V was legitimate.

So, given what Mrs G and Mrs A had been told and had seen, I think there was enough to reasonably convince them that this was a genuine investment they could trust. With this in mind, I don't think Mrs G made the payments on X's behalf without a reasonable basis of belief that V and the investment itself was genuine. I therefore do not think Metro can apply an exception to the reimbursement for this reason.

Metro could also refuse to reimburse X in full if it could demonstrate that X or its agents had ignored an effective warning, by failing to take appropriate steps in response to that warning. But Metro has not said it provided any warnings to X regarding the payments that are the subject of this complaint, so I cannot reasonably say that this exception applies.

With all this in mind I consider that none of the relevant exceptions to reimbursement apply in this case, it follows that I consider Metro should reimburse X in full.

Putting things right

Metro should reimburse X's loss in full.

It should also apply 8% simple interest from the date of the Investigator's view to the date of settlement. I say this because the information our service has relied upon to uphold X's complaint was not readily available to Metro when the scam claim was first raised. So, it would not have been able to identify the issues that led to the complaint eventually being upheld.

As there is an ongoing investigation by the FCA it's possible X may recover some further funds in the future, through that process. In order to avoid the risk of double recovery, Metro is entitled to take, if it wishes, an assignment of the rights to all future distributions under that process in respect of this investment before paying the award.

If Metro elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to X for consideration and agreement.

My final decision

I uphold this complaint. Metro Bank PLC should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 25 September 2025.

Sophie Mitchell
Ombudsman